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**9.0 USE SPECIFIC STANDARDS****9.1 Accessory Uses and Buildings****9.1.1 Accessory Uses****(A) Accessory Uses Prohibited**

(Ord. #308, adopted 11/04/99)

No mobile or manufactured home, camper, travel trailer, recreational vehicle, bus, or similar structure shall be used as an accessory structure, out building or for storage purposes in any district.

**9.1.2 Accessory Buildings**

(Ord. #445, adopted 04/12/11)

- (A)** A land use permit is not required for any accessory building or storage structure less than or equal to 200 square feet, however all applicable setbacks shall be met.
- (B)** Except as provided below, no storage structure or accessory use shall be constructed or developed on a lot prior to the time of obtaining a land use permit for the principal building/use and construction of the principal building has commenced. In the case where a manufactured home is the principal building, said manufactured home must be installed prior to the issuance of a land use permit for any storage structure.
  - (1)** An accessory building or storage structure may be constructed or placed on lots zoned R-1, R-2, R-3, R-S without a single family dwelling or other principal building, provided a conditional use permit for said structure is obtained and the following conditions are met:
    - (a)** The accessory building shall conform to all of the requirements of subsection 9.1.2(C); and
    - (b)** The accessory building shall not be used for commercial purposes, except as otherwise allowed with a home occupation or home extended business; and

- (c) The accessory building shall not be used for temporary or permanent residence; and
  - (d) There is land suitable for the construction of a residence and septic system without the need for variances; the septic verification shall require soil borings to be provided to demonstrate compliance with Section 9.22 for new construction; or
  - (e) The accessory building will serve the residents of a single family dwelling located on a lot adjacent and abutting to, or separated by a street or road from, the lot upon which the storage structure will be placed.
- (2) An accessory building or storage structure may be constructed or placed on lots zoned A or R-A less than 10 acres without a single family dwelling or other principal building, provided a conditional use permit for said structure is obtained and the following conditions are met:
  - (a) The accessory building conforms to all of the requirements of subsection 9.1.2(C); and
  - (b) The accessory building will not be used for commercial purposes; and
  - (c) The accessory building will not be used for temporary or permanent residence; and
  - (d) That there is land suitable for the construction of a residence and septic system without the need for variances; the septic verification shall require soil borings to be provided to demonstrate compliance with Section 9.22 for new construction.

- (C) The allowed size of accessory buildings shall be based on the size of the lot as indicated below:

Lot Size* (in Acres)	Maximum Cumulative Accessory Building Footprint Area**	Maximum Building Height
0-0.49	5% of Lot Area	15 feet
0.5<=1.00	5% of Lot Area	20 feet
>1.01-2.49	5% of Lot Area	25 feet
2.50-4.99	5% of Lot Area	35 feet
5.0-9.10	5% of Lot Area	40 feet or 35 feet in Shoreland
10 or greater	Unlimited***	Unlimited or 35 feet in Shoreland
* Only land above the Ordinary High Water level shall be used to calculate lot size.		
** Accessory buildings not requiring a land use permit, as described in Section 9.1.2(A), shall not be calculated towards the cumulative footprint of accessory buildings		
*** Lots 10 acres or greater will only be limited by the total lot coverage		

- (D) The addition of an accessory building shall not cause the property to exceed allowable total lot coverage, as determined by district.
- (E) Garages attached to the primary building shall not be considered in the calculation of the cumulative accessory building area.
- (F) Accessory buildings shall meet the setback requirements of all zoning districts
- (G) Accessory buildings in Residential Districts (R-1, R-2, R-3, and R-S) shall comply with the following:
- (1) Accessory buildings shall be constructed with a design that conforms to the architecture of the principal structure.

- (2) No accessory building shall be located nearer the front lot line than the principal building on that lot, except as provided by subsection 9.1.2(I).
- (3) An alternate septic site shall be designated by a licensed designer prior to the issuance of a land use permit for the accessory structure in a residential district for lots 1 acre or less in size.
- (H) Accessory buildings in Agricultural Districts (A and R-A) shall comply with the following:
  - (1) No storage structure in a cluster development shall be located nearer the front lot line than the principal building on that lot.
- (I) Accessory buildings in Shoreland shall comply with the following:
  - (1) If the presence of a waterbody or watercourse creates a second front yard, accessory buildings in the Shoreland may be placed with a setback 2 times the required setback from the waterbody regardless of the location of the principal structure.
  - (2) An alternate septic site shall be designated by a licensed designer prior to the issuance of a land use permit for an accessory building for lots less than 2 acres in the shoreland.

## **9.2        Adult Uses**

9.2.1        For the purposes of this section, the following definitions shall apply:

- (A) Adult Uses: Adult uses include adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse facilities, adult enterprises, businesses or places open to some or all members of the public at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.
- (B) Adult Bookstore: A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audiotape, videotape, or motion picture film if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or

"specified anatomical areas" or the barter, rental or sale of instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, "Substantial or significant portion of items," for purposes of this Ordinance, shall mean more than 15 percent of usable floor area.

- (C) Adult Cabaret: A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age, or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas."
- (D) Adult Conversation/Rap Parlor: A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (E) Adult Health/Sports Club: A health/sports club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (F) Adult Massage Parlor: A massage parlor which restricts minors by reason of age, or which provides the service of "massage," if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
- (G) Adult Mini-Motion Picture Theater: A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- (H) Adult Motion Picture Theater: A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

- (I) Adult Steam Room/Bathhouse Facility: A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

- (J) Specified Anatomical Areas:

Less than completely and opaquely covered:

- (1) Human genitals;
- (2) Pubic region;
- (3) Buttocks; and,
- (4) Female breast below a point immediately above the top of the areola; and
- (5) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

- (K) Specified Sexual Activities:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy; and
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

#### 9.2.2 Location Requirements

Adult Uses shall be permitted in areas zoned B-1, B-2, I-1, and I-2, provided the following requirements are met:

- (A) No adult use shall be located within 500 feet of:
- (1) Any area zoned R-1, R-2, R-3 or R-S.

(Ord. #423, adopted 12/06/07)

- (2) Any school, as defined in Minn. Stat. § 120A.05, as may be amended.
  - (3) Any church, as defined in the Benton County Development Code.
  - (4) Any daycare facility, as defined in the Benton County Development Code, or any residential or nonresidential program, as defined in Minn. Stat. § 245A.02, as may be amended.
  - (5) Any hotel or motel.
  - (6) Any public park.
- (B) Adult uses shall not be established or maintained as a permitted, conditional or accessory use in any area other than those described in item (A), above.

#### 9.2.3 Amortization of Nonconforming Uses

Adult uses established prior to the enactment of Benton County Ordinance 235 shall be permitted and regulated as nonconforming uses until July 31, 1998, at which time such uses shall become unlawful, unless they conform to the requirements of subsection 9.2.2.

(Ord. #260, adopted 11/21/95)

#### 9.2.4 Additional Building Placement Restrictions

Section 9.2, the Adult Use Regulations of the Benton County Development Code, contains standards that are additional to those set forth in other sections of the Code. Minimum setbacks from roads, building bulk limitations, as well as minimum lot and building dimensions, shall be determined by referring to the specific standards set forth in the underlying zoning district (e.g., I-1, I-2, B-1, B-2). In the event of a conflict between the setbacks listed in this chapter and those listed in other appropriate sections of the Development Code, the most restrictive setback shall apply.

(Ord. #242, adopted 07/19/94)

### 9.3 **Agricultural Tourism**

- 9.3.1 Agricultural Tourism, where allowed in this Ordinance, shall be subject to the following standards:



- (A) The parcel shall be actively farmed.
- (B) If the owner of the agricultural tourism use is not the owner of the property on which it is operated, then the owner of the property shall have a letter on file with Benton County stating her/his permission for the use to occur and her/his acknowledgement of the standards required for the use.
- (C) The responsible road authority and law enforcement agency shall be notified of such use at the proposed location.
- (D) A plan for seasonal directional signs shall be administratively approved.
- (E) All structures and portions of the parcel used for agricultural tourism, including temporary structures, shall meet the minimum setback requirements of the district in which it is located.
- (F) Adequate parking for employees and customers shall be provided on site and shall meet parking standards of Section 8.2.
- (G) Adequate restroom facilities shall be provided either through permanent facilities or seasonal, portable toilets.
- (H) Local and state health and liquor regulations shall be met if food or beverages are served.
- (I) Hours of operation shall be limited to 8 a.m. to 10 p.m.
- (J) Any outdoor lighting shall be arranged so as to reflect the light away from adjoining property and right-of-way.

#### **9.4 Animal Unit Density Requirement**

(Ord. #431, adopted 10/07/08)

9.4.1 The following animal density shall apply in the Agricultural and Rural Agricultural districts unless approved for animal boarding.

- (A) Less than 2 acres  
0.5 animal units; and cats and dogs and other domestic animals customarily kept as household pets
- (B) 2.0 - 4.99 acres

1.5 animal units; and cats and dogs and other domestic animals customarily kept as household pets

(C) 5.0 – 10.0 acres

1.5 AU plus 0.5 animal unit for each additional acre owned above 5 acres max of 4 animal units; and cats and dogs and other domestic animals customarily kept as household pets

(D) 10.1 - 19.99 acres

4.0 AU plus 0.5 animal unit for every acre above 10 acres maximum of 9 animal units; and cats and dogs and other domestic animals customarily kept as household pets

9.4.2 The following animal density shall apply in the Residential and Rural Service District

(A) Less than 1 acres

Cats and dogs and other domestic animals customarily kept as household pets

(B) 1.0 - 1.99 acres

Cats and dogs and other domestic animals customarily kept as household pets; and 10 chickens (no roosters) as long as they are within a confined area.

(C) 2.0 - 4.99 acres

1.0 animal unit and cats and dogs and other domestic animals customarily kept as household pets; and 10 chickens (no roosters) as long as they are within a confined area. Up to 10 chickens shall not be counted towards the overall animal unit density.

(D) 5.0 – 10.0 acres

1.0 animal unit plus 0.25 animal units for each additional acre owned above 5 acres max of 2.25 animal units; and cats and dogs and other domestic animals customarily kept as household pet and 10 chickens (no roosters) as long as they are within a confined area. Up to 10 chickens shall not be counted towards the overall animal unit density.

## (E) 10.1 - 19.99 acres

2.25 animal unit plus 0.5 animal unit for every acre above 10 acres maximum of 7.25 animal units; and cats and dogs and other domestic animals customarily kept as household pets”.

**9.5 Auto Fuel Stations****9.5.1 General Provisions**

- (A) For architectural purposes, each side of an auto fuel station shall be considered as a front face.
- (B) The storage of items for sale outside the principal building shall be displayed in specially designated areas.
- (C) All trash, waste materials, and obsolete parts shall be stored within a separate enclosure.
- (D) All goods for sale, other than those required for the operation and maintenance of motor vehicles, shall be displayed within the principal structure.
- (E) Open dead storage of motor vehicles shall not be permitted for a period of more than 48 hours.
- (F) All rental campers, trailers, or motor vehicles shall be stored within the rear and/or side yard not adjacent to the street.

**9.5.2 Site Requirements**

- (A) Wherever an auto fuel station abuts residential property, a fence or compact evergreen hedge, not less than 50 percent opaque or less than 6 feet high, shall be erected and maintained along the side and rear property line that abuts the residential property. Application of this provision shall not require a fence within 15 feet of any street right-of-way line.
- (B) The entire auto fuel station site, other than the part devoted to landscaping and structure, shall be maintained and operated in such a manner as to minimize, as far as is practicable, conditions which are injurious or substantially annoying to persons living in the vicinity.

- (C) Driveways shall not exceed 30 feet in width, nor be spaced closer than 30 feet apart measured at the property line. No more than 2 access drives to any street shall be permitted.

### 9.5.3 Setbacks

#### (A) Side Yard

	Lot Width	Front Yard	Side Yard Adjacent to another lot	Side Yard Adjacent to street	Rear Yard	Pump Setback
Motor Fuel Station	200'	70'	30'	70'	30'	30'
Truck Stop	200'	80'	60'	80'	60'	30'

- (B) The setback of any overhead canopy or weather protection, free standing or projecting from the station structure, shall be not less than 10 feet from the street right-of-way line, nor less than 20 feet from an adjacent property line.

## 9.6 **Cluster Subdivision**

(Ord. #398, adopted 05/08/06)

### 9.6.1 Cluster Subdivision

#### (A) Purpose

The clustering of houses in order to preserve open space, agricultural land and purposes and/or environmentally sensitive areas in some cases can be an asset to the community and when appropriate is encouraged by permitting a density up to 6 dwelling units per 40 acres.

#### (B) Permitted Uses within a Cluster Subdivision

- (1) Daycare Facilities, Licensed Group Family serving 14 or fewer children
- (2) Dwelling, Single Family
- (3) Essential services and necessary appurtenant structures in accordance with Section 9.11.

- (4) Horticulture uses and structures designed for storage of products and machinery pertaining and necessary thereto.
  - (5) Nonresidential Program Facilities with a licensed capacity of 12 or fewer persons.
  - (6) Residential Program Facilities with a licensed capacity of 6 or fewer persons.
- (C) Permitted Accessory Uses within a Cluster Subdivision
  - (1) Accessory Buildings in accordance with Section 9.1 of this Ordinance.
  - (2) Decorative Landscape Features
  - (3) Home Occupations in conformance with the provisions of Section 9.14.
  - (4) Residential garages, parking spaces, carports
  - (5) Private Swimming Pools
  - (6) Private Tennis Courts
  - (7) Signs as regulated by Section 8.1
- (D) Conditional Uses within Cluster Subdivision
  - (1) Energy efficient subterranean dwellings
  - (2) Fences located in a front yard or side yard with a height between 4 feet and 6 feet (Ord. #407, adopted 11/14/06)
  - (3) High voltage transmission lines of between 100 and 200 kilovolts according to Section 9.11
  - (4) Home extended business in conformance with the provisions of Section 9.14
  - (5) Nurseries and greenhouses with retail sales of home grown products;

- (6) Pre-existing single family dwellings moved from another site onto a lot
- (7) Recreational Facilities if located within the cluster subdivision open space
- (8) Residential garages on parcels without a principal building according to Section 9.1
- (9) Substations with a voltage designed for and capable of operations at a nominal voltage of 100 kilovolts or more according to Section 9.11.

(E) Setbacks

Setbacks and lot coverage shall be in accordance with subsection 7.2.6.

(F) Accessory Buildings

Accessory building size and height shall be subject to the requirements of Section 9.1 and shall not be located closer to the front lot line than the principal building on the lot.

(G) Open Space and Buffers

- (1) The Planning Commission as part of the review of the conditional use permit shall determine the need for buffers and open space to be preserved.
- (2) The open space and/or residual parcel shall be limited to recreational facilities associated with the clustered subdivision, open space, and cropland. No structures shall be permitted except those specifically permitted by conditional use for a recreational facility.

(H) Density

Density for the cluster subdivision shall be calculated in accordance with Section 6.4(B). Density transfer is prohibited.

(I) Cluster Siting Standards

- (1) Cluster developments should be sited to achieve the following goals to the extent deemed practicable by the Planning Commission:
  - (a) Avoid prime farmland soils, tillable farmland, large tract of land in agricultural use; and
  - (b) Avoid interference with adjacent or on-site agricultural uses; and
  - (c) Minimize the fragmentation of agricultural land; and
  - (d) Ensure the right to farm for adjacent agricultural lands by careful siting and provision of screening and buffers; and
  - (e) Minimize the disturbance of woodlands or other significant stands of vegetation; and
  - (f) Avoid encroachment upon or disturbing rare plant communities identified in the department of Natural Resources' County Biological Survey for Natural Communities and rare Species; and
  - (g) Avoidance of wetlands or other environmentally sensitive areas; and
  - (h) Cluster developments shall result in contiguous tracts and shall only be allowed where land features and topography allow for contiguous tracts to be sited.
- (2) To meet the above stated goals the applicant shall provide the following with a conditional use permit:
  - (a) Site plan depicting the general layout and size of the lots.
  - (b) Plan depicting the proposed access to the subdivision and individual lots,
  - (c) Soil borings for each lot depicting the potential for 2 standard systems or a centralized system,
  - (d) Location of environmentally sensitive areas, woodlands, or agricultural land being preserved,

- (e) Location of existing vegetation that will be preserved within a restricted open space or proposed vegetation located within a restricted open space to buffer the development from adjacent uses.

(J) Subdivision

- (1) The clustered lots shall be contiguous to one another, which may include the separation by an internal street, and may not exceed 6 dwelling units per 40 acres; however, clustering on less than 40 acres may be permitted proportionate to the tract owned. If the tract contains less than 40 acres but described by the rectangular survey system as a quarter, quarter section, in common ownership, the tract shall be considered eligible for up to 6 dwelling units per quarter, quarter section.
- (2) There shall be a minimum of 2 lots and a maximum of 6 lots within a cluster subdivision.
- (3) There shall be no transfer of development rights from one parcel to another to create more than 6 dwelling units.
- (4) Access requirements shall be determined by the Planning Commission in coordination with the road authority and County Engineer. Every lot, tract or plot of land, including outlots, shall abut or have a minimum road frontage equal to the required lot width; however, the Board of Commissioners with approval of a final plat or the Planning Commission with approval of a conditional use permit for a cluster development may approve a flag lot that has ownership to a dedicated public right-of-way by a minimum 33 foot wide access. The public right-of-way shall meet the minimum requirements stated in subsection 10.11.2; however, the construction design standards of the road shall be subject to the requirements of the Township for which the road is so located.
- (5) The remaining portion of the tract shall be deed restricted to prohibit structures, except those specifically permitted by conditional use for a recreational facility and further subdivision to ensure the density will not exceed 6 dwelling units.



- (6) The development shall meet all subdivision standards and regulations per Chapter 10.

## **9.7 Commercial Recreation, Outdoor**

9.7.1 Commercial Recreation, Outdoor Uses, where allowed through an Interim Use Permit, shall be subject to the following:

- (A) The site shall adequately accommodate the recreational use.
- (B) No overnight accommodations shall be provided.
- (C) The responsible road authority shall grant written permission for such use at the proposed location.
- (D) All structures and portions of the parcel used for the outdoor commercial recreation, including temporary structures, shall meet the greater of the minimum setback requirements of the district in which it is located or 300 feet from any existing residential dwelling on an adjacent parcel.
- (E) Adequate parking for employees and customers shall be provided on site and shall meet parking standards of Section 8.2.
- (F) If there is a commercial kitchen on-site or if the facility has its own liquor license, an individual sewage treatment system shall be provided that complies with Section 9.22 and regulations from the Minnesota Pollution Control Agency (PCA). If food and/or alcohol are provided by a caterer, the site, at the discretion of the Planning Commission, may permit the use of a holding tank or provide restroom facilities via portable toilets.
  - (1) Should a plan for portable toilets be approved by the Planning Commission, the applicant/property owner shall provide the Department of Development with the number, location, type, and means of disposing of waste deposited and a copy of the signed contract with the service provider shall be submitted to the Department of Development annually as long as portable toilets are being used.
- (G) All buildings used in conjunction with the use shall meet the requirements of the state building code, including state mandated accessibility requirements.

- (H) Local and state health and liquor regulations shall be met if food or beverages are served.
- (I) Hours of operation shall be limited to 8 a.m. to 10 p.m. The Planning Commission may grant approval for modified hours of operation.
- (J) Any outdoor lighting shall be arranged so as to reflect the light away from adjoining property and right-of-way.
- (K) Expiration. Interim use permit will expire upon the occurrence of any of the following events:
  - (1) Re-subdivision of the property.
  - (2) Change in ownership of the property.
  - (3) Rezoning of the property.
  - (4) Changes or amendments to the Development Code that affect the property on which the use exists.

## **9.8 Communication Towers**

(Ord. #287, adopted 05/19/98)

### **9.8.1 Tower Definition**

A communication tower is any pole, spire, structure, or combination thereof, including supporting lines, cables, wires, braces and masts, intended primarily for the purpose of mounting an antenna, meteorological device, or similar apparatus, 50 feet or greater in height, above grade.

### **9.8.2 Purpose**

The purpose of this section is to accommodate the communication needs of residents and businesses while protecting public health, safety and general welfare of the community. The County finds that these regulations are necessary in order to:

- (A) Facilitate the provision of wireless communication services to residents and businesses;

- (B) Minimize adverse visual effects of towers through careful design and site standards;
- (C) Avoid potential damage to adjacent properties from tower failure; and;
- (D) Maximize the use of existing and approved towers and buildings to accommodate new wireless communication antennas in order to reduce the number of towers needed to serve the community.

#### 9.8.3 Permitted Zoning Districts

- (A) The construction and maintenance of a commercial tower shall be permitted within the zoning classification, I-1, I-2, A, R-A, R-S, B-1, B-2, pursuant to a conditional use permit granted in accordance with the Zoning Ordinance. Amateur radio, television towers and exempted dishes shall not require a conditional use permit.
- (B) For construction of a communications tower equal to or in excess of 500 feet in height, or 300 feet in height within 1,000 feet of any protected water or protected wetland or within 2 miles of the Mississippi River, Benton County is the RGU and an Environmental Assessment Worksheet is required before construction of the tower may be approved.
- (C) All applicants shall submit the following information upon application.
  - (1) A plan illustrating all known future location sites for communications towers and/or antennas.
  - (2) Legal description of the property.
  - (3) Survey and/or general site plan of the tower and related facilities, as determined by the Department of Development.
  - (4) One or more color computer generated photographs depicting the proposed tower located on the site.
  - (5) Written authorization by the owner of the land for the tower construction.
  - (6) A statement that affirmatively ensures that the use is consistent with any land use restrictions that apply to the site.

- (D) No land may be subdivided for the purpose of providing space for any antenna unless all lot size requirements for the relevant zoning district are met and subdivision approval is obtained.
- (E) Towers located within a 5 mile radius of an FAA approved airstrip shall provide evidence of FAA consent.
- (F) Only 1 communication tower is permitted on a parcel of land. All other standards contained in this Ordinance must be met.

#### 9.8.4 General Performance Standards

- (A) The applicant shall submit a capacity analysis and coverage analysis, as required, prepared by a qualified radio frequency analyst, showing that the proposed tower site is necessary to meet the needs of the system, and that the tower cannot be located in a less restrictive district, or be accommodated by co-location on an existing tower or structure.
- (B) All towers shall meet the following performance standards:
  - (1) A proposal for a new commercial wireless communication tower shall not be approved unless the County finds that the telecommunications equipment plans for the proposed tower cannot be accommodated by an existing or approved tower of building within a one-half mile search radius of the proposed tower due to one or more of the following reasons:
    - (a) The planned equipment would exceed the structural capacity of the existing or approved tower, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot be re-enforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
    - (b) The planned equipment would cause interference materially impacting the useability of other existing or planned equipment at the tower as documented by a qualified and licensed professional engineer, and the interference cannot be prevented at a reasonable cost.
    - (c) Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a

height necessary to function reasonable as documented by a qualified and licensed professional engineer.

- (d) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- (C) Any proposed commercial wireless telecommunication service tower shall be designed (structurally and electronically) in all respects, to accommodate both the applicant's antennas and comparable antennas for at least 2 additional users. The tower must be designed to allow for future re-arrangement of antennas upon the tower and to accept antennas mounted at various heights.
- (D) All towers should be of a monopole design unless the Planning Commission deems that an alternative design is necessary or preferred due to the topography or to better blend with existing structures, for safety reasons, or if necessary to allow co-location.
- (E) The tower location shall provide screening for the base as deemed appropriate by the Planning Commission. Screening includes but is not limited to trees, setbacks, and fences. Associated base equipment must be located within a structure whenever possible or housed at the base of the tower and screened from view for adjoining residents by fencing or landscaping. Tower accessory structures shall be constructed of materials designed to minimize visibility to surrounding areas. The Planning Commission reserves the right to require design measures to camouflage facilities by integrating them with existing buildings and other existing uses. Existing on-site vegetation shall be preserved to the maximum extent practicable. (Ord. #410, 04/17/07)
- (F) All towers shall be constructed and maintained in accordance with the Electronic Industry Association Standards and all applicable building codes.
- (G) Minimum spacing between commercial tower locations is one-fourth (1/4) mile; except antennas wholly contained within a building or other structure and not visible to the general public shall be exempt from this spacing regulation.

- (H) All towers shall be reasonably protected against unauthorized climbing. The bottom of the tower from ground level to 12 feet above ground shall be designed in a manner to preclude unauthorized climbing or shall be enclosed by a 6 foot fence with 3 strands of barbed wire at the top with a locked gate.

#### 9.8.5 Tower Setbacks

- (A) The tower should be setback from all property lines a distance deemed appropriate by the Planning Commission. (Ord. #410, adopted 04/17/07)
- (B) Buildings accessory to a tower shall comply with the setback requirements of the zone in which the tower is located.
- (C) Commercial towers shall be setback a minimum of 1,000 feet from schools or structures used as dwellings and a minimum of 600 feet from property zoned for residential use.
- (D) Towers and accessory structures shall be situated in the rear yard when located with another principal residential use, unless the Planning Commission finds that another location on the parcel is more appropriate.

#### 9.8.6 Tower Lighting

- (A) A tower shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other state or federal authority for a particular tower.
- (B) When incorporated into the design standards of the tower, light fixtures to illuminate ball fields, parking lots or similar areas may be attached to the tower.
- (C) Antennas in the "Agricultural District" may be lighted to facilitate identification to low flying aircraft used for crop spraying.

#### 9.8.7 Signs and Advertising

The use of any portion of a tower for signs other than a warning or equipment information signs is prohibited.

#### 9.8.8 Abandoned or Unused Telecommunication Towers

Abandoned, unused telecommunications towers or portions of telecommunications towers shall be removed as follows:

- (A) All abandoned, unused towers and associated facilities shall be removed within 12 months of the cession of operations at the site unless a time extension is approved by the County.
- (B) Any unused portions of towers above a manufactured connection shall be removed within 6 months of the time of antenna relocation.

#### 9.8.9 Interference of Public Safety Communications

- (A) No new or existing telecommunication service shall interfere with public safety communications.
- (B) All applications for a conditional use permit for new service shall be accompanied by an intermodulation study which provides the technical evaluation of existing and proposed transmission and indicates all potential interference problems.
- (C) Before the introduction of a new service or change in existing service, telecommunication providers shall notify the County at least 10 calendar days in advance of such changes and allow the County to monitor interference levels during the testing process.

#### 9.8.10 Conditional Use Application Submittal

In addition to the information generally required to accompany a request for a conditional use permit as found in the Zoning Ordinance, applications for towers shall include the following supplemental information:

- (A) A report from a qualified and licensed engineer which:
  - (1) Describes the tower height and design, including a cross section and elevation;
  - (2) Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distance between antennas;
  - (3) Describes the towers capacity, including the number and type of antennas it can accommodate;

- (4) Describes how the applicant will take action to avoid interference with established public safety communication;
- (5) Describes the lighting to be placed on the tower if such lighting is required by the FCC or FAA;
- (6) Includes the engineer's stamp and registration number.
- (7) Includes other information necessary to evaluate the request.
- (B) Letter of intent committing the tower owner, and successors, to allow the shared use of the tower if any additional user agrees in writing to meet reasonable terms and conditions for shared use.
- (C) Proof that the proposed tower complies with regulations administered by the Federal Aviation Administration.
- (D) A report from a qualified and licensed professional engineer which demonstrates the tower's compliance with all applicable structural and electrical standards.
- (E) A site plan showing the boundaries of the property on which the tower is located, adjacent land uses, the location of the tower and any accessory buildings within the property, distance setbacks from property lines for the tower and accessory buildings, fence locations, and proposed landscaping or screening.
- (F) Proof of insurance against injury and property damage.

#### 9.8.11 Building Mounted Antennas

- (A) An antenna is defined as any device consisting of a metal, carbon fiber, or other electromagnetically conductive rods or elements on a single supporting pole or other structure, and used for the transmission and reception of wireless communication radio waves including cellular, personal communication services (PCS), enhanced specialized mobilized radio (ESMR), paging and similar services and including the wiring, related ground equipment and the support structure thereof.
- (B) The placement of a wireless telecommunication antennas on roofs or walls of existing buildings or structures may be approved by the County as a conditional use provided that the antennas meet the requirements of this



Ordinance, after submittal of a final site and building plan, and a report prepared by a qualified licensed professional engineer indicting the existing building structure suitability to accept the antenna as well as a proposed method for affixing the antenna to the structure. Complete details of all fixtures, couplings, and the precise point of attachment shall be indicated.

- (C) The antennas shall be located on an existing structure, if possible, and shall not extend more than 15 feet beyond the height of the structure to which they are attached.
- (D) The structural design, mounting, and installation of any antenna and support structure shall be in compliance with the manufacturer's specifications. The construction plans and design of any antenna requiring a permit shall be approved and certified by a registered professional engineer.
- (E) All obsolete and unused antenna shall be removed within 12 months of cessation of use, unless a written exemption is granted by the Department of Development Director.
- (F) All antenna shall be in compliance with all Federal, State and local building, electrical and other relevant code requirements.
- (G) No advertising message nor identification shall be affixed to any antenna structure.
- (H) Antennas shall not be artificially illuminated unless required by law or by a governmental agency to protect the public health and safety. Guy wires or guy wire anchors shall not be erected within public or private utility and drainage easements, and shall be set back a minimum of 5 feet from all lot lines. Guy wires within 10 feet of the ground surface must be fenced within an enclosure or maintained with a cover of highly reflective material to prevent accidental collision.
- (I) When applicable, proposals to erect new antenna shall be accompanied by any required federal, state, or local agency licenses or proof of application thereof.
- (J) Antenna support structures under 200 feet in height shall be painted or coated silver or have a galvanized finish to reduce visual impact, unless otherwise required by federal law. Silver or galvanized finishes shall be

required unless the setting or natural surroundings can be used to justify another color.

- (K) No land may be subdivided for the purpose of providing space for any antenna unless all lot size requirements for the relevant zoning district are met and subdivision approval is obtained.

#### 9.8.12 Amateur Radio Towers

Residential radio and television reception antennas and amateur radio station antennas shall be for non-commercial uses and less than 50 feet in height. The setback for the antenna shall be 50 ft.

(Ord. #410, adopted 04/17/07)

#### 9.8.13 Prohibited Uses

- (A) No tower or accessory structure shall be erected in any public or private drainage easements.
- (B) No temporary mobile cell sites are permitted except in the case of equipment failure, equipment testing, or in the case of emergency situation as authorized by the Department of Development Director. Use of temporary mobile cell sites for testing purposes shall be limited to 24 hours, use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of 30 days. These limits can be extended by the Department of Development Director.
- (C) Permanent platforms or structures, exclusive of antennas, other than those necessary for safety purposes or for tower maintenance are prohibited.

### 9.9 **Contractor Shop**

#### 9.9.1 Contractor Shop without Outside Storage

Contractor Shops without Outside Storage in the A and R-A districts shall be subject to the following conditions:

- (A) Any repair or maintenance of equipment or vehicles incidental to the business shall only be allowed if such activities are conducted completely indoors and by-products of such activities, such as used motor oil, are disposed of in accordance with County standards.

- (B) No operation or activity shall emit any hazardous substances in such quantity, concentration, or duration as to be injurious to human health or property. If hazardous materials are stored and used on the property, a materials management plan shall be submitted to address storage, handling, use, disposal, and potential hazards.

#### 9.9.2 Contractor Shop with Outside Storage

- (A) The lot must be served by a collector or higher functional class of roadway, except that the use may be allowed to be served by a lesser functional class of roadway if the responsible road authority grants written permission for such use at the proposed location.
- (B) Buildings, parking areas, loading areas, and outside storage shall meet the setback requirements of the applicable zoning district.
- (C) All motorized vehicles, including trucks and trailers, and machinery stored in the outside storage area shall be licensed and in operable condition.
- (D) No operation or activity shall emit any hazardous substances in such quantity, concentration, or duration as to be injurious to human health or property. If hazardous materials are stored and used on the property, a materials management plan shall be submitted to address storage, handling, use, disposal, and potential hazards.
- (E) Outside screening shall meet the provisions outline in subsection 8.6.1.

### 9.10 **Drive-In Businesses**

#### 9.10.1 Location Requirements

- (A) No drive-in business shall be located within 500 feet of a school or church.
- (B) No drive-in shall be located within 300 feet of any residentially zoned property.
- (C) No access drive shall be within 50 feet of intersecting street right-of-way lines.

#### 9.10.2 Site Requirements

- (A) The entire area other than that occupied by structure or landscaping shall be paved surface which will control dust and drainage.

- (B) Adequate area shall be designated for snow storage such that clear visibility shall be maintained from the property to any public street.
- (C) Lighting shall have no direct source visible from the public right-of-way or adjacent land.
- (D) A 6 inch insurmountable curb shall separate all walks and landscape areas from parking areas.
- (E) A screen fence not over 6 feet in height, nor less than 4 feet, at least 50 percent opaque throughout its height, shall be constructed along the property line abutting a residential zoning district. Should the use be a drive-in theater, an opaque fence not less than 8 feet in height and extending at least to within 2 feet of the ground, shall be constructed around the property.

## **9.11      Essential Services**

- 9.11.1      Essential Services that are not specifically listed as conditional uses are permitted uses in all zoning districts and are not subject to height, yard, setback requirements, or permits or certificates of any kind; subject only to the provisions of these subsections 9.11.2 through 9.11.7.
- 9.11.2      Public utility buildings shall be permitted uses in all zoning districts, except that a conditional use permit shall be required before construction in any residential, business, and industrial district.
  - (A)      Parcels created for the sole purpose of structures for public utilities shall be exempt from the minimum lot size requirements to permit a lot area, depth and width that is less than the minimum required for the district in which the building or structure is located. Lot shall be large enough, so all structures of facilities comply with the setbacks for the applicable zoning district.
  - (B)      Parcels shall be created in accordance with Section 10 Subdivision Regulations, as amended from time to time.
  - (C)      Structures for public utilities are subject to accessory building setback requirements as outlined in the applicable district.

(Ord. #487, adopted 01/17/23)

- 9.11.3 Since some essential services, as defined by this Ordinance, may have an effect upon county parks and recreation areas, the location of all such essential services in any zoning district shall be filed with the Department of Development Director prior to commencement of any construction by the applicant.
- 9.11.4 Except as otherwise provided herein, essential services not located within highway and street right-of-ways shall observe the following procedure:
- (A) The applicant shall file with the Department of Development Director maps indicating the location, alignment, and type of service proposed.
  - (B) The Department of Development Director shall review the location and alignment to determine whether the same encroaches upon a County park or recreation area existing or approved by the County Board; and if there is no such encroachment, he shall so indicate on the application.
  - (C) The Department of Development Director shall furnish the applicant with information as to land use which may be of assistance to the applicant in the development of the proposed service.
- 9.11.5 An application for a permit for essential services located within any County highway or County State Aid highway right-of-ways shall observe the following procedure:
- (A) The applicant shall file with the County Engineer, on forms supplied by the County, an application for such permit accompanied by maps indicating the locations, alignment and type of service proposed.
  - (B) The application and accompanying data shall be reviewed by the County Engineer, and the County Engineer may issue the permit after determining that the application is acceptable and in the best interest of the County.
  - (C) The County Engineer may require in conjunction with the issuance of such permit that:
    - (1) The applicant submit as-built drawings of the essential service after construction.
    - (2) The applicant construct the essential service to take into consideration contemplated widening, regrading, or relocation of a County highway or County State Aid highway, providing the County owns such additional right-of-way.

- 9.11.6 Recognizing the need for adequate and timely service by applicants for construction of essential services, the designated County officials shall act upon all information filings or permit applications within 30 days of receipt thereof. Failure to act within 30 days shall constitute approval.
- 9.11.7 No filing shall be necessary to maintain, reconstruct, or relocate existing lines or facilities where the general line and conformation thereof remain essentially the same. Nor shall any filing be necessary for electric lines unless the voltage is in excess of 35 KV. Emergency work otherwise requiring a permit or filing may be accomplished provided such filings are made as soon thereafter as possible.
- 9.11.8 Prior to the issuance of a conditional use permit for a high voltage transmission line between 100 and 200 kilovolts or substation with a voltage designed for and capable of operations at a nominal voltage of 100 kilovolts or more an Environmental Assessment of the project must be completed as required by Minn. Stat. § 216E.04, as may be amended.

(Ord. #354, adopted 01/21/03)

**9.12 Feedlots and Intensive Livestock/Poultry Farming**

(Ord. #292, adopted 05/19/98) (Ord. #407, adopted 11/14/06) (Ord. #342, adopted 04/16/02) (Ord. #431, adopted 10/07/08) (Ord. #352, adopted 12/17/02)

**9.12.1 Permitted Uses**

Tier I feedlots shall be a permitted use in areas zoned A or R-A, subject to the restrictions set forth in subsections 9.12.3 through 9.12.6.

**9.12.2 Conditional Uses**

(A) Tier II feedlots shall be conditional uses in areas zoned A and R-A. Conditional use permits for feedlots may only be granted if the following requirements are met:

- (1) The applicant must obtain a valid MPCA certificate of compliance, as defined in Minn. R. 7020.0300, as may be amended, pertaining to the feedlot site.
- (2) The feedlot must be located in compliance with the minimum setbacks and minimum parcel size restrictions described in subsection 9.12.3.

- (3) The feedlot must meet the criteria of Section 11.6.
- (B) Livestock waste storage facilities shall be conditional uses in areas zoned A or R-A unless the proposed waste storage facility is covered by a building and has been specifically permitted by the Minnesota Pollution Control Agency (MPCA). If the livestock waste storage facility is covered by a building and has been approved by MPCA a conditional use shall not be required. Conditional use permits for waste storage facilities may only be granted if the following requirements are met:
  - (1) The applicant must have obtained a valid MPCA feedlot permit.
  - (2) The waste storage facility must comply with all applicable state requirements for soil, water and air pollution.
  - (3) The facility shall not be located within 660 feet of any non-feedlot residence at which the storage facility is located.
  - (4) The facility must be at least 200 feet from a road right-of-way.

#### 9.12.3 Minimum Setbacks and Parcel Size

	Tier I	Tier II
Number of Animal Units (au) Permitted:	50-999 au; 10-999 au in shoreland	1,000 – 2,500 au
Minimum Setbacks		
Non-Feedlot Residence	660 feet	660 feet
Centerline of Road	100 feet	100 feet
Incorporated City with a Population over 500	660 feet	660 feet
Lake	1,000 feet	1,000 feet
River, Creek, Stream or Watercourse	300 feet	300 feet
Property Line	80 feet	80 feet
Existing Feedlot	660 feet	660 feet
Minimum Contiguous Parcel	35 acres	75 acres

#### 9.12.4 Feedlot Expansion

- (A) A land use permit or conditional use permit obtained for a Tier I or Tier II Feedlot shall authorize the feedlot owner/operator to maintain any number of animal units within the allowable range for that tier. The number of animal units contained in the feedlot must not exceed the maximum allowed in the permitted tier. If the number of animal units contained in the feedlot at any time exceeds, or is anticipated to exceed, the number allowed in the permitted tier, the property owner must obtain a new or amended conditional use permit for the appropriate higher tier.
- (B) Notwithstanding Section 4.2, any otherwise lawful feedlot which is rendered nonconforming solely by expansion or extension of a municipal boundary may be expanded, provided that the expansion shall not encroach upon the affected municipality to any greater extent than the preexisting feedlot, and provided that the feedlot owner has obtained an appropriate land use permit or conditional use permit, as required by this Section.

#### 9.12.5 Residential Setbacks

- (A) Non-feedlot residences must meet the minimum setbacks from a feedlot set forth in subsection 9.12.3. However, a feedlot or non-feedlot residence that was previously permitted to be within 660 feet of one another shall be permitted to expand or enlarged provided that the expansion does not encroach closer to the other to any greater extent than the existing residence or feedlot.
- (B) Existing residences on the same parcel as an existing feedlot may continue to have setbacks less than 660 feet should the two uses be split by subdivision of property resulting in each on individual parcels.
  - (1) New residences or feedlots on the resulting properties shall meet required setbacks
  - (2) These existing buildings may be expanded or enlarged provided that the expansion does not encroach closer to the other to any greater extent than the existing residence or feedlot.

#### 9.12.6 Permits



All proposed feedlots shall require a separate permit to be submitted to the Department of Development for review. The following information shall be submitted as part of this permit:

- (A) A complete land use permit with a site plan indicating dimensions of feedlot and showing all existing homes, buildings, lakes, ponds, water courses, wetlands, dry-runs, rock outcroppings, roads, wells, general contour, and drainage plan and north arrow.
- (B) A copy of approval from the Pollution Control Agency to operate a feedlot.
- (C) Any additional required state or federal permits, such as a NPDES/SDS permit for construction activity through the Pollution Control Agency.
- (D) No feedlot shall be located within the Flood Plain.

### **9.13 Field Windbreak**

(Ord. #425, adopted 02/19/08)

- 9.13.1 Field windbreaks and the management of them are intended to reduce the amount of suspended soil in air that causes a nuisance. The use of windbreaks and other erosion control practices promotes the protection of the public health and safety and protects the productivity of the soil for future generations.
- 9.13.2 No person shall remove or destroy any field windbreak or pine plantation, nor remove trees or stumps remaining after a field windbreak or pine plantation is destroyed by natural causes or any cause, on soils listed within wind erodability groups 1-2 or Wind Erodability Index 134 or above within any zoning district of the county without first making an application for and obtaining a land use permit. No such permit shall be issued unless the land owner has agreed, to a deed restriction for the parcel, to utilize Best Management Practices (BMP's) for erosion control. BMP's include, but are not limited to, crop residue management, conservation tillage, permanent grass or tree plantings, ridge orientation, cover crops, wind barriers, perennial grass barriers, ridge roughness, strip-cropping and buffer strips. More than one BMP may be needed to minimize erosion on the site.
- 9.13.3 As a part of the land use permit application the applicant shall specify the BMP's that will be utilized on the site and provide enough information regarding the

specified practice so the practice may be monitored. If a windbreak or portion of a windbreak is to be removed for conversion to a non-erosive land use then the use shall be stated on the permit and no BMP's shall be required.

- 9.13.4 No permit shall be required for the normal harvest of trees planted for harvesting, for ornamental or decorative purposes, or for the normal and necessary thinning of trees in a field windbreak or pine plantation.

(Ord. #373, adopted 02/17/04)

**9.14 Home Occupations and Extended Home Business**

(Ord. #308, adopted 11/4/99) (Ord. #407, adopted 11/14/06)

- 9.14.1 Home Occupations, where allowed as a permitted accessory use in this Ordinance, shall be subject to the following conditions:

- (A) Only persons who are members of the household residing on the premises may be employed in the home occupation.
- (B) Not more than 25 percent of the square footage of the dwelling including attached garage, as measured by using the horizontal perimeter of the dwelling, shall be used for a home occupation. No part of the home occupation area shall displace the original purpose of the garage.
- (C) Adequate off street parking shall be provided and not more than 3 parked vehicles may be present at one time.
- (D) Any sign(s) on the premises shall meet the requirements of the zoning district.
- (E) No articles for sale shall be displayed so as to be visible from any street in a residential district.
- (F) There shall be no indication of offensive noise, vibration, smoke, dust, odors, heat or glare at or beyond the property line.
- (G) No mechanical or electrical equipment is used if the operation of such equipment interferes unreasonably with the desired quiet residential environment of the neighborhood or TV and radio reception and the health and safety of the residents is not endangered.

- (H) No outside storage of material for the home occupation shall be allowed.
- (I) An individual sewage treatment system shall be designed and sized to accommodate both the residential use and the home occupation in accordance with Section 9.22.
- (J) Any home occupation that will have customers come to the site for any reason must meet the Minnesota State Building Code requirements for accessibility.
- (K) Any home occupation in existence prior to the adoption of Ord. #308 adopted 11/04/99 will be allowed to continue as a legal Non-conforming Use subject to Chapter 4.
- (L) Home occupations include, but are not necessarily limited to, the following:
  - (1) Antique shops, not including refurbishing
  - (2) Artists and sculptors
  - (3) Authors and composers
  - (4) Beauty Shop/Barber Shop
  - (5) Dressmakers, seamstresses and tailors
  - (6) Home crafts, such as model making, rug weaving, lapidary work, and ceramics
  - (7) Office facilities, other than home professional offices
  - (8) Schools of special education whose class size does not exceed more than 4 pupils at any given time and not more than 8 pupils in any one day.
- (M) Home Occupations Not Permitted include the following:
  - (1) Antique repair and refurbishing shops
  - (2) Auto Repair
  - (3) Eating establishments

- (4) Gift shops
- (5) Veterinary hospitals
- (6) Other uses specifically listed as a conditional or interim use for the zoning district
- (N) A permit for a home occupation is valid for only the original applicant and is not transferable to any resident, address or any other occupation. Upon termination of the applicant's residency, the home occupation permit shall become null and void.

9.14.2 Home Extended Business, where allowed as an interim use in this Ordinance, shall be subject to the following conditions:

(Ord. #352, adopted 12/17/02)

- (A) The proposed activity shall be clearly incidental and secondary to the residential use of the property, and shall only include the sale of merchandise incidental to the Home Extended Business.
- (B) The principal operator of the home extended business must reside on the parcel and have homestead status on the parcel. No more than 2 non-residents shall be employed or engaged in such home extended business.
- (C) Operation of the home extended business shall be limited to accessory or agricultural buildings on the same parcel.
- (D) All buildings used in conjunction with the home extended business shall meet the requirements for the state building code and accessibility standards.
- (E) All materials and vehicles, incidental to the use, shall be stored within an enclosed structure except as provided for in subsections 9.14.3 and 9.14.4.
- (F) All on-site production, assembly, sales and service shall be conducted within a building approved for the home extended business.
- (G) Adequate off street parking shall be provided for employees and customers.

- (H) Any signage shall meet the requirements of the zoning district.
- (I) There shall be no indication of offensive noise, vibration, smoke, dust, odors, heat or glare at or beyond the property line.
- (J) The home extended business shall not generate hazardous waste unless a plan for off-site disposal of the waste is approved by the Planning Commission.
- (K) An individual sewage treatment system shall be designed and sized to accommodate the home extended business in accordance with Section 9.22, if required.
- (L) Junk and Salvage Yards are prohibited.

9.14.3 Performance Standards - Agricultural and Rural Agricultural District

The following standards apply to home extended businesses within the Agricultural (A) and Rural Agricultural (R-A) Districts, in addition to the general performance standards.

- (A) Outdoor storage may be allowed for home extended businesses in A and R-A Districts on lots 5 acres or less provided the following conditions are met:
  - (1) The outdoor area shall not exceed 3,000 square feet in area.
  - (2) The outdoor storage area is delineated by a fence.
  - (3) The outdoor storage area is located at least 100 feet from adjoining property lines.
  - (4) The outdoor storage is screened from the view of adjoining residential uses and public right-of-way.
  - (5) The height of the storage materials shall not exceed the height of the screening provided.
  - (6) Limited to 3 business related vehicles and or trailers stored outside of the garage/accessory/storage structure.
- (B) Outdoor storage is permitted on lots greater than 5 acres.

- (C) Accessory structure shall meet the standards outlined in Section 9.1.
- (D) Limited to 3 business related vehicles and 3 business related trailers stored outside of the garage/accessory/storage structure.

#### 9.14.4 Performance Standards – All Residential Districts

The following standards apply to home extended businesses within the all Residential Districts, in addition to the general performance standards.

- (A) Outdoor storage of equipment, supplies, or products is prohibited.
  - (1) Residential properties 10 acres or greater may follow the storage standards as outlined in subsection 9.14.3(A).
- (B) The accessory structure shall meet the standards outlined in Section 9.1.
- (C) 1 vehicle associated with the business may be stored outdoors.

#### 9.14.5 Termination and Expiration of Home Occupations or Home Extended Businesses

- (A) Termination. The Planning Commission may terminate any home extended business interim use permit if the use in question violates any of the standards of this Ordinance, or other conditions placed on the permit by the Planning Commission.
- (B) Expiration. Any home occupation permit or home extended business interim use permit will expire upon the occurrence of any of the following events:
  - (1) Re-subdivision of the property.
  - (2) Change in ownership of the property.
  - (3) Rezoning of the property.
  - (4) Changes or amendments to the Development Code that affect the property on which a home occupation or home extended business exists.

### 9.15 **Manufactured Home Parks**

- 9.15.1 Every new manufactured home park constructed in the county shall provide a storm shelter for the protection of the residents of the park. When additions to the

capacity of a park are approved, the storm shelter capacity shall also be increased to provide shelter equal to the projected population of the entire park.

Storm shelters may be multi-purpose and may be used day-to-day as utility rooms, recreation areas or other uses, so long as the area is readily accessible to the residents of the park.

9.15.2 All storm shelters shall be constructed to withstand wind pressure as required by the applicable section of the Uniform Building Code as adopted under Minnesota Statutes.

9.15.3 Minimum Standards

- (A) Minimum Lot Size Per Homesite -- 6,000 square feet.
- (B) All homesites must have two off-street parking spaces -- minimum 20 foot x 20 foot.
- (C) All streets shall have a minimum width of 30 feet and streets and parking areas shall be hard surface.
- (D) There shall be a minimum of a 20-foot front yard setback and 10 feet from the rear lot line.

**9.16 Mining Operations**

(Ord. #428, adopted 06/17/08)

9.16.1 Permit Required

A permit shall be required for all mining operation(s).

- (A) Interim Use Permits.

(Ord. #444, adopted 09/07/10)

Owners and operators of any mining operations commencing on or after June 15, 2010 shall obtain an interim use permit. Said permit shall be valid for a 20 year period, unless it is revoked, expires, or is otherwise terminated earlier. The interim use permit shall be subject to an administrative review and inspection by County staff every 5 years from the date the IUP was approved. IUP's approved after January 1, 2017 are subject to the 20 year permit term period. Administrative review shall

consist of a review and inspection in accordance with Section 9.16.4 through 9.16.7. Additional documentation shall be provided to County staff as requested. Said permit is not transferable or assignable without the prior written consent of the Planning Commission. (Ord. #483, adopted 02/15/22)

(B) Land Use Permits.

Person, firms, partnerships, associations, corporations, or other entities that commenced mining operation(s) prior to December 31, 1995 who applied for and received a land use permit to operate, will be allowed to continue such operation according to the conditions of the permit. Any expansion of an existing Land Use Permit, beyond the limits established in the land use permit requires the entire site to be permitted as an Interim Use Permit and the entire site is subject to the provisions of the Interim Use Permit.

(Ord. 447, adopted 12/20/11)

(C) Small Scale Mining Operations.

In lieu of an interim use permit, persons, firms, partnerships, associations, corporations or other entities may secure a land use permit from the Planning and Zoning Department providing the following conditions are met:

- (1) A maximum of 10,000 cubic yards of material shall be removed from, and/or processed in, the mining operation;
- (2) The mining operation will be commenced, completed and rehabilitated within a 12 month period;
- (3) Only one land use mining permit may be issued for a deeded tract of land in perpetuity and a deed restriction shall be required to be submitted with the mining application acknowledging the limitation;
- (4) No interim use permit for a mining operation shall be issued within 1 year of the completion of the rehabilitation of a small scale mining operation on the same site.
- (5) All other requirements of this section, shall apply to the permittee.



- (D) Failure to comply with this section shall be a violation of the Benton County Development Code, as amended.
- (E) Persons requesting a permit shall submit the prescribed fee to the Department of Development Director, together with all information required in subsection 9.16.4, below. The applicant shall provide 3 copies of the required information.
- (F) The Planning Commission, in determining whether to grant an interim use permit pursuant to subsection 9.16.1(A), shall apply the criteria for granting interim use permits set forth in Section 11.7 and this section.
- (G) If the request for a permit is denied, no reapplication shall be made for a period of 6 months.

#### 9.16.2 Exceptions

A permit described in subsection 9.16.1 shall not be required for any of the following:

- (A) Excavation for the purpose of the foundation, cellar, or basement of some immediately-pending structure to be erected, built, or placed thereon contemporaneously with or immediately following such excavation, provided that a land use permit for that structure has first been issued.
- (B) All normal and customary agricultural practices.
- (C) Excavation required for completion of a septic system and drain field(s), provided that a land use permit for the septic system and/or drain field(s) has first been issued.
- (D) Excavation for the creation of ponds, wetlands, livestock ponds or other structures for wildlife habitat improvement with appropriate permits.

#### 9.16.3 Termination/and Revocation of Permit

- (A) Termination
  - (1) Permitted mining operations as of June 15, 2010, may continue to operate in accordance with the conditions of approval and performance standards in place at the time of approval.

- (2) Conditional use permits approved prior to June 15, 2010, shall terminate and be subject to a new permit 5 years after the conditional use permit was issued. Applications for mining operations that previously had a CUP, but the CUP terminated in accordance with this Ordinance shall provide all the information required under subsection 9.16.4 when applying for an interim use permit with the exception of the survey of the property boundary per subsection 9.16.4(E)(1) and are subject to additional conditions of approval from the Planning Commission.
- (3) Conditional use mining operation(s) permits approved on or after December 31, 1995, and Interim use mining operation(s) permits shall terminate automatically 5 years after date of issuance. Interim use permits issued after January 1, 2017 are valid for 20 years, subject to administrative review and inspection by County staff every 5 years from the date the IUP was approved. After termination of any CUP or an IUP for mining, any new Interim Use Permits granted for the same operation shall follow all the performance requirements of this Ordinance at the time of the issuance of any new interim use permit. (Ord. #483, adopted 02/15/22)

(B) Revocation

- (1) The Planning Commission may revoke a mining operation(s) permit for violation of this section; for violation of a condition of the permit; or for other cause.
- (2) To revoke a permit the Department of Development Director shall give notice by U.S. Mail (first class mail addressed to the permittee and property owner at the address of the permittee and property owner on file in the office of the Department of Development) of the violation or other cause for revocation, along with the directive of the Planning Commission that the condition be remedied. If the condition has not been repaired, corrected, or otherwise remedied within 30 days, the Planning Commission shall determine, at its next scheduled meeting, whether the mining operation(s) permit should be revoked.
- (3) Mining operation(s) shall be discontinued immediately if the permit is revoked or terminates pursuant to this section; however, such

revocation or termination shall not nullify the obligation of the permittee to undertake rehabilitation under this section.

#### 9.16.4 Information Required

- (A) The name and address of applicant(s) requesting the mining operation(s) permit and/or the name and address of owner(s) of the land upon which the mining operation is proposed to be located.
- (B) The legal description and acreage of the proposed mining operation(s) site, together with proof of applicant(s)' ownership or leasehold interest.
- (C) The purpose of the proposed mining operation(s).
- (D) The estimated duration of the mining operation(s).
- (E) A topographic survey of the proposed site providing at a minimum the following detail:
  - (1) Site property boundaries except for right-of-way, shall be certified by a survey if the boundaries will be within 100 feet of the proposed excavation.
  - (2) Contours of the affected land at intervals no greater than 10 feet.
  - (3) The location and names of all streams, lakes, wetlands, wells, structures and roads on or within 500 feet of the site.
  - (4) Boundaries of previous excavations on the site, and the location and description of boundary stakes for the site.
  - (5) A permanent benchmark that shall be the reference point for all mining specifications, maps, surveys or drawings. The benchmark shall not be located within an area disturbed by the mining operation.
  - (6) The site specifications, maps, surveys or drawings shall be at a scale of one inch = two hundred feet (1" = 200'). Specifications, maps, surveys or drawings detailing information off the mining site may be submitted at a scale of one inch = six hundred and sixty feet (1" = 660').

- (7) General information such as vegetation, depth of topsoil, and screening, etc. of the site.
  - (8) Observed or estimated groundwater elevation referenced to the permanent benchmark.
  - (9) Location of any proposed asphalt or hot mix bituminous plants.
  - (10) Proposed location for the storage of topsoil.
- (F) A detailed soil erosion and sediment control plan. A National Pollutant Discharge Elimination System (NPDES) permit, if required, shall be obtained and submitted to the Department of Development prior to excavation.
- (G) A site plan and description of all phases of the proposed mining operation(s), to include and approximate the amount and depth of excavating to take place as well as the plan of operation, including processing, if any, the nature of the processing and equipment, location of the processing plant, source of water, disposal of water, reuse of water, location of storage areas, haulways and the use of explosives. The site plan must conform to the specifications found in subsection 9.16.4(E). If necessary, the plan should illustrate temporary erosion control measures. A dewatering permit from the appropriate agency (DNR and/or MPCA) shall be submitted if dewatering is proposed to exceed 10,000 gallons per day or one million (1,000,000) gallons per year.
- (H) Description of how the site will be secured when mining is not being conducted on-site (e.g. fence, gates, berm, sloping).
- (I) A comprehensive rehabilitation plan showing suitable provisions for rehabilitation of the mining operation(s) site to a condition compatible with the adjacent land such that it will not become a health or safety hazard or nuisance, which shall include the following:
- (1) A site plan showing final slope angles, high wall reduction, benching, terracing, other stabilization measures and water impoundments. The plan must conform to the specifications found in subsection 9.16.4(E).
  - (2) Cross-sectional drawings of any water impoundments, high wall reductions, benching, terracing or other conservation practices.

- (3) A description of the proposed reclamation, including final slopes, terracing and other structural slope stabilization.
- (4) A description of how the phased reclamation will be conducted.
- (5) A description of the anticipated topography, water impoundment, artificial lakes and future use of the site.
- (6) A description of the method of disposal of over and undersized materials.
- (7) A seeding plan that includes the methods of seedbed preparation, seed mixtures, seeding rates, mulching and other techniques to accomplish site stabilization.
- (8) A map of the proposed reclamation with the proposed topography.
- (9) Where the Planning Commission deems practical and necessary, such plans shall also include adjoining related areas where excavations have previously been made which remain under the control of the applicant or the owner(s) of the land on which the excavation or processing is proposed.
- (J) Indication of the major routes over which the mined material will be hauled or carried.
- (K) A description of the erosion control practices that will be used during mining.
- (L) A description of the measures taken to screen the operation from view of surrounding land.
- (M) Any other information requested by the Department of Development Director or Planning Commission.

#### 9.16.5 Use Restrictions

- (A) With the exception of those mining operations described in item (B), below, mining operations may be conducted only in areas zoned agricultural district "A", Rural-Agricultural district "R-A", light industrial district "I-1", or heavy industrial district "I-2".

- (B) Any mining operation commenced prior to December 31, 1995, that is located in an area zoned "R-1", "R-2", "B-1" or "B-2" may continue to operate in compliance with the requirements of the permit issued for the site.

#### 9.16.6 Performance Standards

- (A) General Provisions.

Weeds and any other unsightly or noxious vegetation shall be cut or trimmed as may be necessary to preserve a reasonably neat appearance, to prevent seeding on adjoining property.

- (1) All equipment used for mining operation(s) shall be kept operational and shall be maintained and operated in such a manner as to minimize as far as is practicable noises and vibrations. The mining operation shall conform to all noise standards contained in Minn. R. Ch. 7030, as may be amended.
- (2) Abandoned machinery and rubbish shall be removed from the mining operation(s) site and shall not be allowed to accumulate.

- (B) Water Resources.

The mining operation(s) shall not be allowed to interfere with surface water drainage beyond the boundaries of the mining operation(s) site.

- (1) Surface water originating outside and passing through the mining site shall, at its point of departure from the mining site, be of equal quality to the water at the point where it enters the mining site. The permittee shall perform any water treatment necessary to comply with this provision and shall, at a minimum, meet the requirements specified in Item (K), below.

- (C) Safety Fencing.

Any mining operation(s) adjacent to a residential zone, or within 300 feet of 4 or more residential structures, shall adhere to the following standards:

- (1) Where collections of water occur that are 1.5 feet, or more, in depth, exist for any period of greater than 7 consecutive days and occupy an area of 700 square feet or more, all access to such

collections of water shall be barred by a fence or similarly effective barrier of at least 4 feet in height with support posts spaced no farther apart than 10 feet.

- (2) In locations where slopes occur that are steeper than 1 foot vertical to 3 feet horizontal existing for a period of 7 days or more, access to such slopes shall be barred by a fence or some similarly effective barrier at least 4 feet in height with support posts spaced no farther apart than 10 feet.
- (3) As an alternative to the fencing requirements of subsection 9.16.6(C)(1) and (2), the entire perimeter of the property on which a mining operation is located may be fenced or protected by some other similarly effective barrier at least 4 feet in height with support posts spaced no farther than 10 feet.

(D) Mining Access Roads.

The intersection of mining access roads with any public roads shall be located in such a manner that traffic on the access roads will have a sufficient length of the public road in view so that any turns onto the public road can be completed safely. The permittee shall specifically request the Road Authority access for a mining operation prior to excavation. A turn lane shall be provided at the entrance prior to excavation if determined necessary by the Road Authority prior to excavation.

- (1) All mining access roads shall be gated or cabled and closed when not in operation.
- (2) Trucks shall not queue on public roads while waiting to load or unload. Ingress and egress points from or onto any public road shall be clearly signed "Trucks Hauling" advising traffic in both directions of this activity with temporary signs during heavy hauling (average of 15 or more trucks per hour).
- (3) Intersections of public roads with the access road shall be maintained by the mine operator and shall be kept free from excessive mud, debris or asphalt tract out of the mining site.

(E) Screening Barrier.

The permittee shall not cause trees and ground cover existing at the time of issuance of the initial permit and present within the depth of the roadside setback to be harmed or destroyed, except where traffic safety requires that said trees and/or ground cover be cut and/or trimmed or except where alteration or destruction of the trees and/or ground cover is necessary for a rehabilitation plan approved by the Planning Commission.

(F) Setback.

All mining operations shall be conducted within the confines of the site described in the permit.

- (1) Processing shall not be conducted closer than 300 feet to any residential or commercial structures existing prior to the commencement of mining operation(s) without the approval of the Planning Commission and written consent of all owners and residents of said structures. Structures owned by the applicant or permittee shall be exempt from the setback requirement. A photocopy of said consent(s) shall be filed by the permittee with the Department of Development Director.
- (2) There shall be no mining activities or storage of materials within 10 feet of a property line without the approval of the Planning Commission and written consent of all owners. The area within 30 feet of the property line may only be excavated if the permittee restores the area within 90 days of excavation to meet a 4:1 slope.
- (3) Mining operations shall not be conducted closer than 30 feet to the right-of-way line of any existing or platted street, road or highway, or any other right-of-way except that excavation, if not otherwise prohibited, may be conducted within such limits in order to reduce the elevation thereof in conformity to the existing or platted street, road or highway or other right-of-way and approved by the Road Authority.
- (4) Mining operations shall not be conducted closer than 150 feet from the ordinary high water mark of any stream, river, lake or pond, as defined in the Benton County Development Code, as amended.

(G) Appearance.



All buildings, structures, and plants used for mining operation(s) shall be maintained in such a manner as is practicable, and according to acceptable and industrial practice, so as to assure that such buildings, structures, and plants will not become dangerously dilapidated.

(H) Dust and Dirt.

Permittees shall use all practical means to reduce the amount of fugitive dust generated by mining operation(s). In any event, the amount of dust or other particulate matter generated by the mining operation(s) shall not exceed air pollution control standards established by the Minnesota Pollution Control Agency, including those set forth in Minn. R. Ch. 7005; Minn. R. Ch. 7009; Minn. R. Ch/ 7011; Minn. R. Ch. 7017; and Minn. R. Ch. 7023, as may be amended.

- (1) All access roads from mining operation(s) to public highways, roads, or streets, or to adjoining property shall be maintained to minimize dust conditions.

(I) Noise.

Maximum noise level at the site shall comply with the limits or standards established by the Minnesota Pollution Control Agency, including those set forth in Minn. R. Ch. 7030, as may be amended.

(J) Hours.

No mining operation(s) shall be conducted during restricted hours specified in the applicable mining operation(s) permit.

(K) Water Pollution.

Permittees shall comply with all applicable Minnesota Pollution Control Agency regulations, including those set forth in Minn. R. Ch. 7001; Minn. R. Ch. 7050; and Minn. R. Ch. 7060, as may be amended; Department of Natural Resources regulations, and all applicable United States Environmental Protection Agency Regulations for the protection of water quality. In addition, no waste products or processed residue shall be deposited in any public (i.e. protected) waters or wetlands in Benton County (as designated by the Minnesota Department of Natural Resources).

(L) Topsoil Preservation.

Sufficient topsoil shall be retained at the excavation site to ensure completion of rehabilitation in accordance with the rehabilitation plan. Mining operators/owners are prohibited from removing topsoil from the mining site unless sufficient topsoil is retained to cover the entire site to a minimum depth of 3 inches.

(M) Slopes During Mining Operation(s).

During the entire period of operation(s), all excavation other than the working face shall be sloped on all sides to a maximum ratio of 1 foot horizontal to 1 foot vertical, unless a steeper slope is approved by the Planning Commission; or, in the alternative, the permittee shall install an effective barrier enclosing the site, the barrier to be no less than a 4 strand wire fence 4 feet in height with support posts spaced no farther apart than 10 feet. In any event, where excavations are adjacent to a public roadway or other right-of-way, the terrain shall have a maximum slope of 4 feet horizontal to 1 foot vertical. Slopes adjacent to waterways shall not exceed 4 feet horizontal to 1 foot vertical.

(N) Reports.

The permittee shall comply with the reporting requirements, if applicable, mandated in Minn. Stat. § 298.75, subd. 3, as may be amended, Aggregate Material Removal Tax as the statute shall prescribe at the time of reporting.

- (1) Failure to submit the reports to the County shall be considered grounds to revoke the interim use permit.

(O) Investigations.

In order to ensure compliance with the performance standards set forth above, the Planning Commission, after being presented with information alleging the permittee's violation of this section, may require the permittee to complete such investigations, surveys and tests as may be required to show adherence to the performance standards. Such investigation and tests as are required to be made shall be carried out by an independent testing organization as may be selected by the Planning Commission.

(P) Surety Bond.

Prior to excavation the permittee shall post a surety bond executed by a corporate surety company acceptable to the county and authorized to do business in the State of Minnesota, or cash escrow, in the sum of \$1,000 per acre for 40 percent of the total excavated area.

- (1) The Planning Commission, at its discretion, may increase or decrease the bond amount if deemed necessary to protect the public health, safety, or welfare. Said bond shall run in favor of the county, and said bond shall remain in full force and effect for a minimum period of 1 year after termination or revocation of the permit, which bond shall guarantee the required rehabilitation as well as all other requirements of this section, and pay, up to its face value, all expense the county may incur for non-compliance.
- (2) All bonds shall be renewed to the minimum required amount in the case of partial or total default.

(Q) Non-assignment.

Permittee shall not allow any other person, firm, partnership, association, or corporation to conduct mining operation(s) at the site, other than hauling to or from the pit, without (1) obtaining the prior written consent of the Planning Commission and (2) receiving written acknowledgement of said other person, firm, partnership, association, or corporation that he/she/they/it agree(s) to be bound by the requirements of the mining operation(s) permit in effect, and has obtained a surety bond guaranteeing the other entity's performance as a permittee. Subcontractors to the permittee shall be allowed to perform mining operations under the direct supervision of the permittee. The subcontractor must follow all applicable rules, standards, laws, regulations or permit conditions pertaining to mining operations. The permittee shall be responsible for any violations of this Ordinance caused or committed by any subcontractor.

(R) Signage:

A 4 ft x 8 ft information sign shall be erected at the access to the site identifying the operator, telephone number and name of the contact person.

(S) Phasing:

As each phase of an operation is completed that phase shall be rehabilitated in accordance to subsection 9.16.7. At no time shall more than 40 percent of the total proposed excavation area be open to excavation unless the Planning Commission specifically approves a higher or lower percentage of the area.

(T) Insurance:

The operator shall provide proof of bodily injury, property damage, and public liability insurance in the amount of \$1,000,000 for any occurrence. If blasting is proposed the operator shall provide proof of blasting insurance.

(U) Additional Requirements.

The governing body may impose additional performance standards as part of the owner(s) interim use permit.

9.16.7 Land Rehabilitation

- (A) Within a period of 3 months after the termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of 12 months, or within 3 months after termination or revocation of a permit, all buildings, structures, and plants incidental to such mining operation(s) shall be dismantled and removed by and at the expense of the permittee last utilizing such buildings, structures and plants.
- (B) Within a period of 3 months after the termination of mining operation(s), or immediately after abandonment of such operation(s) for a period of 12 months, or within 3 months after termination or revocation of a permit, the peaks and depressions of the site shall be graded and backfilled to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall. Overall, the finished grade shall be such that it will not adversely affect the adjacent land and shall have slopes that do not exceed 4 feet horizontal to 1 foot vertical.
- (C) Reclaimed areas shall be surfaced with soil of quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least 3 inches; provided, however, that the permittee need not import topsoil to supplement the topsoil existing at the site prior to the commencement of the excavation. The finished reclaimed areas shall be planted with legumes and grassed upon all parts where revegetation is possible. Trees

and shrubs may also be planted but not as a substitute for legumes and grasses. Such ground cover shall be sufficient to hold the topsoil in place and shall be tended by the permittee as necessary until ground cover is self-sustaining.

- (D) Excavations completed to a water producing depth need not be backfilled; however, banks shall be sloped to a grade no steeper than 4 feet horizontal to 1 foot vertical.

## **9.17 Rural Event Venues**

9.17.1 Rural Event Venues, where allowed in this Ordinance, shall be subject to the following standards:

- (A) If the owner of the rural event venue use is not the owner of the property on which it is operated, then the owner of the property shall be a consenter to the interim use permit application and have a letter on file with Benton County stating her/his permission for the use to occur and her/his acknowledgement of the standards required for the use.
- (B) The responsible road authority shall grant written permission for such use at the proposed location.
- (C) All structures and portions of the parcel used for the rural event venue, including temporary structures, shall meet the minimum setback requirements of the district in which it is located.
- (D) Adequate parking for employees and customers shall be provided on site and shall meet parking standards of Section 8.2.
- (E) If there is a commercial kitchen on-site or if the facility has its own liquor license, an individual sewage treatment system shall be provided that complies with Section 9.22 and regulations from the Minnesota Pollution Control Agency (PCA). If food and/or alcohol are provided by a caterer, the site, at the discretion of the Planning Commission, may permit the use of a holding tank or provide restroom facilities via portable toilets.
- (F) All buildings used in conjunction with the use shall meet the requirements of the state building code, including state mandated accessibility requirements.

- (G) Local and state health and liquor regulations shall be met if food or beverages are served.
- (H) Hours of operation shall be limited to 8 a.m. to 10 p.m. The Planning Commission may grant approval for modified hours of operation.
- (I) Any outdoor lighting shall be arranged so as to reflect the light away from adjoining property and right-of-way.
- (J) Local law enforcement shall be notified prior to event.

## **9.18 Seasonal Worker Housing**

(Ord. #361, adopted 06/17/03)

### **9.18.1 Provisions**

- (A) Seasonal worker housing shall be located on the property where the migrant and/or seasonal worker is employed.
- (B) Housing shall only be occupied during the time of employment.
- (C) Seasonal worker housing shall be occupied by workers only and the applicant shall provide written notice to the Department 2 weeks before the housing will be occupied.
- (D) Submitted site plan showing the following:
  - (1) Location of the housing unit on the subject property
  - (2) Location of the access to the housing unit
  - (3) Location of the sewage treatment system
  - (4) Setbacks based upon the zoning district
  - (5) Adjacent land uses
- (E) Occupancy is based upon the amount of habitable space calculated at 80 square feet per occupant. Habitable space is the square footage of the bedroom(s), living room(s) and kitchen areas, excluding bathrooms, corridors and/or hallway areas.
- (F) Severe weather plan shall be provided.

- (G) Site and structural improvements (parking, recreation space, site layout, etc.) as applicable, shall be determined by the Planning Commission.
- (H) Seasonal worker housing shall not be considered in the calculation of any residential density determination as set forth in this Ordinance.

## **9.19 Second Dwelling**

(Ord. #447, adopted 12/20/11)

### **9.19.1 In General**

- (A) A second dwelling on a property shall be a detached single family dwelling for one of the following uses:
  - (1) Supportive care,
  - (2) Help on the farm, or Farm operator.
- (B) Second dwellings are not intended as rental property and rental of either dwelling is prohibited. All applications and required documents that require signatures must be signed by the primary dwelling occupant(s) over 18 years of age, secondary dwelling occupant(s) over 18 years of age, and the landowner(s).

### **9.19.2 Supportive Care**

- (A) A Second Dwelling for the use of Supportive Care are allowed as an interim use for the following zoning districts:
  - (1) "A" Agricultural District
  - (2) "R-A" Rural Agricultural District
  - (3) "R-S" Rural Service District
- (B) The applicant must provide the documents and meet criteria listed below:
  - (1) Site plan showing the location of the second dwelling unit in relation to the original dwelling unit.
  - (2) Documentation of the type of supportive care to be provided by a physician, nurse practitioner or physician assistant to verify the need for supportive care.

- (3) The principal owner of the property shall annually submit an affidavit to the Department of Development verifying that the dwellings are still occupied by the eligible resident(s) named in the original application.
- (4) A signed statement declaring that the second dwelling shall be removed within 90 days of discontinuance of providing or receiving supportive care.
- (5) The dwelling must be a manufactured home.
- (6) The dwelling unit must be connected to a permitted sewage treatment system.
- (7) The dwelling must meet the state building code and meet the 31 point inspection requirement.

#### 9.19.3 Help on the Farm or Farm Operator

- (A) A Second Dwelling for the use of Help on the Farm or Farm Operator are allowed as an interim use for the following zoning districts:
  - (1) "A" Agricultural District
  - (2) "R-A" Rural Agricultural District
- (B) The applicant must provide the documents and meet the criteria listed below:
  - (1) Provision of Schedule F, or similar document, demonstrating the need for full time help on the farm.
  - (2) Site plan showing the location of the second dwelling unit in relation to the original dwelling unit.
  - (3) Signed written statement that the farm operator or the retired operator will reside on the property.
  - (4) Signed written statement indicating the name or title of the person(s) occupying the second dwelling.
  - (5) A signed statement declaring that the second dwelling shall be removed within 90 days when the demonstrated need for full time



help on the farm no longer exists, or the farm operator no longer resides on the property.

- (6) The dwelling must be a manufactured home.
- (7) The dwelling must meet the state building code and meet the 31 point inspection requirement.
- (8) The dwelling must be connected to a permitted sewage treatment system.

#### 9.19.4 Second Dwelling as a permanent building

A second dwelling may be allowed as a permanent site built dwelling if:

- (A) The requirements of subsection 9.19.2(B) items(1 – 3, 6 & 7) or subsection 9.19.3(B) items(1 – 4, 7 & 8), above, are met;
- (B) The property may be legally subdivided to create 1 lot for the primary dwelling and a separate lot for the secondary dwelling; and
- (C) The property to be subdivided shall meet the zoning district requirements established and documented at the time of the application:
  - (1) residential density
  - (2) all lot standards (length, width, area) as indicated on a site plan
  - (3) all existing or proposed structures meeting the setback requirements
  - (4) access approval from the road authority
  - (5) standard sewerability requirements (soil borings meeting the minimum requirement for 2sewage treatment areas)
  - (6) As an interim use a condition shall be placed on the property that indicates that a change in status of either occupant of the dwellings will require a subdivision of said property according to the requirements established in the permit and within the subdivision portion of the ordinance.

- (D) Upon the expiration of the IUP, the property to be split shall be subdivided in accordance with standards of the Benton County Development Code in place at the time of the actual subdivision. The lots to be created will not need to meet the current zoning district requirements for lots at the time of the actual subdivision, but the lots created must meet the documented zoning district requirements that existed at the time of application for the IUP.

#### 9.19.5 Exemption

If the second dwelling is to be constructed as the principal dwelling to replace the existing dwelling it shall be exempt from subsection 9.19.2(B) items (1 – 5) and 9.19.3(B) items (1 – 6). A condition shall be placed on all associated Interim Use Permits for second dwellings stating the original dwelling shall be removed within 90 days after the original party or parties named in the permit are no longer residing in the original dwelling.

### 9.20 **Solar Energy Systems**

(Ord. #455, adopted 06/21/16)

#### 9.20.1 Purpose

The purpose of this section is to regulate the installation and operation of Solar Energy Systems not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act (Minn. Stat. Ch. 216E, as may be amended) to protect and promote health, safety and general welfare within the county through uniform standards, regulation and procedures governing the type, size, structure, location, height, erection and use of Solar Energy Systems.

In order to ensure adequate solar skyspace, the County does encourage the use of a solar skyspace easement as a means to protect solar skyspace.

#### 9.20.2 Standards for Private Solar Gardens and Community Solar Farms

Private Solar Gardens and Community Solar Farms shall be subject to the requirements of subsection 11.7 and the following additional performance standards:

- (A) Foundations.

A professional licensed engineer in the state of Minnesota shall certify that the foundation and design of the solar panels is within accepted professional standards, given local soil and climate conditions.

(B) Other standards and codes.

All private solar gardens and community solar farms shall comply with any applicable local, state and federal regulatory standards, including the State of Minnesota Uniform Building Code, as amended; the National Electric Code, as amended; the National Pollutant Discharge Elimination System (NPDES), as amended; and shall be in compliance with all applicable federal, state and local wetland laws, rules and regulations, as amended.

(C) Power and communication lines.

Power and communication lines running between banks of solar panels, to electric substations, among other project elements and providing interconnections with buildings shall be buried underground. Exemptions may be granted by the planning commission in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.

(D) Setbacks.

Private solar garden and community solar farms must meet the minimum principal building setback for the zoning district and be located a minimum of 300 feet from a residential dwelling unit not located on the property. Setbacks shall be measured to the nearest solar array or other structure within the private solar garden or community solar farm, excluding security fencing, screening or berm.

(E) Maximum Height.

Ground mounted systems shall not exceed 25 feet in height at maximum ground tilt.

(F) Field Windbreak.

As stipulated in Section 9.13, no field windbreaks shall be removed as part of the project unless it can be shown that the windbreak is no longer serving its purpose and the Planning Commission approves such removal.

(G) Screening.

Private solar gardens or community solar farms shall be screened from residential dwelling units as follows when there is less than 1,000 feet of separation between the solar array and residential dwelling:

- (1) Screening shall consist of earth mounds or berms; neutral colored fences; or landscaping used in combination or singularly so as to block direct visual access and to mitigate potential glare concerns.
- (2) The use of berming and landscaping shall be 80 percent opaque at the time of maturity. Planting screens shall consist of healthy plant materials at least 6 feet in height at the time of planting. Or planting screens shall include at least 2 staggered rows of evergreen trees placed no more than 8 feet apart.
- (3) Screening fences that are in disrepair shall be repaired. Planting screens shall be maintained in a neat and healthy condition with plantings that have died being replaced within the current or next growing season.
- (4) Applicant shall provide mitigation of glare issues, failure to mitigate will be a violation of the IUP.

(H) Solar panels must be removed and properly disposed of if they are out of production for more than 1 year unless the Planning Commission grants an extension of time for their removal.

(I) The interim use permit shall expire at the same time the solar energy farm lease expires, but in no case shall the permit be less than 25 years. The IUP may be extended following the same process as establishment of the original IUP. The Planning Commission may waive the expiration requirement for solar energy farms located on property owned by public utilities or other unique owner operated facilities.

(J) Application Requirements.

The following information shall be provided to the Department as part of the IUP permit:

- (1) A site plan of existing conditions showing the following:

- (a) Existing property lines and property lines extending 300 feet from the exterior boundaries, including the names of the adjacent property owners and current use of those properties.
- (b) Existing public and private roads, showing widths of the roads and any associated easements.
- (c) Location and size of any existing or abandoned wells, and sewage treatment systems.
- (d) Existing buildings and any impervious surface.
- (e) Topography at 2 foot intervals and source of contour interval, a contour map of surrounding properties may also be required.
- (f) Existing vegetation (list type and percent of coverage; i.e. grassland, pasture, plowed field, wooded areas, etc.).
- (g) Waterways, watercourses, lakes and public water wetlands.
- (h) Level 2 wetland delineation required. Other levels may be appropriate if approved by the Department of Development staff.
- (i) The 100 - year flood elevation and Regulatory Flood Protection Elevation, if applicable.
- (j) Floodway, flood fringe and/or general flood plain district boundary, if applicable.
- (k) The shoreland district boundary, if any portion of the project is located within a shoreland overlay district.
- (l) In the shoreland overlay district, the ordinary high water level and the highest known water level.
- (m) In the shoreland overlay district, the toe and top of any bluffs within the project boundaries.
- (n) Surface water drainage patterns.

- (o) Mapped soils according to the Benton County Soil Survey.
- (2) Site Plan of Proposed Conditions:
  - (a) Location and spacing of solar panels.
  - (b) Location of access roads.
  - (c) Planned location of underground or overhead electric lines connecting the solar farm to the building, substation or other electric load.
  - (d) New electrical equipment other than at the existing building or substation that is the connection point for the solar farm.
  - (e) Sketch elevation of the premises accurately depicting the proposed solar energy conversion system and its relationship to structures on adjacent lots (if any).
- (3) Manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles or racks;
- (4) The number of panels to be installed;
- (5) A description of the method of connecting the array to a building or substation;
- (6) Aviation Analysis. If the project is within 2 miles of an airport, the applicant must complete and provide the results of the Solar Glare Hazard Analysis Tool (SGHAT) for the Airport Traffic Control Tower cab and final approach paths, consistent with the Interim Policy, FAA Review of Solar Energy Projects on Federally Obligated Airports, or successor policy. The applicant must also complete the Air Space Case Analysis (Form 7460) and provide the results.
- (7) Visual Impact Analysis. An analysis of the potential visual impacts from the project including solar panels, roads and fencing along with measures to avoid, minimize or mitigate the visual effects shall be required. A plan may be required showing vegetative screening or buffering of the system from those items to mitigate for visual impacts.

- (8) Solar farms must also provide the following:
- (a) A copy of the interconnection agreement with the local electric utility or a written explanation outlining why an interconnection agreement is not necessary;
  - (b) A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. Decommissioning of solar panels must occur in the event they are not in use for 12 consecutive months. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. Disposal of structures and/or foundations shall meet all applicable rules and regulations to proper disposal.
  - (c) To ensure proper decommissioning, the applicant shall provide a financial surety by posting a bond, letter of credit or the establishment of an escrow account at a rate of \$25,000 per MW or fraction thereof for Community Solar Farms and at a rate of \$500 per acre for Private Solar Gardens.

Any financial surety arrangement shall be approved by the County Attorney's Office as to form and issuing bank. The issuing bank must be an FDIC insured bank. The issuing bank must be available in its entirety to fulfill the obligations of Developer under the Agreement. Any letter of credit to the County shall contain language requiring its automatic renewal prior to December 31 of each calendar year, unless cancellation of the letter of credit is specifically approved in writing by the County.

#### 9.20.3 Standards for Accessory Solar Energy Systems.

Accessory Solar Energy Systems shall be a permitted accessory use in all zoning districts, subject to the following criteria:

- (A) Accessory Building Limit.

Ground mounted systems shall count as an accessory building for the purpose of meeting limits on the number of accessory structures allowed per lot and the coverage limits, as set in Section 9.1.

(B) Height.

Solar energy systems are subject to the following height requirements:

- (1) Building or roof-mounted solar energy systems shall not exceed the maximum allowed height in any zoning district. For the purposes of height measurement, solar energy systems other than building-integrated systems shall be considered to be mechanical devices and are restricted consistent with other building-mounted mechanical devices for the zoning district.
- (2) Ground or pole-mounted solar energy systems shall not exceed 25 feet in height when oriented at maximum tilt.

(C) Location within Lot.

Solar energy systems must meet the accessory structure setback for the zoning district.

(1) Roof-mounted Solar energy systems.

In addition to the building setback, the collector surface and mounting devices for the roof-mounted solar systems that are parallel to the roof surface shall not extend beyond the exterior perimeter of the building on which the system is mounted or built. The collector and racking for roof-mounted systems that have a greater pitch than the roof surface shall be set back from all roof edges by at least 2 feet. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.

(2) Ground-mounted Solar Systems.

Ground-mounted solar energy systems may not extend into the side yard or rear yard setback when oriented at minimum design tilt.

(D) Compliance with State Electric Code.



All photovoltaic systems shall comply with the Minnesota State Electrical Code.

- (E) Compliance with all applicable federal, state and local wetland laws, rules and regulations.
- (F) Solar panels must be removed and properly disposed of if they are out of production for more than 1 year unless the Planning Commission grants an extension of time for their removal.
- (G) Application Requirements.

The following information shall be provided to the Department as part of the land use permit process:

- (1) A site plan of existing conditions showing the following:
  - (a) Existing property lines.
  - (b) Existing public and private roads, showing widths of the roads and any associated easements.
  - (c) Location and size of any existing or abandoned wells, and sewage treatment systems.
  - (d) Existing buildings and any impervious surface.
  - (e) Waterways, watercourses, lakes and public water wetlands
  - (f) The 100 - year flood elevation and Regulatory Flood Protection Elevation, if applicable.
  - (g) Floodway, flood fringe and/or general flood plain district boundary, if applicable.
  - (h) The shoreland district boundary, if any portion of the project is located within a shoreland overlay district.
  - (i) In the shoreland overlay district, the ordinary high water level and the highest known water level.
  - (j) In the shoreland overlay district, the toe and top of any bluffs within the project boundaries.

- (k) Surface water drainage patterns.
- (2) Site Plan of Proposed Conditions:
  - (a) Location and spacing of solar panels.
  - (b) Location of access roads.
  - (c) Planned location of underground or overhead electric lines connecting the solar farm to the building, substation or other electric load.
  - (d) New electrical equipment other than at the existing building or substation that is the connection point for the solar farm.
- (3) Manufacturer's specifications and recommended installation methods for all major equipment, including solar panels, mounting systems and foundations for poles or racks;
- (4) The number of panels to be installed.

## **9.21 Solid Waste Management/Recycling Facilities**

(Ord. #447, adopted 12/20/11)

- 9.21.1 The facility/operation is in compliance with the Benton County Solid Waste Ordinance and any other applicable ordinance.
- 9.21.2 The facility /operation is in compliance with the adopted Comprehensive Plan and the Solid Waste Master Plan.
- 9.21.3 The site shall not be located within the Shoreland or Floodplain Districts.
- 9.21.4 The site shall not be located within a wetland as defined in Minn. Stat. § 103G.005, as may be amended.
- 9.21.5 Any required environmental assessment documents have been developed and required review procedures have been completed.
- 9.21.6 Any required County, State, or Federal licenses have been issued.
- 9.21.7 The facility/operation is in compliance with all applicable Minnesota Pollution Control Agency (MPCA) and U. S. Environmental Protection Agency (EPA) rules and regulations.

- 9.21.8 An Operation plan shall be developed and the activity conducted in accordance with the operational plan.
- 9.21.9 The permit shall be subject to annual renewal. Renewal shall occur during the same month as the County license renewal.
- 9.21.10 A site plan is submitted showing adjacent land uses and the type of measures that will be used to buffer the physical impacts to these sites.
- 9.21.11 Reports as required by MPCA/EPA rules and regulations.
- 9.21.12 The facility/operation must not be constructed or used until the property owner complies with all local ordinances and has obtained the appropriate permits(s) from the MPCA.
- 9.21.13 Buildings and any exterior storage shall meet the setback requirements of the underlying zoning district.
- 9.21.14 All parking areas and access drives to parking areas shall be durable and dustless.
- 9.21.15 The site shall be located at least 500 feet from any residential dwelling unit.

## **9.22 Subsurface Sewage Treatment Systems (SSTS)**

(Ord. #432, effective 01/02/09) (Ord. #457, effective 05/26/16)

### **9.22.1 Purpose, Objective and Authority**

#### **(A) Purpose.**

The purpose of this section is to establish minimum requirements for regulation of individual sewage treatment systems (ISTS) and mid-size subsurface sewage treatment systems (MSTS) collectively referred to as subsurface sewage treatment systems (SSTS) for the treatment and dispersal of sewage within the applicable jurisdiction of the County to protect public health and safety, groundwater quality, and prevent or eliminate the development of public nuisances. It is intended to serve the best interests of the county's citizens by protecting its health, safety, general welfare, and natural resources.

#### **(B) Objectives**

- (1) The protection of lakes, rivers and streams, wetlands, and groundwater in Benton County is essential to the promotion of public health, safety, welfare, socioeconomic growth and development of the County.
  - (2) Given the extensive resources and numerous supplies of surface water and groundwater and their susceptibility to contamination, the regulation of proper SSTS construction, reconstruction, repair and maintenance is necessary to prevent the entry and migration of contaminants, thereby protecting the degradation of surface water and groundwater quality.
  - (3) The establishment of minimum standards for SSTS placement, design, construction, reconstruction, repair and maintenance is necessary to prevent contamination and, if contamination is discovered, the identification and control of its consequences and the abatement of its source and migration.
  - (4) The appropriate utilization of privy vaults and other non-water carried sewage collection and storage facilities.
  - (5) The provision of technical assistance and education, plan review, inspections, SSTS surveys and compliance investigations to prevent and control water-borne diseases, lake degradation, groundwater related hazards, and public nuisance conditions.
- (C) Authority.

This section is adopted pursuant to Minn. Stat. § 115.55; Minn. Stat. Ch. 145A; and Minn. Stat. § 375.51, as may be amended, and Minn. R. Ch. 7080; Minn. R. Ch. 7081; Minn. R. Ch. 7082; Minn. R. Ch. 7083, as may be amended.

#### 9.22.2 General Provisions

- (A) Scope.

This section regulates the siting, design, installation, alterations, operation, maintenance, monitoring, and management of all SSTS within the County's applicable jurisdiction including but not necessarily limited to individual SSTS and cluster or community SSTS, privy vaults, and other non-water carried SSTS. All sewage generated in unsewered areas of the

County shall be treated and dispersed by an approved SSTS that is sited, designed, installed, operated, and maintained in accordance with the provisions of this Ordinance or by a system that has been permitted by the Minnesota Pollution Control Agency (PCA).

(B) Jurisdiction.

The jurisdiction of this section shall include all lands of the County except for incorporated areas or areas under an annexation or joint powers agreement that administer a Subsurface Sewage Treatment System (SSTS) program by Ordinance within their jurisdiction, which is at least as strict as this Ordinance and has been approved by the County. The County Department of Development shall keep a current list of local jurisdictions within the County administering a SSTS program.

(C) County Administration.

The Department of Development shall administer the SSTS program and all provisions of this Ordinance. At appropriate times, the County shall review this and revise and update this Ordinance as necessary. The County shall employ or retain under contract qualified and appropriately licensed professionals to administer and operate the SSTS program. The Department shall have the following duties and responsibilities:

- (1) To review all SSTS applications;
- (2) To issue all permits required by this Ordinance;
- (3) To inspect work in progress and to perform the necessary tests to determine its conformance with this Ordinance
- (4) To investigate complaints regarding SSTS and septage disposal;
- (5) To issue cease and desist orders and notices of violation, pursuant to this Ordinance;
- (6) To maintain proper records for SSTS and septage disposal including site evaluation records, design records including calculations and summaries for all system component sizing and as-builts.

- (7) To submit annual reports to the PCA to demonstrate enforcement of the local Ordinance per Minn. R. 7082.0040, subp. 5, as may be amended.
  - (8) Provide programs by the Department and/or others to increase public awareness and knowledge of SSTS. Programs may include distribution of educational materials through various forms of media and SSTS workshops focusing on SSTS planning, construction, operation, maintenance, and management.
- (D) State of Minnesota
  - (1) Where a single SSTS or group of SSTS existing or proposed under common ownership are within one-half mile of each other, have a combined design flow greater than 10,000 gallons per day, the owner or owners must obtain a State Disposal System (SDS) permit from PCA according to Minn. R. Ch. 7001.
  - (2) SSTS serving establishments or facilities licensed or otherwise regulated by the State shall conform to the requirements of this Ordinance including, but not limited to, campgrounds, resorts, mobile home parks, and eating and drinking establishments.
  - (3) For dwellings including apartments, townhouses, resort units, rental cabins and condominiums, the sum of the flows from all existing and proposed sources under single management or ownership will be used to determine the need for a SDS permit.
  - (4) Any SSTS requiring approval by the State of Minnesota shall also comply with this Ordinance.
  - (5) Plans and specifications must receive appropriate state and local approval before construction is initiated.
- (E) Plumbing Code Administration
  - (1) The plumbing code shall be administered by the local building code official as it relates to the hook-up of the water using device to the septic tank or system.

- (2) Verification that the septic system hook-up is compliant with the plumbing code shall be provided by the building code official prior to issuance of a certificate of compliance.

### 9.22.3 General Requirements

#### (A) Standards Adopted by Reference.

The County hereby adopts by this reference Minn. R. 7080 through 7083, as may be amended, in their entirety as now constituted and from time to time amended. This adoption does not supersede the County's right or ability to adopt local standards that are in compliance with Minn. Stat. §115.55, subd. 7, as may be amended.

#### (B) Retroactivity.

Except as explicitly set forth in subsection 9.22.3 (C), below, all provisions of this Ordinance shall apply to any SSTS regardless of the date it was originally permitted.

#### (C) Existing Permits.

Unexpired permits which were issued prior to the effective date shall remain valid under the terms and conditions of the original permit until the original permit expiration date.

#### (D) Existing SSTS without Permits.

Existing SSTS, including those with no permits of record, shall require a permit for new construction/replacement and the portion being replaced or upgraded shall be brought into compliance with the requirements of this Ordinance regardless of the date they were originally constructed. The portion of the SSTS that is not being replaced or upgraded is not required to be brought into compliance with this Ordinance unless it is failing or in the opinion of the designer is required to be upgraded.

#### (E) Sewerability Requirements

- (1) Newly created lots, and legally created lots created after January 23 1996 shall have a minimum of 2 Type I septic sites. A site without a septic system or a septic system that has not been in

operation for more than 5 years shall be considered a vacant lot.  
(Ord.#436, adopted 04/07/09)

- (2) New construction of a single family dwelling on vacant lots or lots created after January 23, 1996 unable to meet the requirements set forth in subsection 9.22.3(E)(1) shall be able to utilize a “Local Alternative Septic System” designed in accordance with subsection 9.22.7(C). These systems will be “Type III” systems and a minimum of 6 inches of unsaturated soil shall be required. Local Alternative Septic Systems shall be permitted when:
- (a) One Type I site is found, or no Type I sites are found
  - (b) Said system is not located within shoreland areas, wellhead protection areas or systems serving food, beverage, or lodging establishments;
  - (c) Said system is for a single-family dwelling unit;
  - (d) Said system is not within a wetland; and
  - (e) Said system is designed in accordance with subsection 9.22.7 (C)
  - (f) If a Type I site is found then the property owner shall be required to utilize the Type I site for a Type I septic system. The Local Alternative Septic System site shall qualify as the secondary site.
- (3) Lots created prior to January 23, 1996 shall be considered sewerable provided 2 septic sites can be found and verified with a minimum of 6 inches of separation.

(F) Sewerability Exceptions.

Any newly created lot which is deed restricted for agricultural/recreational use, is exempt from demonstrating Type I septic sewerability requirements of subsection 9.22.3 (E)(1) and Type III septic sewerability requirements of subsection 9.22.3 (E)( 2). Type I sewerability requirements are not required for a replacement sewage treatment system in which a dwelling or other establishment is removed, and a new dwelling or other



establishment is built within 5 years of the date of the removal of the existing dwelling or other establishment.

#### 9.22.4 Prohibitions

(A) Occupancy or Use of a Building without a Compliant SSTS.

It is unlawful for any person to maintain, occupy, or use any building intended for habitation that is not provided with a SSTS that disposes of wastewater in a manner consistent with the provisions of this Ordinance.

(B) Sewage Discharge to Ground Surface or Surface Water.

It is unlawful for any person to construct, maintain, or use any SSTS under this Ordinance that results in raw or partially treated wastewater seeping to the ground surface or flowing into any surface water. Any surface discharging system must be permitted under the National Pollutant Discharge Elimination System (NPDES) program by the PCA.

(C) Sewage Discharge to a Well or Boring.

It is unlawful for any person to discharge raw or treated wastewater into any well or boring as described in Minn. R. 4725.2050, as may be amended, or any other excavation in the ground that is not in compliance with this Ordinance.

(D) Discharge of Hazardous/Commercials or Deleterious Materials.

It is unlawful for any person to discharge into any treatment system regulated under this Ordinance any hazardous, commercial or deleterious material that adversely affects the treatment or dispersal performance of the system or groundwater quality. (Ord. #436, adopted 04/07/09)

(E) Wetlands.

It is prohibited to construct or place an SSTS, or any part thereof, in a wetland as defined in Minn. Stat. §103G.005, as may be amended; except replacement systems with no other alternative may be placed within a wetland if the criteria under Minn. R. 8420.0420, subp. 6(A)(2), as may be amended, is met.

#### 9.22.5 SSTS Practitioner Licensing

(A) Licensing Requirement

No person shall engage in site evaluation, inspection, design, installation, construction, alteration, extension, repair, maintenance, or pumping of SSTS without an appropriate and valid license issued by PCA in accordance with Minn. R. Ch. 7083, as may be amended, except as exempted in Minn. R. 7083.0700, as may be amended.

(B) Unlicensed Persons

- (1) Unlicensed persons may install a Type I Septic System or Holding Tank on their property for their single family dwelling as permitted by Minn. R. 7083.0700, as may be amended.
- (2) A property owner must follow all applicable County, state, and federal requirements for permitting and construction of an SSTS.
- (3) The property owner shall provide an executed agreement to the Department which indemnifies and saves the County, holding it harmless from all losses, damages, costs, including attorney's fees, and charges that may be incurred by Benton County due to the failure of the permittee to conform to and comply with the provisions of this Ordinance.
- (4) The licensed design business or certified designer of the SSTS must be present at the site during the compliance inspection conducted by the Department of Development.

9.22.6 SSTS Permitting

(A) Permits Required.

It is unlawful for any person to construct, install, modify, replace, repair, rejuvenate, remediate, or operate a subsurface sewage treatment system without the appropriate permit from Benton County. The issuing of any subdivision, permit, variance, or conditional use under the provisions of this Ordinance shall not absolve the applicant's responsibility to obtain any other required permit. The purpose of this permit is to ensure that the proposed construction activity is sited, designed, and constructed in accordance with the provisions of this Ordinance by an appropriately certified and/or licensed practitioner(s). A septic permit is not required for minor repairs or replacements of system components that do not alter the

original function of the system, change the treatment capacity of the system, change the location of the system, or otherwise change the original system's design, layout, or function as determined by the Department.

(Ord. #436, adopted 02/07/09)

(B) Septic Permit Required to Obtain Building or Land Use Permit.

For any property where a SSTS permit is required, approval and issuance of a valid SSTS septic permit must be obtained before a building or land use permit will be issued by the Department or Building Official.

(C) Permit Application Requirements.

Septic permit applications shall be made on forms provided by the Department of Development and signed by the applicant/owner and an appropriately certified practitioner including the practitioner's license number and date of expiration. The applications shall include the Site Evaluation Report as described in Minn. R. 7080.1730, as may be amended, Design Report as described in Minn. R. 7080.2430, as may be amended, a Management Plan as described in Minn. R. 7082.0600, as may be amended. Applications shall be considered incomplete if they are not on the County forms, do not include a management plan and, when applicable, a monitoring plan, mitigation plan, pumping agreement or deed restriction. Applications shall also be considered incomplete if they are not signed by the owner/applicant and designer.

(Ord. #436, adopted 02/07/09)

(D) SSTS Designer Responsibilities

- (1) Upon completion of any SSTS design, the SSTS designer shall review the proposed SSTS design with the applicant/owner. At that time, the designer shall have the applicant/owner sign the SSTS application, and any other required management plan or operational agreement before the design is released to the applicant/owner or installer.
- (2) If a proposed SSTS design cannot meet a technical requirement of Minn. R. Chs. 7080 through 7083, as may be amended, or Section 9.22 of this Ordinance, it is the responsibility of the SSTS designer

to contact the Department of Development before releasing the proposed SSTS design to the applicant/owner.

- (3) If it is determined by the designer and the Department of Development, that the proposed SSTS design would require a variance, the designer shall discuss this finding with the applicant/owner. The need for a variance shall be clearly indicated on a separate sheet of paper and attached to the proposed SSTS design. A variance application shall accompany the septic permit application. The septic application shall be considered incomplete until the variance is approved.

(E) Application Review and Response.

The Department shall review a permit application and supporting documents in accordance with Minn. Stat. §15.99, as may be amended. Upon satisfaction that the proposed work will conform to the provisions of this Ordinance, the Department shall issue a written permit authorizing construction of the SSTS as designed. In the event that the applicant makes a change to the approved application, the applicant must resubmit an amended application to the Department detailing the changed conditions prior to initiating or continuing construction, modification, or operation. The Department may approve or deny the amended application. If the permit application is incomplete or does not meet the requirements of this Ordinance the Department shall deny the application or request additional information. A notice of denial or request for additional information shall be provided to the applicant with the reason for the denial or request for additional information. Applications shall be considered incomplete if they are not on County forms, do not include the required signatures, do not include a management plan, and when applicable a monitoring plan, mitigation plan, pumping agreement or appropriate deed restrictions.

(F) Fees.

The County Board shall establish fees for permits and reviews required by this Ordinance. All fees shall be paid prior to the issuance of the septic permit or certificate of compliance whichever shall apply.

(G) Appeal.

The applicant may appeal the Department's decision to deny the septic permit in accordance with the County's established policies and appeal procedures in accordance with Section 11.4 (Ord. #436, adopted 02/07/09). If a septic permit is denied based on a failure to obtain a variance to a requirement of Section 9.22, then the variance denial shall be appealed in accordance with Minn. Stat. 394.27, as may be amended, and not subsection 11.4.7.

(H) Permit Expiration.

The septic permit is valid for a period of no more than 1 year from its date of issue or satisfactorily completion, whichever is shorter. The Department may, at its sole discretion, provide an expiration of the permit shorter than 1 year. Satisfactory completion of construction shall be determined by receipt of final record drawings and a signed certification that the construction or installation of the system was completed in substantial conformance to the approved design documents by a qualified employee of the Department. The Department may at its sole discretion grant an extension of the septic permit if requested in writing by the owner prior to the expiration of the permit.

(I) Suspension or Revocation.

The Department may suspend or revoke a septic permit issued under this section when issuance of the permit was based on false statements or misrepresentations of facts made by the applicant. The Department may suspend or revoke a septic permit issued under this section when there have unauthorized changes to the system design that alter the original function of the system, change to the treatment capacity of the system, change to the location of the system, or otherwise change to the original system's design, layout, or function. A notice of suspension or revocation and the reasons for the suspension or revocation shall be conveyed in writing to the permit holder. If the permit is suspended or revoked, installation or modification of a treatment system may not commence or continue until a valid septic permit is obtained.

(J) Posting.

The septic permit should be posted on the property in such a location and manner so that the permit is visible and available for inspection until construction is completed and certified.

## 9.22.7 SSTS Standards

## (A) Benton County Standards.

The County hereby adopts by reference Minn. R. Chs. 7080 through 7083, as may be amended. In accordance with Minn. Stat. § 115.55, subd. 7, as may be amended, Benton County has adopted more restrictive standards than required by Minn. R. Chs. 7080 through 7083, as may be amended.

## (B) Additional SSTS Design Requirements.

In addition to the design requirements contained in Minn. R. Chs. 7080 through 7083, as may be amended, the following more restrictive requirements shall be required for all SSTS designs submitted to the Department. (Ord. #436, adopted 02/07/09)

- (1) A minimum of 3 soil borings are required in the primary site and a minimum of 1 boring is required for the secondary site; however, if the primary and secondary site do not adjoin each other a minimum of 2 soil borings are required in both the primary and secondary locations. Soil borings must be representative of the soil conditions throughout the absorption area and shall be verified by staff.
- (2) SSTS for new construction shall have a minimum of 3 feet of separation to the periodically saturated soils, bedrock or other restrictive layer, including 1 foot in the original soil.
- (3) The depth of each soil boring shall be to the water table, bedrock or 3 feet below the proposed depth of the system, whichever is less.
- (4) An authorized representative from the Department of Development shall verify the soil borings prior to issuance of the certificate of compliance for any new or replacement system.
- (5) The proposed location of the soil treatment area shall be roped or staked upon completion of the SSTS design.
- (6) The application shall provide a fixed reference point and distances from the proposed sites and/or borings to that reference point including a benchmark with an assumed elevation.

- (7) All SSTS or part thereof that will no longer be used and/or are found out of compliance shall be identified on the SSTS design.
  - (8) Classification I flows shall be used to determine the average design flow for any SSTS design.
  - (9) If the map unit name of the soil listed in the Benton County Soil Survey states "fine sand," the SSTS designer shall conduct a sieve analysis, or size the soil treatment area using the loading rates in Minn. R. 7080.2150, Table IXa, as may be amended.
  - (10) The absorption area of mounds shall be based upon Minn. R. 7080.2150, Table IXa, as may be amended from either the percolation rate or the heaviest soil texture encountered.
  - (11) Table IX entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Detail Soil Descriptions" and Table IXa entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" from Minn. R. 7080.2150, subp. 3(E), as may be amended are herein adopted by reference and either shall be used to size SSTS infiltration areas for SSTS design.
  - (12) All newly created lots, vacant lots and/or vacant lots of record shall have a minimum of 2 Type I septic sites. A site without a septic system or a septic system that has not been in operation for more than 5 years shall be considered a vacant lot.
  - (13) Exception. All newly created lots, vacant lots and/or vacant lots of record within a floodplain shall have a minimum of 2 Type II septic sites. See the provisions outlined in Section 9.22.7(N).
- (C) Additional Local Alternative Septic System Requirements.

In addition to the design requirements contained in Minn. R. Chs. 7080 through 7083, as may be amended, the following requirements shall be required for all Local Alternative Septic System Requirements. (Ord. # 457, adopted 05/17/16)

- (1) A minimum of 3 soil borings are required in the primary site and a minimum of 2 borings are required in the 3 secondary sites. These will be verified by county staff or designee to determine the depth to the limiting layer.
- (2) Designers shall determine the linear contour loading rate for the drain field locations based upon **Table A**.



Table IX. Effluent absorption and contour loading rates for determining absorption area size and configuration using detailed soil descriptions.\*

**Table A**

USDA Soil Classification		Structure and Grade	Absorption Loading Rate (gpd/ft <sup>2</sup> )		Contour Loading Rate (gpd/ft) <sup>††</sup>											
					0-3% Slope			4-7% Slope			8-10% Slope			>10% Slope		
					Horizon Depth (in.) <sup>‡</sup>			Horizon Depth (in.)			Horizon Depth (in.)			Horizon Depth (in.)		
Texture			Effluent Treatment Level		≥6-12	>12-24	>24-36	≥6-12	>12-24	>24-36	≥6-12	>12-24	>24-36	≥6-12	>12-24	>24-36
very coarse sand, loamy coarse sand, or loamy coarse sand	≥ 35% coarse fragments	single grain*	LR**	1.0	6	8	10	8	10	10	8	10	10	8	10	10
	< 35% coarse fragments	single grain*	LR	2.0												
sand, loamy sand	≥ 35% coarse fragments	single grain*	0.5 <sup>‡</sup>	1.0	5	6	7	6	8	10	7	9	10	8	10	10
	< 35% coarse fragments	single grain or weak <sup>††</sup>	0.8	1.6												
fine sand, loamy fine sand, very fine sand, loamy very fine sand		weak to strong non-play <sup>††</sup>	0.6	1.0	3.5	4	5	4.5	5.5	7	4.5	6	9	5	8	10
		massive <sup>††</sup>	0.4	0.8	3	3.5	4	3.5	4	5	3.5	5	6	4	5	7
coarse sandy loam, sandy loam		moderate to strong non-play <sup>††</sup>	0.6	1.0	4.5	5.5	6	5	6	9	5.5	7	10	6	8	10
		massive or weak <sup>††</sup>	0.5	0.8	4	4.5	5.5	4.5	5	6	4.5	5.5	6	5	6	7
fine sandy loam, very fine sandy loam, loam		moderate to strong non-play <sup>††</sup>	0.6	0.8	3.5	4	5	4	5	7	5	6	8	5.5	7	9
		massive or weak <sup>††</sup>	0.4	0.6	3	3.5	4	3.5	4	5	3.5	4	5.5	4	5	6
silt loam		moderate to strong non-play <sup>††</sup>	0.5	0.8	3.5	4	4	3.5	4.5	5.5	4	5	7	4.5	6	8
		massive or weak <sup>††</sup>	0.4	0.6	3	3.5	3.5	3	4	4.5	3	4	5	3.5	4.5	5.5
sandy clay loam, clay loam, silty clay loam		moderate to strong non-play <sup>††</sup>	0.4	0.6	3	3.5	4	3	3.5	4	3	4	4.5	3.5	4	4.5
		moderate to strong non-play <sup>††</sup>	0.2	0.3	3	3	3.5	3	3	3.5	3	3.5	3.5	3.5	3.5	3.5

\* Only applies to original soil horizons with < 50% coarse fragments (particle sizes having > 2.00 mm nominal diameters, i.e. gravel or coarser). Absorption area surfaces must not be in contact with soil horizons having ≥ 50% coarse fragments.

† Estimated rates for ISTS. For soil conditions not included in the table, e.g. non-original soil, < 6 in. ≥ 50% coarse fragments, firmer consistence, etc., evaluation of soil morphology and contour loading rate by a licensed Professional Soil Scientist (PSS) who is also an MPCA-licensed SSTS designer is required. Rates projected using hydraulic conductivities measured by a licensed PSS designer supersede table estimates.

‡ Pressure distribution required.

† Unsaturated.

‡ Residential strength septic tank effluent with up to 170 mg BOD<sub>5</sub>/L, 60 mg TSS/L, and 25 mg O&G/L.

† Additionally pretreated septic tank effluent with up to 25 mg CBOD<sub>5</sub>/L and 30 mg TSS/L.

‡ Non-cemented, loose to very friable consistence.

\*\* LR = Liner required. Use clean sand for liner, to separate distribution media from soil, and its associated absorption loading rate (1.0 gpd/ft<sup>2</sup>).

†† Very friable to friable consistence.

‡‡ Very friable to firm consistence.

- (3) Designer shall verify that said system is not located within shoreland areas or wellhead protection areas or systems serving food, beverage, or lodging establishments.
  - (4) A minimum of 6 inches of unsaturated soil is required.
  - (5) The System shall be time dosed according to linear contour loading rates.
  - (6) The Designer shall sign the design.
  - (7) The County shall allow additional perforation spacing (3.5 to 5ft), Minn. R. 7080.2050, subp. 4(E), Table VI: Maximum Number of Perforations Per Pressure Distribution Lateral, as may be amended.
  - (8) The property owner shall sign a county approved document to be recorded noting that the septic system is an Alternative Local Septic System. The property owner shall be responsible for the recording fees of said document.
- (D) Septic Tank Setback Requirements.

Sewage tanks, aerobic tanks, holding tanks, and sealed privies and any part thereof shall be located no closer to the following features than the minimum horizontal separation distances as stated in **Table 1**.

**Table 1. Septic Tank Setback**

Source	Septic Tank Setback
Dwelling or Principal Structure Foundation	10 ft.
Appurtenance to Dwelling or Principal Structure (deck, porch, any extension of the dwelling or structure that is not on a foundation) <i>*10ft setback must be maintained from dwelling or principal structure foundation.</i>	5 ft.
Accessory Structures	5 ft.
Property Lines	10 ft.
Road right-of-way	5 ft.
Road right-of-way in Shoreland	0 ft.

## (E) Soil Treatment System (Drainfield) Setback Requirements.

All soil treatment systems of an SSTS shall be set back the following minimum horizontal separation distances from the features given in **Table 2**.

**Table 2. Drainfield Setback**

Source	Drainfield Setback
Dwelling or Principal Structure Foundation	20 ft.
Appurtenance to Dwelling or Principal Structure (deck, porch, any extension of the dwelling or structure that is not on a foundation) <i>*20ft setback must be maintained from dwelling or principal structure foundation.</i>	10 ft.
Accessory Structures	5 ft.
Property Line	10 ft.
Road right-of-way	5 ft.
Road right-of-way in Shoreland	0 ft.

## (F) Shoreland Setbacks.

All SSTS's shall be located in accordance with the minimum horizontal separation setback distances from Department of Natural Resources designated lakes, rivers and streams as stated in **Table 3**.

**Table 3. Shoreland Setbacks**

Shoreland District	Septic/Lift Tank Setback	Drainfield Setback
Agricultural/Urban and Tributary Rivers	75 ft.	75 ft.
Bluffs	30 ft.	30 ft.
Recreational Development Lakes	75 ft	100 ft
Natural Environment Lakes and Streams	150 ft.	150 ft.
Transitional/Forested Rivers	100 ft.	150 ft.

## (G) Winter SSTS Designs.

A complete SSTS design, including soil borings and percolation tests are required year round. If weather, frost or light conditions do not permit a

complete design to be conducted and soils verified by the Department, the design shall be considered incomplete.

(H) Incomplete SSTS Installations due to Winter/Wet Soil Conditions.

If the soil treatment system cannot be installed due to frost or wet soil conditions and the installer agrees to install the septic tank as a temporary holding tank system, the owner shall submit a holding tank pumping agreement with a PCA licensed maintainer to the Department prior to occupancy. Records of the frequency of pumping shall be kept for the Departments review or request for submission.

(I) Determination of Hydraulic Loading Rate and SSTS Sizing

- (1) Hydraulic Loading Rate and SSTS Sizing shall be calculated using Minn. R. 7080.2150, subp. 3E, Table IXa, as may be amended, entitled "Loading Rates for Determining Bottom Absorption Area for Trenches and Seepage Beds for Effluent Treatment Level C and Absorption Ratios for Determining Mound Absorption Areas Using Percolation Tests" and herein adopted by reference shall be used to determine the hydraulic loading rate and infiltration area for all SSTS permitted under this Ordinance.
- (2) For all Local Alternative Septic Systems **Table A** subsection 9.22.7 (C) shall determine the Hydraulic Loading Rate and SSTS sizing based on Contour Loading Rates.

(J) Holding Tanks.

Holding tanks for new residential dwellings are prohibited. Holding tanks may be allowed for replacement SSTS systems only if a drainfield cannot be installed. The final determination of the need for a holding tank shall be made by the Department. It is the responsibility of the designer to contact the Department before releasing the holding tank design to the applicant. (Ord. #436, adopted 04/07/09)

- (1) If a holding tank is permitted by the Department, the property owner shall:
  - (a) Provide to the Department a holding tank Management Plan with the application; and

- (b) Maintain receipts of all maintenance performed. These records are to be available for submission and/or review by the Department.
  - (c) The holding tank shall have a minimum capacity of at least 1,500 gallons or an amount equal to 400 gallons multiplied by the number of bedrooms in the dwelling which the tank will serve, whichever is greater.
  - (d) An operating permit shall be required.
- (2) Low Volume Users. Holding tanks may be allowed for low volume uses subject to meeting the provisions of subsection 9.22.7(J)(1)(a)-(d). Low volume users include the following:
  - (a) An accessory building with no more than 2 water using devices that may consist of only a sink and/or toilet.
  - (b) A place of business with no more than 3 water using devices that may consist of only a sink, toilet, emergency shower and/or washing machine.
  - (c) A township meeting hall that is not open to the public except when conducting official township business.
- (K) Additional SSTS Construction Requirements.

In addition to the construction requirements contained in Minn. R. Chs. 7080 through 7083, as may be amended, the following additional requirements shall be met for the construction of SSTS systems:

- (1) Schedule 40 sewer pipe shall extend a minimum of 3 feet beyond the last septic tank and/or lift tank.
- (2) To prevent freezing problems, the sewer line from the lift tank to a pressurized soil treatment area shall be protected from sagging or bending.
- (3) The final dimensions of an SSTS mound system (the upslope and downslope calculations of the berm) shall be scarified and contain clean sand as defined in Minn. R. 7080.1100 subp. 16 and Minn. R. 7080.2220, subp. 3( C), as may be amended.

- (4) Clean sand used in the construction of mound systems shall be landscaped to a minimum of 4 horizontal units to 1 vertical unit for all new construction. 3 horizontal units to 1 vertical unit may be used for replacement systems if determined by the Department that 4 horizontal units to 1 vertical unit cannot be accommodated on-site.
  - (5) Elevation readings (in reference to the design benchmark) shall be required at the time of the Department's inspection of all sewage treatment systems.
  - (6) The top of the sewage tank for a new system shall not be buried more than 4 feet from the final grade unless specifically approved by the Department.
- (L) Bedroom Addition(s)
  - (1) A bedroom addition requires the submission of a compliance inspection. A compliant system shall require the property owner to develop and comply with a management plan for said system.
  - (2) The addition of 2 or more bedrooms over the existing septic system's designed capacity will require a new design.
  - (3) If a dwelling has an existing septic system that is not permitted and capacity cannot be determined, a new design shall be required and a new septic system shall be installed.
- (M) Reporting.
  - (1) Type III, Type IV, Type V, Local Alternative Septic Systems and other establishments that are required to install water meters or event counters shall take readings every day for the first 30 days that the system is in operation and once a month thereafter.
  - (2) The readings shall be submitted to the County on the form provided by the County by the following January 30<sup>th</sup>.
  - (3) After reviewing the readings the Department may request additional readings to be conducted or indicate that additional readings are no longer required to be submitted.

- (4) Failure to submit the required readings shall be deemed a violation of the management plan. An agreement signed by the applicant shall be submitted with the application acknowledging these requirements.

(Ord. #436, adopted 04/07/09)

(N) Requirements.

The following sections are in Minn. R. Ch. 7080, as may be amended, and are not more restrictive but are highlighted due to their importance.

(1) SSTS in Floodplains

- (a) SSTS shall not be located in a floodway and wherever possible, location within any part of a floodplain should be avoided. If no option exists to locate a SSTS outside of a floodplain, location within the flood fringe is allowed if the requirements in Minn. R. 7080.2270, as may be amended, are met. If an SSTS is built in the flood fringe, the bottom of the distribution medium shall be at least as high as 10 year flood elevation. If the SSTS is a mound system, the bottom of the distribution medium shall be at least ½ foot above the 10 year flood elevation.
- (b) If the 10 year flood elevation is not available, the SSTS must be located on the highest feasible area of the lot and must have location preference over all other improvements except the water supply well. The best hydrological information shall be used in determining the elevation of the bottom of the distribution medium. The best available hydrological information shall include, but is not limited to the following:
  - (i) Flood elevations provided from the Benton County Highway Department;
  - (ii) Flood elevations provided from the Minnesota Department of Transportation;
  - (iii) A flood elevation provided by a certified land surveyor; or

(iv) A geological topographic/contour map.

(2) Class V Injection Wells.

All owners of new or replacement SSTS that are considered to be Class V injection wells, as defined in the 40 C.F.R. 144, are required by the Federal Government to submit SSTS inventory information to the Environmental Protection Agency as described in 40 C.F.R 144. Further, owners are required to identify all Class V injection wells in property transfer disclosures.

9.22.8 Operating Permits

(A) SSTS Requiring an Operating Permit

- (1) An operating permit shall be required of all owners of new holding tanks, Type IV systems, Type V systems, Local Alternative Septic Systems, lodging (excluding bed and breakfast facilities unless served of a Type IV or V system), food and beverage facilities or MSTS. Sewage shall not be discharged to a holding tank or MSTS until the Department of Development certifies that the MSTS or holding tank was installed in conformance with the approved plans, receives the final record drawings of the MSTS, and a valid operating permit is issued to the owner. (Ord. #436, adopted 04/07/09)
- (2) The Department shall review the record drawings, operation and maintenance manual, management plan, maintenance and servicing contract, and any other pertinent documents as appropriate for accuracy and completeness. If any deficiencies are identified, the operating permit shall be denied until the deficiencies are corrected to the satisfaction of the Department. If the submitted documents fulfill the requirements, the Department shall issue an operating permit in accordance with Minn. Stat. §15.99, as may be amended.
- (3) The Department may not amend an existing permit to reflect changes in this Ordinance until such time the permit term has expired and is renewed unless an amendment is necessary to eliminate an imminent threat to public health or safety.



- (4) The Department may suspend or revoke any operating permit issued under this section for any false statements or misrepresentations of facts on which the operating permit was issued or if the owner fails to meet the requirements of the operating permit. Notice of suspension revocation and the reasons for revocation shall be conveyed in writing to the owner. If suspended or revoked, the Department may require that the treatment system be removed from service, operated as a holding tank, or abandoned in accordance with subsection 9.22.14. At the Department's discretion, the operating permit may be reinstated or renewed upon the owner taking appropriate corrective actions.
  - (5) Systems found to be out of compliance with the operating permit shall be required to bring the SSTS into compliance within 30 days.
- (B) Compliance Monitoring Type IV Systems, Type V Systems, Food and Beverage Facilities or MSTs
  - (1) Type IV Systems, Type V Systems, Local Alternative Septic Systems, MSTs, food and beverage facilities shall require monitoring performed by licensed service provider hired by the holder of the operating permit in accordance with the monitoring frequency and parameters stipulated in the permit.
  - (2) A report shall be submitted to the Department on a form provided by the Department on or before the compliance reporting date stipulated in the operating permit. The report shall contain a description of all maintenance and servicing activities performed since the last compliance monitoring report as described below:
    - (a) Owner name and address
    - (b) Operating permit number
    - (c) Average daily flow since last compliance monitoring report
    - (d) Description of type of maintenance and date performed
    - (e) Description of samples taken (if required), analytical laboratory used, and results of analyses

- (f) Demonstrate compliance with Minn. R. 7080.2350, as may be amended (Type IV Systems).
  - (g) The test from the effluent (before discharge into the soil treatment system) as determined by the County in the operating permit.
  - (h) Problems noted with the system and actions proposed or taken to correct them
  - (i) Name, signature, license and license number of the licensed professional who performed the work
- (3) Type IV systems, Type V systems, Local Alternative Septic Systems, food and beverage facilities or MSTs operating permits shall expire on January 30<sup>th</sup>. The owner of the operating permit shall apply for renewal of their operating permit by December 30<sup>th</sup>. The operating permit renewal period shall be determined by the County. (Ord. #436, adopted 04/07/09)
- (C) Holding Tanks.
  - (1) Owners of holding tanks shall provide to the Department of Development a copy of a valid monitoring and disposal contract executed between the owner and a licensed maintenance business, which guarantees the removal of the holding tank contents in a timely manner and that prevents an illegal discharge.
  - (2) A monitoring and disposal contract is not required for a farmer who is exempt from licensing pursuant to Minn. R. 7083.0700 (D). , as may be amended.
  - (3) The owner of the operating permit shall apply for renewal of their operating permit by December 30<sup>th</sup>. (Ord. #436, adopted 04/07/09)

#### 9.22.9 Management Plans

##### (A) SSTS Requiring Management Plans

- (1) Management plans are required for all new or replacement SSTS, including Local Alternative Septic Systems.

- (2) The management plan shall be submitted to the Department with the septic permit application for review and approval.
- (3) The purpose of management plans is to describe how a particular SSTS is intended to be operated and maintained to sustain the performance required.
- (4) The plan is to be provided by the certified designer to the system owner when the treatment system is commissioned.
- (5) The Department shall be notified of any system modifications made during construction and the management plan revised and resubmitted at the time of final construction certification.

(Ord. #436, adopted 04/07/09)

(B) Required Contents of a Management Plan.

Management plans shall include:

- (1) Signature of the designer and owner detailing that the plan has been reviewed and understood by both parties.
- (2) Operating requirements describing tasks that the owner can perform and tasks that a licensed service provider or maintainer must perform;
- (3) Monitoring requirements;
- (4) Maintenance requirements including maintenance procedures and a schedule for routine maintenance;
- (5) Statement that the owner is required to notify the Department when the management plan requirements are not being met;
- (6) Disclosure of the location and condition of the additional soil treatment and dispersal area on the owner's property or a property serving the owner's residence.
- (7) Require pumping the septic tank(s) at least once every 3 years and retention of receipts to demonstrate compliance.

(C) Requirements for Systems not Operated under a Management Plan

- (1) SSTS that are not operated under a management plan or operating permit must inspect treatment tanks and remove solids at least every 3 years and retain the receipts to demonstrate compliance.

#### 9.22.10 Soil Verification

##### (A) Soil Borings

- (1) Prior to approval of an administrative land split or final plat the Department of Development shall verify the soil borings submitted are compliant with Minn. R. Chs. 7080 through 7083, as may be amended, or compliant with subsection 9.22.3(E)(2) General Requirements for Local Alternative Septic Systems.
- (2) Prior to issuance of the certificate of compliance for a new or replacement SSTS the County shall verify the soil borings submitted are compliant with Minn. R.Chs 7080 through 7083, as may be amended, or with Local Alternative Septic System Requirements.

##### (B) Dispute Resolution

- (1) In the event of a dispute between two designers on whether the soil or design meets the minimum requirements of the Ordinance the County shall review the site, upon request, and make the final determination.
- (2) In the event that a designer and the County have a dispute related to the design or soils meeting the minimum requirements of the Ordinance the County shall meet with the designer on-site to review the soils and design. If the dispute is unresolved the County and designer shall request a mutually agreeable licensed and septic certified soil scientist to review the site or agree upon a representative(s) from extension or MPCA in the SSTS program. The applicant shall provide a deposit in an amount to be determined by the County to cover the cost of the soil scientist and County review. Both parties shall agree in writing that the soil scientist findings shall be final. If the scientist determines the County correctly interpreted the soils the deposit will be retained and used to pay the scientist and County, with any extra money refunded to the applicant. If the soil scientist determines the

designer was correct the deposit shall be refunded and the County will pay for the cost of the soil scientist review. If soils are reviewed with the soil scientist that was not previously reviewed by the County the County shall retain the deposit. All reviews with the soil scientist shall be conducted in a pit that is a minimum of 4 feet by 4 feet with a depth of at least 3 feet below the bottom of the proposed system or until bedrock or the water table, whichever is less.

#### 9.22.11 Compliance Inspections Conducted by the County

- (A) Department Responsibility. The Department shall inspect all newly constructed SSTS in Benton County. All inspection requests shall conform to the following:
- (1) All required permit fees shall be paid for prior to issuing the permit or certificate of compliance;
  - (2) The installation and construction of the SSTS shall be in accordance with the permit requirements and application design.
  - (3) The applicant shall notify the Department prior to the completion and covering of the SSTS for an inspection. If any SSTS component is covered before being inspected and approved by the Department, it shall be uncovered upon the direction of the Department;
  - (4) It shall be the duty of the permittee to notify the Department on the workday preceding the day inspection is desired;
  - (5) Proposals to alter the permitted construction shall be reviewed by a designer and the proposed change shall be approved by the Department prior to construction.
  - (6) Inspections shall be conducted at least once during the construction of the SSTS at such time as to assure that the system has been constructed per permit requirements.
  - (7) A designated certified professional shall be on site during the SSTS compliance inspection by the Department.
  - (8) The Department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system.

(B) As-Builts Requirements.

If the applicant provides proper notice as described above and the Department does not appear for an inspection within 24 hours after the set time, the applicant may complete the installation. The applicant shall then file a signed as-built packet provided by the Department. The as-built packet shall be submitted to the Department within 5 business days of the date of the SSTS installation. The as-built shall include a certified statement that the work was installed in accordance with submitted design and permit conditions and that it was free from defects. The Certificate of Compliance shall not be released until the as-built packet is submitted.

(C) New Construction or Replacement SSTS

- (1) Compliance inspections must be performed on new or replacement SSTS to determine compliance with Minn. R. Chs. 7080 through 7083, as may be amended. SSTS found to be an imminent threat to public health or safety must be repaired or replaced within 120 days. SSTS that are determined to have operation or monitoring deficiencies must within 30 days be maintained, monitored or otherwise managed according to the operating permit or management plan. SSTS found to be noncompliant with other applicable requirements must be repaired or replaced according to the Department's requirements.
- (2) The certificate of compliance must include a certified statement by qualified employee who conducted the inspection that the SSTS is or is not in compliance with the Ordinance requirements. If the SSTS is determined not to be in compliance with the applicable requirements, a notice of noncompliance must be issued to the owner which includes a statement specifying those Ordinance provisions with which the SSTS does not comply.
- (3) No SSTS shall be placed into operation until a valid certificate of compliance has been issued.

(D) SSTS Inspection Reports

A certificate of compliance or notice of noncompliance shall be prepared by the Department following all SSTS inspections or from the review of submitted as-built plans.

- (1) A certificate of compliance or notice of noncompliance shall include a signed statement by the Department identifying the type of SSTS inspected and whether the SSTS is in compliance with Minn. R. 7080.1500, as may be amended.
- (2) A copy of the certificate of Compliance or notice of noncompliance shall be provided to the property owner within 15 days of the compliance inspection and a copy kept on file in the Department.
- (3) A certificate of compliance for a new SSTS is valid for 5 years from the date of issuance unless the Department finds evidence of an imminent threat to public health or safety.
- (4) The plumbing code shall be administered by the local building code official as it relates to the hook-up of the dwelling to the septic tank or system. Verification that the septic system hook-up is compliant with the plumbing code shall be provided by the building official prior to issuance of a certificate of compliance.
- (5) Electrical Inspections if needed shall be administered by the state electrical inspector as it relates to electrical connections to the septic system. Verification that the electrical work associated with the septic system is compliant with the electrical code shall be provided by the state inspector prior to the issuance of a certificate of compliance.

(E) Failing Systems

The County shall inspect an existing SSTS if there is evidence of a failing system. The County shall issue a notice of noncompliance if the County witnesses evidence of the failing system. The system shall be upgraded in accordance with subsection 9.22.13.

9.22.12 Compliance Inspection Conducted by a Private Inspector

(A) Criteria for Systems Constructed Before April 1, 1996.

SSTS built before April 1, 1996, must have at least 2 feet of vertical separation between the bottom of the dispersal system and seasonal saturation or bedrock. If the SSTS is located within an area designated as shoreland, wellhead protection or serves a food, beverage or lodging

establishment the system shall be required to meet the requirements of subsection 9.22.12(B).

- (B) Criteria for Systems Constructed After March 31, 1996, or in a Designated Area.

SSTS built after March 31, 1996, with the exception of a Type IV or Type V system, shall have a 3 foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. SSTS located in the shoreland, wellhead protection or serving a food, beverage, or lodging establishment regardless of the year constructed shall have a 3-foot vertical separation between the bottom soil infiltrative surface and the periodically saturated soil and/or bedrock. Existing systems that have no more than a 15 percent reduction in this separation distance (a separation distance no less than 30.6 inches) to account for settling of sand may be considered compliant under this Ordinance if the inspector states there is evidence of settling, measurement or interpretation of the restrictive layer. The vertical separation measurement shall be made outside the area of system influence but in an area of similar soil.

- (C) Type IV and Type V systems shall be reviewed and shall meet the requirements of Minn. R. Ch. 7080, as may be amended, to determine compliance of the system.

- (D) Compliance Inspection Requirements

- (1) Compliance inspections shall be required when any of the following conditions occur:
- (a) When a construction permit is required to repair, modify, or upgrade an existing system;
  - (b) Anytime there is an expansion of use of the building being served by an existing SSTS which may impact the performance of the system;
  - (c) Anytime there is a change in use of the property being served by an existing SSTS which may impact the performance of the system;
  - (d) Submission of a variance application for an affected parcel;



- (e) Submission of a conditional/interim use permit for an affected parcel;
  - (f) Submission of a land use permit in which a dwelling or other establishment is removed and a new dwelling or other establishment is proposed;
  - (g) At any time as required by this Ordinance or the Department deems appropriate such as upon receipt of a complaint or other notice of a system malfunction.
- (2) Compliance inspections of existing SSTS shall be reported on the inspection report forms provided by the Minnesota Pollution Control Agency. The following conditions must be assessed, or verified:
  - (a) Water tightness assessment of all treatment tanks including a leakage report;
  - (b) Vertical separation distance between the bottom of the soil treatment and dispersal system and the periodically saturated soil or bedrock including vertical separation verification report unless the vertical separation has been verified by the County or another independent designer/inspector.
  - (c) Compliance with the management plan or operating permit if applicable.
- (3) The entire system is to be evaluated for its compliance status. In evaluating the vertical separation of a soil treatment system found to be in compliance, the compliance inspector shall provide:
  - (a) The elevation of the bottom of the rock bed;
  - (b) The elevation of the depth to the restricting layer, if applicable, measured outside of the soil treatment system in an area of similar soil; and
  - (c) A detailed sketch drawn to scale or dimension showing the location of the SSTS, the soil boring(s), and the bottom of the rock bed in relation to a referenced benchmark.

(E) Certificate of Compliance for Shoreland Areas.

A certificate of compliance on the affected property shall be provided to the Department as part of an application request in the shoreland for a:

- (1) Land Use Permit;
- (2) Variance, unless a variance is needed for the septic system or a new dwelling is proposed and the existing system will be required to be upgraded or replaced in which case a compliance inspection will be adequate;
- (3) Conditional/Interim Use Permit

(F) Point of Sale Certification

- (1) No owner or other person acting with legal authority on behalf of an owner of a tract of land upon which a dwelling is located, or a tract of land upon which a structure is required to have an individual sewage treatment system is located, shall convey to another party said tract of land, unless all of the following requirements are met:
  - (a) The seller shall provide a compliance inspection or a Benton County sewage treatment system inspection to the buyer at or before the closing date. The compliance inspection shall be submitted to the County with the property transfer. If the seller does not provide the compliance inspection the buyer shall be responsible for providing the compliance inspection to the County within 30 days of the property transaction. A valid compliance inspection is an inspection conducted by an MPCA Designated licensed and certified professional, which is 3 years old or less indicating that the system is in compliance or is out of compliance. A valid Benton County sewage treatment system inspection is an inspection issued by the Department that is 5 years old or less. A compliance inspection shall not be valid if the Department finds evidence of an imminent health threat to public health and safety.
  - (b) A Benton County sewage treatment system property transfer form shall be signed by both the buyer(s) and seller(s) and filed with the Benton County Auditor at the time of sale or transfer of the property.

- (c) Failure to submit a compliance inspection for a property transfer shall result in all future permits for the site to be denied until a completed compliance inspection form has been submitted.

(2) Exemptions.

A compliance inspection or a Benton County sewage treatment system inspection is not required to be filed with the Auditor's office at the time of sale or transfer of property if any of the following conditions exist:

- (a) The property to be transferred has no structures usable for human habitations;
- (b) The property to be transferred has no buildings with plumbing fixtures;
- (c) A public sewer system, a community sewer system or a central sewer system services the dwelling(s) on the property to be transferred;
- (d) The sale of land is exempt from the requirements that a certificate of real estate value (CRV) be filed with the County Auditor's office as described in Minn. Stat. §272.115, subd. 1, as may be amended; or
- (e) The sale or transfer completes a contract for deed or purchase agreement entered into prior to June 18, 2002. This subsection applies only to the original vendor and vendee on such a contract.
- (f) The transfer is a foreclosure or tax forfeiture.

(3) Winter Transfers.

If the sale or transfer of property occurs during the winter months of November 15th through April 15th, the buyer shall complete the compliance inspection, if necessary, by the following June 1st. The buyer shall ultimately be held responsible by the County if the septic system is noncompliant and not brought into compliance

within the timeframe provided by the Department or if a compliance inspection has not been completed.

(G) Inspection Forms.

Upon completion of a compliance inspection of an existing SSTS, the inspector shall submit a certificate of compliance or a notice of noncompliance to the Department and the property owner within 15 days of the date of the compliance inspection. In completing the PCA compliance inspection form for existing sewage treatment systems, the compliance inspector shall complete the entire form, including, but not limited to the following information:

- (1) The parcel identification number of the property;
- (2) The reason why the compliance inspection is being performed; and
- (3) If necessary, the soil boring information which includes the depth of each horizon, the Munsell soil color and the texture of the soil.
- (4) If any of the above required information is not provided, the compliance inspection report will be considered incomplete.

9.22.13 Notice of Noncompliance

If an existing SSTS is found to be out of compliance with this Ordinance, the property owner shall complete the following requirements, as applicable:

- (A) The owner of property on which a septic system is found to be out of compliance shall within 30 days after receipt of a notice of noncompliance submit a completed SSTS design using Department application forms and obtain a sewage treatment system permit from the Department.
- (B) An SSTS that is determined to be noncompliant shall be upgraded, repaired, replaced or abandoned by the owner in accordance with the provisions of this Ordinance within 12 months of receipt of a notice of noncompliance, unless it is considered an imminent threat to public health or safety.
- (C) An SSTS that is determined to be an imminent threat to public health or safety in accordance with Minn. R. 7080.1500, subp. 4(A), as may be amended, shall be upgraded, repaired, replaced or abandoned by the

owner in accordance with the provisions of this Ordinance within 120 days of receipt of a notice of noncompliance.

- (D) An owner/operator with an SSTS found to be out of compliance with its operating permit, management plan or monitoring plan shall bring the system into compliance with the plan within 30 days of the notice of noncompliance.

#### 9.22.14 Abandonment Certification

- (A) Purpose. The purpose of the system abandonment certification is to ensure that a treatment system no longer in service is abandoned in a manner that protects public health, safety and water quality.
- (B) Abandonment Requirements
  - (1) Whenever the use of a SSTS or any system component is discontinued as the result of a system repair, modification, replacement or decommissioning following connection to a municipal or private sanitary sewer, or condemnation or demolition of a building served by the system, further use of the system or any system component for any purpose under this Ordinance shall be prohibited.
  - (2) Continued use of a treatment tank where the tank is to become an integral part of a replacement system or a sanitary sewer system requires the prior written approval of the Department.
  - (3) An owner of an SSTS must abandon all components of the discontinued treatment system within 30 days of discontinuance.
  - (4) Abandonment shall be completed in accordance with Minn. R. 7080.2500, as may be amended.
  - (5) A report of abandonment certified by the licensed installation business shall be submitted to the Department. The report shall include:
    - (a) Owner's name and contact information
    - (b) Property address
    - (c) System construction permit and operating permit

- (d) The reason(s) for abandonment
- (e) A brief description of the abandonment methods used, description of the system components removed or abandoned in place, and disposition of any materials or residuals, and receipts to document proper disposal.

(C) Abandonment Certificate.

Upon receipt of an abandonment report and determination that the SSTS has been abandoned according to the requirements of this Ordinance, the Department shall issue an abandonment certificate. If the abandonment is not completed according the requirements of this Ordinance the County shall notify the owner of the SSTS of the deficiencies, which shall be corrected within 30 days of the notice.

9.22.15 Variances

(A) Variance Requests

A property owner may request a variance pursuant to county policies and procedures as stated in Section 11.5. Variances that pertain to the standards and requirements of the State of Minnesota must be approved by the affected state agency pursuant to the requirements of the state agency.

(Ord. #436, adopted 04/07/09)

(B) Board of Adjustment Authority

The Board of Adjustment shall have the authority only to consider variances to horizontal setbacks from property lines, ordinary high water level, rights-of-way, structures, or buildings. The Board of Adjustment may also grant variances to permit a Type II-V system for new construction or creation of a new lot. Variance requests to deviate from the design flow determination procedures in Minn. R. 7081.0110, as may be amended, must be approved by Minnesota Pollution Control Agency if the deviation reduces the average daily estimated flow from greater than 10,000 gallons per day to less than 10,000 gallons per day or to provisions in Minn. R. 7080.2150, subp. 2, and Minn. R. 7081.0080, subp. 2 through subp. 5, as may be amended, regarding the vertical separation required beneath the treatment and dispersal soil system and saturated soil or bedrock from the

required 3 feet of unsaturated soil material (except as provided in Minn. R. 7080.1500, subp. 4(D), as may be amended) Variances to wells and water supply lines must be approved by the Minnesota Department of Health.

#### 9.22.16 Enforcement

##### (A) Cause to Issue a Notice of Violation

Any person, firm, agent, or corporation who violates any of the provisions of this Ordinance, or who fails, neglects, or refuses to comply with the provisions of this Ordinance, including violations of conditions and safeguards, or who knowingly makes any material false statement or knowing omission in any document required to be submitted under the provisions hereof, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable as defined by Minnesota State Law. Each day that a violation exists shall constitute a separate offense. In the event of a violation of this Ordinance, in addition to other remedies, the County Attorney may institute appropriate actions or proceedings to prevent, restrain, correct or abate such violations. The Department shall be given access to enter a property at any reasonable time to inspect and/or monitor the SSTS system. As used in this item, "property" does not include a residence or private building. No person shall hinder or otherwise interfere with the Department's employees in the performance of their duties and responsibilities pursuant to this Ordinance. Refusal to allow reasonable access to the property by the Department shall be deemed a separate and distinct offense.

(Ord. #436, adopted 04/07/09)

##### (B) Notice of Violation

The Department shall serve, in person or by mail, a notice of violation to any person determined to be violating provisions of this Ordinance. The notice of violation shall contain:

- (1) A statement documenting the findings of fact determined through observations, inspections, or investigations;
- (2) A list of specific violation(s) of this Ordinance;
- (3) Specific requirements for correction or removal of the specified violation(s);

- (4) A mandatory time schedule for correction, removal and compliance with this Ordinance.

(C) Cease and Desist Orders

Cease and desist orders may be issued when the Department has probable cause that an activity regulated by this or any other County Ordinance is being or has been conducted without a permit or in violation of a permit. When work has been stopped by a cease and desist order, it shall not be resumed until the reason for the work stoppage has been completely satisfied, any administrative fees paid, and the cease and desist order lifted.

(D) Costs and Reimbursements

If the Department is required to remove or abate an imminent threat to public health or safety, the Department may recover the costs including, attorney fees, incurred in removal or abatement in a civil action, or at the discretion of the County Board, the cost of an enforcement action under this Ordinance may be assessed and charged against the real property on which the public health nuisance was located. The County Auditor may extend the cost as assessed and charged on the tax roll against said real property.

- (E) This Ordinance may also be enforced in accordance with Minn. Stat. §394.37, as may be amended, and Section 11.11 of this Ordinance.

**9.23 Wind Energy Conversion Systems (WECS)**

(Ord. #440, adopted 10/20/09)

**9.23.1 Purpose**

- (A) The purpose of this section is established to regulate the installation and operation of Wind Energy Conversion Systems (WECS) not otherwise subject to siting and oversight by the State of Minnesota under the Minnesota Power Plant Siting Act, (Minn. Stat. Ch. 216E, as may be amended)
- (B) In order to ensure adequate wind access, the County does encourage the use of private easements and restrictive covenants as a means to protect wind access.



### 9.23.2 Applications

Land use and building permits shall be required for all WECS. Micro-WECS shall require a building permit and possible land use permit. Conditional use, land use and building permits shall be required for commercial WECS.

- (A) The land use permit application for all WECS shall include the following information:
  - (1) A completed land use permit in accordance with Section 11.8.
  - (2) A description of the project including: number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
  - (3) Engineer's certification per subsection 9.23.6.
  - (4) Letter of approval from the Benton County Sheriff stating that the proposed WECS would not interfere with the public communication systems.
  - (5) Decommissioning plan in accordance with subsection 9.23.7.
  - (6) Completed building permit.
  - (7) Additional information as required by the Building Inspector or Department of Development.
  
- (B) The application for Commercial WECS shall include:
  - (1) A completed conditional use permit in accordance with Section 11.6.
  - (2) The latitude and longitude of individual wind turbines.
  - (3) A USGS topographical map, or map with similar data, of the property and surrounding area, including any other WECS within 10 rotor diameters of the proposed WECS.

- (4) Location of wetlands, scenic, and natural areas, including bluffs, within 1,320 feet of the proposed WECS.
  - (5) An acoustical analysis.
  - (6) FAA permit application if 200 feet or taller.
  - (7) Location of all known communications towers within 5 miles of the proposed WECS.
  - (8) Decommissioning plan in accordance with subsection 9.23.7.
  - (9) Letter of approval from the Benton County Sheriff stating that the proposed WECS would not interfere with public communication systems.
  - (10) Completed land use and building permit.
  - (11) Additional information as required by the Building Inspector or Department of Development.
- (C) Applications for a micro-WECS shall include:
- (1) Engineer's certification and additional information as required by the building inspector.
  - (2) Completed land use permit if not located on an existing structure.
- (D) Application for WECS meteorological tower shall include:
- (1) A USGS topographical map, or map with similar data, of the property and surrounding area
  - (2) Location of all known communications towers within 5 miles of the proposed tower.
  - (3) Decommissioning plan. The WECS tower shall be limited to 4 years as a permitted use. If additional time is required the meteorological tower shall be a conditional use.
  - (4) Letter of approval from the Benton County Sheriff stating that the proposed tower would not interfere with public communication systems

- (5) Completed land use and building permit.
- (6) Additional information as required by the Building Inspector or Department of Development.

#### 9.23.3 Exception

WECS that are by nature ornamental, rather than functional, shall be exempt from this Ordinance if the total height is less than 25 feet and not located within a required setback for an accessory building.

#### 9.23.4 Setbacks and Lot Size

- (A) Non-Commercial WECS shall be setback a minimum of 1.1 times the height of the WECS to the property line and right-of-way or road setback if greater and be located on a minimum lot size of 2 acres.
- (B) Meteorological towers shall be setback 1.1 times the times the height of the tower to the property lines and right-of-way or road setback if greater and be located on a minimum lot size of 20 acres.
- (C) Micro-WECS may be placed on any existing structure but shall not be located within a required setback. Micro-WECS that are not placed on an existing structure shall be placed 1.1 times the total height of the Micro-WECS to the property line and right-of-way road setback if greater but shall not be located within a front yard setback or the required setback for an accessory building.
- (D) Commercial WECS setbacks
  - (1) Right-of-way and property line: 1.25 times the height of the WECS or road setback if greater.
  - (2) Type III, IV and V wetlands: 600 feet
  - (3) Public conservation land managed as grassland: 600 feet
  - (4) County Park: 1,000 feet
  - (5) Protected River or Stream: 300 feet
  - (6) Lake: 1,000 feet

- (7) Commercial WECS: 1,320 feet (excludes WECS that are part of the same application)
- (8) Located on a minimum lot size of 20 acres

#### 9.23.5 Standards

##### (A) Total height.

- (1) Non-Commercial WECS total height shall be 150 feet.
- (2) Total height of a meteorological tower shall be 200 feet.
- (3) Commercial WECS total height shall be subject to the Planning Commission approval with the conditional use permit.

##### (B) Color and Finish.

- (1) All WECS shall be white, grey or another non-obtrusive color.
- (2) Blades may be black in order to facilitate deicing.
- (3) Finishes shall be matte or non-reflective.
- (4) Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

##### (C) Lighting.

- (1) Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations.
- (2) Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds.
- (3) Red pulsating incandescent lights should be avoided.
- (4) Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

##### (D) Design.

All wind turbines, which are part of a commercial WECS, shall be installed with a tubular, monopole type tower.

(E) Signage.

- (1) All signage on site shall comply with Section 8.1.
- (2) Only the manufacturers or owner's company name and/or logo may be placed upon the compartment containing the electrical generator of the WECS.

(F) Feeder Lines.

- (1) All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a WECS shall be buried where reasonably feasible.
- (2) Feeder lines installed as part of a WECS shall not be considered an essential service.

(G) Orderly Development.

Upon issuance of a conditional use permit, all Commercial WECS shall notify the Environmental Quality Board Power Plant Siting Act program staff of the project location and details on the survey form specified by the Environmental Quality Board.

(H) Noise.

All WECS shall comply with Minn. R. Ch. 7030, as may be amended, governing noise.

(I) Electrical codes and standards.

All WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

(J) Federal Aviation Administration.

All WECS shall comply with FAA standards and permits.

(K) Uniform Building Code.

All WECS shall comply with the Uniform Building Code adopted by the State of Minnesota as amended and the National Electric Code as amended.

(L) Interference.

- (1) All WECS shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals cause by any WECS.
- (2) Non-Commercial WECS shall notify all communication tower operators within 1 mile of the proposed WECS location upon application to the County for permits.
- (3) Commercial WECS shall notify all communication tower operators within 5 miles of the proposed WECS location upon application to the county for permits.
- (4) No WECS shall be constructed so as to interfere with County or Minnesota Department of Transportation microwave transmissions.

(M) Maintenance.

- (1) All WECS shall have routine maintenance as recommended by the manufacturer and at a minimum of once every 3 years.
- (2) A copy of the maintenance report shall be provided to the Department of Development upon written request.

9.23.6 Safety Design Standards

(A) Engineering Certification.

- (1) All WECS, Equipment shall conform to applicable industry standards for wind turbines design and related standards adopted by the American Standards Institute (ANSI) and a copy of an engineer's certification shall accompany the application.
- (2) A professional engineer registered in the State of Minnesota shall certify that the design, construction and operation of the tower and foundation are compatible with and appropriate for the turbine to be installed, given the local soil and climate conditions.

## (B) Clearance.

Rotor blades or airfoils must maintain at least 12 feet of clearance between their lowest point and the ground.

## (C) Warnings.

- (1) All WECS to be installed shall be equipped with redundant braking systems, including aerodynamic, variable pitch over speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode, whereby they are engaged in case of a loss of load on the generator. Stall regulation shall not be considered a sufficient braking system for over speed protection.
- (2) The WECS shall be guarded against unauthorized climbing. The first 12 feet of the tower shall be unclimbable by design or be enclosed by a 6 foot high, unclimbable fence with a secured access.
- (3) A WECS shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other state or federal authority for a WECS. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.
- (4) For all commercial WECS, a sign or signs shall be posted on the tower, transformer and substation warning of high voltage. Signs with emergency contact information shall also be posted on the turbine or at another suitable location.
- (5) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of 8 feet above the ground. Visible fencing shall be installed around anchor points of guy wires.

## 9.23.7 Decommissioning.

- (A) The owner of the WECS that is to be dismantled must accomplish such act within 45 days after 1 year of discontinued use/operation or the County is empowered to dismantle such WECS and assess the costs against the property.

- (B) Each commercial WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon becoming a discontinued use.
- (C) The cost estimates shall be made by a competent party; such as a professional engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning.
- (D) The plan shall also identify the financial resources that will be available to pay for the decommissioning and removal of the WECS and accessory facilities.
- (E) The decommissioning plan shall include: removal of the structure and debris to a depth of 4 feet and restoration of the vegetation consistent with the surrounding vegetation.

## **9.24 Auction Business**

(Ord. #483, adopted 02/15/22)

9.24.1 Auction business, where allowed in this Ordinance, shall be subject to the following standards:

- (A) The Applicant shall demonstrate adequate on-site parking and restroom facilities.
- (B) Goods to be auctioned may be displayed outside in a secured area two (2) weeks prior to the auction and must be removed from outside within two (2) weeks after the auction unless otherwise required by the IUP.
- (C) There shall be no auctioning of livestock
- (D) The applicant shall obtain written permission or and access permit, where required, from the responsible road authority for such use at the proposed location.
- (E) All signage shall comply with Section 8.1 of the Zoning Ordinance.

## **9.25 Temporary Sales / Transient Merchant Stands**

(Ord. #483, adopted 02/15/22)



9.25.1 Temporary Sales / Transient Merchant Stands, where allowed in this Ordinance, shall be subject to the following standards:

- (A) Required to obtain a Transient Merchant / Peddlers license through the County Auditor's office prior to conducting business per Minn. Stat. § 329.11.
- (B) Shall be located at an existing business site, or within an existing parking lot.
- (C) Shall have adequate access to and from a maintained public roadway.
- (D) Limited to a total of 14 days calendar per year.
- (E) Sales stands shall be located outside of the right-of-way and so as not to impede the sight line of traffic.
- (F) Hours of operation are limited to from dawn to dusk.
- (G) No overnight occupancy.

**9.26 Retreat Center**

(Ord. #491, adopted 02/20/2024)

9.26.1 Retreat Center, where allowed in the Ordinance, shall be subject to the following standards:

- (A) When lodging is provided, kitchen and dining facilities shall be located in a single centrally located building or buildings.
- (B) The center may not be utilized by the general public for meals or overnight accommodations.
- (C) A temporary lodging stay shall not exceed two weeks.
- (D) The owner, operator or director must reside on the property.
- (E) Adequate off-street parking for employees and customers shall be provided on site and shall meet parking standards of Section 8.2.
- (F) Applicable State and Federal licenses must be obtained prior to operation of the Retreat Center, to include food, beverage and lodging licenses. A copy of the license(s) shall be provided to the Planning and Zoning Office.

- (G) Proof of sufficient sanitary facilities and waste disposal shall be provided through the submittal of documentation from a septic designer or other qualified individual as determined by the Zoning Administrator.
- (H) Any outdoor lighting shall be arranged so as to reflect the light away from adjoining property and right-of-way.
- (I) All structures, including temporary structures, shall meet the minimum setback requirements of the district in which it is located.
- (J) Amplified noises shall be limited to 8 A.M. to 10 P.M.

## **9.27 Cannabis Businesses and Hemp Businesses**

(Ord. #497, adopted 12/17/24)

- 9.27.1 Administration: The operation of a cannabis business shall be in accordance with Benton County Ordinance #496 Regulating Cannabis and Lower Potency Hemp Edible Businesses, as amended from time to time. Words and phrases contained in Minnesota Statute, Chapter 342, and the rules promulgated pursuant to any of these acts, are incorporated into this Section by reference and shall have the same meaning in this ordinance. If there is a conflict between a word and phrase in this Ordinance Section and Minnesota Statute, Chapter 342, and the rules promulgated pursuant to any of these acts, the Minnesota Statute, Chapter 342, and the rules promulgated pursuant to any of these acts will govern.
- 9.27.2 Registration: All cannabis businesses required to be registered by Benton County Ordinance #496 shall be registered in accord with that ordinance and meet the requirements of that ordinance, in addition to following the requirements of this section.
- 9.27.3 Licenses and Endorsements: Cannabis businesses shall provide a copy of all approved licenses and endorsements issued by Office of Cannabis Management.
- 9.27.4 Setback Requirements:
- (A) Retail: The operation of a retail cannabis business shall be prohibited within the distance identified in Benton County Ordinance #496, as amended from time to time.

(B) Cannabis Testing, Cultivation and Manufacturing:

- (1) The operation of a cannabis business shall be prohibited within the distance identified in Benton County Ordinance #496, as amended from time to time.
- (2) 660 feet from a dwelling or other cannabis testing, cultivation, or manufacturing facility. The setback shall be measured in a straight line from the closest point of the cannabis testing, cultivation or manufacturing facility to the closest point of the residential dwelling or other cannabis testing, cultivation, or manufacturing facility. (Ord. #499, adopted 03/18/2025)

9.27.5 Hours of Operation:

- (A) The retail component of any cannabis business shall be limited to the hours outlined in Benton County Ordinance #496.
- (B) All other cannabis businesses shall state their hours of operation within the application.

9.27.6 Performance Standards: Cannabis Businesses are subject to Section 8 Performance Standards.

9.27.7 Screening:

- (A) Outdoor and mixed light facility cultivation areas must be securely surrounded by fencing and locked gates on the entire perimeter, to prevent access to the area by unauthorized persons. Fencing and all gates must be secure, at least 6 feet high and obscure, or have a cover that obscures, the fenced area from being readily viewed from outside of the fenced area. Such fencing must be commercial or security grade, not agricultural or residential grade, and topped with a three-strand barbed wire extender arm angled away from the site at a minimum of 25 degrees to prevent access to the cultivation area by unauthorized persons. When required by statute, evidence of approval from OCM must be provided that the fencing meets their requirements.
- (B) See Section 8.6 Visual Standards for additional standards that shall be adhered to.

- (C) Additional standards may be required by the Planning Commission based on the proposed location of the cannabis business.

9.27.8 Odor: All indoor or mixed light cultivation, manufacturing, processing or production operations shall be equipped with odor control filtration and ventilation system(s) to control odors, humidity, and mold.

- (A) The facility shall be equipped with a proper ventilation system that filters out the odor of cannabis so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the premises.
- (B) Ventilation & Filtration: Facilities shall install and maintain enhanced ventilation systems designed to prevent detection of marijuana odor from adjacent properties or the public right-of-way. Such systems shall include the following features:
  - (1) Installation and maintenance of activated carbon filters on all exhaust outlets to the building exterior;
  - (2) Location of exhaust outlets a minimum of 10 feet from the property line and 10 feet above finished grade; and
  - (3) Maintenance of negative air pressure within the facility; or
  - (4) An alternative odor control system approved by the Building Official based on a report by a mechanical engineer licensed in the State of Minnesota, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

9.27.9 Security: A cannabis business shall maintain compliance with security requirements established by the Office of Cannabis Management and with its approved security plan.

9.27.10 Lighting:

- (A) A cannabis business must maintain all lighting in good working order inside and outside of a cannabis business premises and temporary cannabis event. Lighting must deter nuisance and criminal activity by allowing observers to see, and cameras to record any activity within a radius of at least 20 feet around all entrances and exits. Exterior lighting must make efforts to not disturb surrounding businesses or neighbors by

adjusting the lumens or radius of lighting to only illuminate the necessary areas outlined in these rules. Any deficient or inoperable lighting must be repaired within 48 hours of detection.

- (B) Should a business choose to use grow lights outdoors, the lights shall not be illuminated from 7:00 p.m. to 7:00 a.m.
- (C) Structures used for mixed-light cultivation and nurseries shall be shielded (e.g., with tarps) so that no light escapes between sunset and sunrise.
- (D) Any security lighting for commercial cannabis activities shall be shielded and angled in such a way as to prevent light from spilling outside of the boundaries of the parcel(s) or premises or directly focusing on any surrounding uses.

9.27.11 Wastewater: The business shall dispose of wastewater in accordance with all local, state and federal regulations. The business shall submit a water and septic plan approved by the appropriate authority shall be provided to the County.

9.27.12 Solid Waste: Shall be stored and disposed of in accordance with all local, state and federal regulations, to include compliance with Benton County Development Code Section 8.8 and Solid Waste Ordinance No. 471, as amended from time to time.

9.27.13 Parking: Shall meet the standards of Section 8.2. Additional parking conditions may be required by the Planning Commission based on the proposed location of the cannabis business.

9.27.14 Termination: For uses permitted through an Interim Use Permit (IUP), said permit shall be valid until any of the following events occur:

- (A) Change of ownership,
- (B) Change of OCM license holder,
- (C) Revoked,
- (D) Expires, or
- (E) Otherwise terminated earlier.

**9.28        Campgrounds and Resorts**

(Ord. #500, adopted 05/20/2025)

**9.28.1        General Provisions:**

- (A)    A campground or resort located within a Shoreland and/or Floodplain District shall follow the process Multiple Unit Development process and criteria outlined in Section 7.14.8 of the Benton County Development Code and Benton County Ordinance 196, in addition to the requirements in this section. Where there are conflicting requirements, the stricter of the standards shall apply.
- (B)    Licensing: The campground/resort owner/operator shall obtain a primary or annual license from the Minnesota Department of Health, "MDH," in compliance with Minnesota Statutes, prior to recording of the CUP and shall submit a copy of the license to the County. The CUP shall have a condition that requires a valid license from MDH. Failure to maintain a valid license from MDH will result in revocation of the CUP.
- (C)    Seasonal Use: The campground shall be seasonal and shall not be in use from November 1st through April 1st. Campgrounds shall comply with all local, state, and federal rules and regulations.
- (D)    Ready to move: All livable structures within a floodplain district (i.e. RV's, park trailers, etc.) must be road ready, licensed (if applicable) and able to operate on their own power or towed on public roads in a legal manner.
- (E)    Related Facilities: Campgrounds and resorts may include associated facilities including, but not limited to, restaurants, recreational facilities, event centers by obtaining the appropriate Conditional or Interim Use Permits for those uses

**9.28.2        Site Plan / Design Criteria:**

- (A)    Grading and Drainage Plan: Campgrounds shall have a Grading and Drainage Plan approved by a licensed engineer.
- (B)    Site Survey: The lot must be surveyed. The site survey shall show locations of property boundaries, surface water features, wetlands, existing and proposed structures, camping sites, recreational vehicle sites and other facilities, land alterations, sewage treatment and water supply

systems (where public systems will not be provided), and topographic contours at 10-foot intervals or less.

- (C) Setbacks: Structures and campsites shall meet the primary structure setbacks outlined within the zoning district in which it is located.
- (D) Camp site minimums:
  - (1) Each RV site shall be a minimum of 16' in width and 70' in depth (minimum area of 2,000 sq ft per RV site) to accommodate an RV and secondary vehicle.
  - (2) Each tent site shall be a minimum of 10' wide and 30' in depth and accommodate the structure and one parking space.
- (E) Accessory Structures: Limited to 1 per site no larger than 150sf.
- (F) Parking Spaces: Refer to Section 8.2 of the Development Code.
- (G) Screening: structures, parking areas and other facilities shall be treated to reduce visibility as viewed from public waters, adjacent shoreland and surrounding residences by vegetation, topography, increased setbacks, color or other means acceptable to the County, assuming summer, leaf-on conditions.
- (H) Sewage Disposal, Toilets and Shower Facilities: On site toilets, bathing, and laundry facilities shall comply with Benton County ordinances, state rules and statutes.
- (I) Code Compliance: All structures intended to be occupied by guests, the public or employees, must be constructed to meet building code.
- (J) Severe Weather Shelter: Campgrounds shall have an adequately sized severe weather shelter(s) on site, as approved by the Building Official. Temporary campgrounds established as emergency housing in a disaster area as declared by the Governor or President of the United States may be exempt unless its use exceeds a period of 18 months.

#### 9.28.3 Site Operations / Development Organization and Functioning:

- (A) Operational Plan: The campground owner/operator shall provide an operational plan, to be approved by the Planning Commission. In addition to addressing the provisions listed in this section, the operational plan

shall include the calendar months of the year which the campground will operate, the maximum number of camping sites including the type of site (i.e. primitive tent camping, RV full hook-ups, etc.). Operational plan shall include maintenance and management of the facility, to include interior roadways, water, septic, bathroom and laundry facilities, storm shelters and evacuation plans.

- (B) Overnight Guests: All overnight guests of the campground shall register their names, permanent address(s), make and model of vehicle(s), and license plate number(s). The campground owner/operator shall retain this registration log for at least one-year and shall be made available to law enforcement officials upon request.
- (C) Caretaker / Attendant: Campgrounds shall provide a caretaker or attendant who shall maintain all facilities in a clean, orderly and sanitary condition. The caretaker or attendant shall be readily available at all times in case of an emergency.
- (D) Refuse and Garbage: The storage, collection, and disposal of refuse and garbage in a recreational campground or resort shall be so conducted as to not create a health hazards, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution. In recreational camping areas, garbage and refuse containers shall be provided on the ratio of at least one for every four sites. Refuse and garbage collection shall be made at least twice each week and more often when necessary to prevent nuisance conditions.
- (E) Evacuation Plan: Campgrounds shall provide an evacuation plan in case of severe weather, flood, fire, or other disaster, as approved by the Benton County Emergency Management Director, and shall be provided to campers at the time of registration.
- (F) Emergency Vehicles: The Campground owner shall maintain streets and roadways in the campground to permit passage of emergency vehicles and reverse maneuvering of recreational vehicles.
- (G) Pets: No domestic animals or pets of occupants of the campground may run at large or be a public nuisance.