

ARTICLE 3. ZONING DISTRICTS

Sec. 3-1 Zoning District Designation

McKenzie County is hereby divided into zoning districts for purposes of controlling the use of lands and structures as authorized in NDCC. Ch. 11-33-02. Said districts shall be known as:

- (A) Agricultural District (AG)
- (B) Recreational District (REC)
- (C) Residential Low Density District (R-1)
- (D) Residential Medium Density District (R-2)
- (E) Residential High Density District (R-3)
- (F) Rural Residential District (R-5A)
- (G) Commercial District (C-1)
- (H) Light Industrial District (I-1)
- (I) Heavy Industrial District (I-2)
- (J) Planned Unit Development District (PUD)
- (K) Floodplain Overlay District
- (L) Highway Corridor Overlay District
- (M) Firearms Facility Overlay District
- (N) Airport Overlay District

Sec. 3-2 Zoning Map and District Boundaries

3-2-1 Zoning Map

The zoning districts as described in this Ordinance shall be mapped. Said map shall be known as the County Zoning Map, shall have attached or be filed with all materials necessary for the interpretation of the map, shall have the date of adoption and date of each amendment to the map printed on the map, and shall be on file in the office of the County Auditor.

3-2-2 Boundary Definition

Zoning district boundary lines shall follow lot lines, parcel lines, subdivision lines, section lines, center lines of streets, roads, highways, alleys, railroad right of ways, or such lines extended.

3-2-3 Boundary Interpretation

Where, due to map scale or lack of clarity, there is any uncertainty as to the intended location of a boundary line shown thereon, the Planning Director shall interpret and delineate the boundary line in question.

Sec. 3-3 Farming and Public Utilities Exemption

No use regulations or dimensional standards shall be interpreted to apply to uses that are exclusively related to farming and ranching or for certain public utilities, in accordance with [Section 2-3](#).

Sec. 3-4 Permitted Uses

3-4-1 Zoning and Land Use Table

(A) The *Zoning and Land Use Table* [Table 3-1](#) on the following pages lists existing and potential future uses that are permitted in each zoning district. The table uses the following key:

- P Use permitted by right
- C Conditional use subject to County Board approval
- C/A Conditional use subject to administrative approval
- NA Use not subject to County oversight

(blank) Use not permitted in zoning district

- (B) **Special use standards:** Special use standards apply to certain uses. Special use standards typically pertain to the permitting, development, operation, maintenance, or closure/reclamation of a use. The rightmost column of [Table 3-1](#) includes section references to special use standards, if applicable.
- (C) **Reclamation Bond:** Some uses require a reclamation bond, as described in [Section 2-13](#). Uses that require a reclamation bond are indicated with an asterisk (*).

Table 3-1. Zoning and Land Use Table

Land Use Type	Zoning District									Special Use Standards
	AG	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2	
Agricultural Uses										
Agriculture	P									
Agritourism	P									
Commercial grain elevators	C							P	P	
Commercial feedlot	C									
Cropping and grazing activities without permanent structures		P								
Farm-related commercial activities	P							P	P	
Livestock auction yards	C									
Nurseries/greenhouses, sale of local produce	P						P			
Processing of agricultural products	C									
Recreational Uses										
Equestrian events	P	P								
Golf course		P								
Harvesting of natural crops		P								
Hunting, fishing, and trapping	P	P								
Hunting lodge	P									
Parks and playgrounds	P	P	P	P	P	P				
Raising of game animals, fowl, and fish		P								
Recreational vehicle park*		P		C	C					Section 2-13 and Section 4-X
Wildlife and game management areas/refuges	P									
Residential Uses										
Attached dwellings, up to 4 units per building				P	P					
Attached dwellings, over 4 units per building					P					
Domestic farm animals			P			P				Section 4-X
Duplex				P	P					
Manufactured home			P	P		P				Section 4-X
Manufactured home community				P	P	P				Section 4-X
Home occupation			P			P				
Recreational vehicle storage		P	P	P	P	P				Section 4-X

Commented [DS1]: Definition includes all farming and ranching operations, except commercial feedlots

Commented [DS2]: New definition.

Commented [DS3]: New definition.

Commented [DS4]: New use standards/AU definitions proposed for domestic animal husbandry.

Commented [DS5]: Revised definition.

Commented [DS6]: New definition

Land Use Type	Zoning District									Special Use Standards
	AG	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2	
Seasonal residence/cabin		C								
Single-family dwelling	P	C	P	P	P					Section 4-X
Public and Institutional Uses										
Airport	C									
Bus station/taxi shelter							P	P	P	
Cemetery	P									
Child care center			C	C	C	C	C			
Child care, family (in-home)	P		P	P	P	P				
Child care, group	C		C	C	C	C				
Child care, preschool	C		C	C	C	C	C			
Child care, school-age program	C		C	C	C	C	C			
Child care, multiple licensed facility	C		C	C	C	C	C			
Child care, self-declared provider	P		P	P	P	P				
Churches	P	C	P	P	P	P	P			
Clubs/assembly halls	P	C	P	P	P	P	P			
College					P					
Cultural center		C	P	P		P				
Government administration/maintenance facilities	C	C						P	P	
Group home			C	C	C	C				
Fire station	P	P	P	P	P	P	P	P	P	
Health care facility							C			
Historical monuments and structures		P								
Long-term care/nursing home						C	C			
Post office	P	P	P	P	P	P	P	P	P	
School	P	C	P	P	P	P				
Sheriff's office	P	P	P	P	P	P	P	P	P	
Commercial and Service Uses										
Adult entertainment center								C	C	Section 4-X
Animal hospitals and clinics	P							P		
Bar/tavern		C					P			

Commented [DS7]: Do we need to list this?

Commented [DS8]: Updated definitions for child care facilities.

Commented [DS9]: New definition (library, museum, etc.)

Commented [DS10]: New definition.

Land Use Type	Zoning District									Special Use Standards
	AG	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2	
Commercial truck parking	C		P					P	P	
Entertainment establishment							P	P		
Hotels and motels							P	P	P	
Heavy equipment storage	P							C	P	
Kennel										
Office							P	P		
Restaurant		P					P			
Retail sales							P	P		
Retail sales, outdoor							C	P		
Self-service storage facilities							P	P	P	
Services, automotive repair								P		
Services, contractor's office/workshop						P	P			
Services, general repair						P	P	P		
Services, personal						P	P			
Service station/car wash							P	P		
Signs	C						P	P	P	Section 4-X
Wholesale activities without exterior storage							P	P		
Wholesale activities with exterior storage							C	P		
Industrial Uses										
Concrete, asphalt, and clay production*	C							P	P	
Data center	C								C	Section 4-X
Electric conversion facility*									P	Section 2-13 and Section 4-X
Energy transmission facility	NA									
Energy conversion facility									C	Section 4-X
Excavation of sand, gravel, rock, etc. (public)	C/A							C/A		
Excavation of sand, gravel, rock, etc. (non-public)*	C							C	C	Section 2-13 and Section 4-X
Medical marijuana manufacturing or distribution center	C							C	C	Section 4-X
Hazardous materials storage, sale, or distribution	C								C	
Dry bulk storage (non-hazardous)								P	P	
Energy conversion facility	C								P	

Land Use Type	Zoning District									Special Use Standards
	AG	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2	
Freight terminal (truck or rail)*								C	P	
Manufacturing, heavy									P	
Manufacturing, light								P	P	
Oil and gas bulk storage*									C	Section 2-13
Oil and gas extraction	NA									*PSC has jurisdiction
Radio/television broadcasting station								C	P	
Salvage yard*									C	Section 2-13
Stockyards, feedlots, and slaughterhouses									C	
Storage of oil drilling rigs and related equipment (over 1 year)	C							C	P	
Storage yard								P	P	
Warehouse							C	P	P	
Waste management facility/landfill									C	
Utility-scale solar facility*	C									Section 2-13 and Section 4-X
Utility-scale wind energy conversion system (WECS)*	C									Section 2-13 and Section 4-7
Infrastructure										
Communication tower	C/A	C/A						C/A	C/A	Section 4-X
Electrical substation	C/A	C						C/A	C/A	
Freshwater depot/storage pond	C						C	P	P	Section 2-13 and Section 4-X
Freshwater pipelines for non-industrial use	P	P	P	P	P	P	P	P	P	
Freshwater pipelines for industrial use*	C	C						P	P	Section 2-13 and Section 4-X
Public water utilities	P	P	P	P	P	P	P	P	P	
Railroad tracks and spurs	C							C	C	
Accessory Uses										
Accessory farm and ranch buildings	P									
Accessory housing for agricultural workers	P									
Accessory residential structure			P	P	P	P				
Accessory live-work unit (1)							C	C	C	
Accessory wind energy conversion system	P	P						P	P	Section 4-7
Accessory solar energy system – roof-mounted/building-mounted	P	P	P	P	P	P	P	P	P	Section X
Accessory solar energy system – ground-mounted	P	P				P		P	P	Section X

Land Use Type	Zoning District									Special Use Standards
	AG	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2	
Temporary Uses										
Temporary farmers market (6 months)	C/A						C/A			
Temporary fireworks sales (3 months)	C/A							C/A		
Temporary freshwater facilities (6 months)	C/A							C/A		
Temporary outdoor sales event (1 week)							C/A	C/A		
Temporary Christmas tree sales (2 months)	C/A						C/A	C/A		
Temporary public gathering/event (1 month)	C/A	C/A								
Unlisted temporary use	C	C	C	C	C	C	C	C	C	
Temporary storage of oil drilling rigs (1 year)*	P								P	See Section 2-13
Temporary workforce housing*	C							C	C	See Section 2-13 and Section 4-X

Sec. 3-5 Dimensional Standards

Table 3-2 below lists dimensional standards and setback requirements for lots or tracts and structures within each zoning district of McKenzie County.

Dimensional standards shall be interpreted according as follows:

- (A) **Application of Standards.** All dimensional standards for buildings or structures apply to the principal building or structure together with all accessory buildings or structures on the lot or tract.
- (B) **Calculation of Setbacks.** Setbacks in **Table X** are measured from the foundation of the building or structure to the property line of the lot or tract within which the building or structure is located.
- (C) **Calculation of Height.** Roof structures and mechanical appurtenances such as belfries, chimneys, domes, flag poles, radio towers, and spires shall not be taken into account when calculating the height of buildings for the purposes of determining compliance with height limitations. Furthermore, building height limitations do not apply to bulkheads, monuments, communication towers, water towers, or similar structures.
- (D) **Airport Height Restrictions.** Nothing in this section shall be interpreted to permit the erection of any structure in violation of any applicable Airport Overlay District provisions (see **Section 3-18**).

Table 3-2. Dimensional Standards

Dimensional Standards	Zoning Districts									
	AG	AG-5	REC	R-1	R-2	R-3	R-5A	C-1	I-1	I-2
Minimum Lot/Tract Area	40 acres	5 acres	1 acre	1 acre	7,000 SF	6,000 SF	5 acres	1 acre	2 acres	2 acres
Minimum Lot/Tract Width	300'	300'	100'	100'	60'	100'	100'	100'	200'	200'
Minimum Lot/Tract Depth	300'	300'	200'	200'	120'	200'	200'	200'	200'	200'
Maximum Density	3 DU/40 acres ^(a)	0.2 DU/acre	--	1 DU/acre	10 DU/acre	20 DU/acre	0.2 DU/acre	--	--	--
Maximum Building Height	35'	35'	35'	35'	50'	50'	35'	35'	75'	75'
Minimum Setbacks										
Front Yard	25'	25'	25'	30'	30'	30'	100'	30'	50'	50'
Side Yard	25'	25'	10'	10'	10'	10'	25'	10'	25'	25'
Rear Yard	25'	25'	10'	25'	25'	25'	50'	25'	50'	50'
Setback between buildings	--	--	--	Minimum 15' between buildings or a 1-hour firewall						(b)
Setback from roadways	See Section 2-10									

(a) Three dwelling units per quarter-quarter acre of a legal section.

(b) Minimum 20' setback between buildings. No building or structure in the Heavy Industrial District (I-2) shall be located within 1,250' from the boundary of a residential district or within 500' from any dwelling unit.

Sec. 3-6 Agricultural District (AG)

3-6-1 Intent

It is the purpose of this district to encourage first and foremost the use of this land for agricultural activities, and to discourage any use which would be detrimental to carrying out agricultural practices. Further, the provisions of this district are intended to regulate scattered non-farm development and to promote the orderly and economic development of public service utilities and schools. These areas have very limited availability of infrastructure and services for residential purposes.

3-6-2 Permitted Uses

Uses that are permitted by right in the Agricultural District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) Farming and ranching operations including dairying, livestock, poultry, apiaries, and fur farming.
- (B) Accessory buildings necessary to the operation of farms or ranches, including the farm residence, septic systems, feedlots, and storage facilities.
- (C) Farm-related commercial activities, including feed grain, and agricultural supply sales; trailer sales; welding services; fence construction; riding stables; water well drilling service; septic cleaning service; and the like.
- (D) Single-family dwelling(s). Up to three single-family detached dwellings may be constructed within a legal quarter-quarter section (40 acres). Each dwelling must be constructed on its own lot with a minimum lot size of five (5) acres. Special use standards apply (see [Section 4-17](#)).
- (E) Recreational vehicle storage. Special use standards apply (see [Section 4-X](#)).
- (F) Nurseries, greenhouses, and sale of local agricultural products.
- (G) Animal hospitals and clinics not nearer than five hundred (500) feet from any residence, except the residence of the owner-operator.
- (H) Cemetery.
- (I) Churches.
- (J) Clubs/assembly halls.

- (K) Public parks, recreational facilities, and wildlife and game management areas and refuges.
- (L) Schools.
- (M) Equestrian events.
- (N) Hunting lodge.
- (O) Agritourism.
- (P) Licensed family child care and self-declared providers.
- (Q) Commercial truck parking.
- (R) Fire station.
- (S) Sheriff's office.
- (T) Post office.
- (U) Temporary storage of oil drilling rigs and related equipment (not to exceed 1 year).
- (V) Freshwater pipelines for non-industrial use.
- (W) Accessory solar energy system (ground-mounted or roof-mounted).
- (X) Accessory wind energy conversion system.

3-6-3 Conditional Uses

Uses in the Agricultural District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) Commercial grain elevators and accessory structures.
- (B) Commercial feedlots. Special use standards apply (see [Section 4-3](#)).
- (C) Livestock auction yards.
- (D) Waste management facilities, sanitary landfills, and hazardous waste sites.
- (E) Processing of agricultural products.
- (F) Railroad tracks and spurs.
- (G) Airport.
- (H) Government administration/maintenance facility.

- (I) Excavation, crushing, and handling of sand, gravel, rock, stone, scoria, or clay for non-public projects. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-18](#)).
- (J) Temporary workforce housing. A reclamation bond is required (see [Section 2-13](#)) and special use standards (see [Section 4-8](#)).
- (K) Freshwater depots and freshwater storage ponds. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-10](#)).
- (L) Freshwater pipelines for industrial use. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-10](#)).
- (M) Commercial truck parking and truck garages and all associated structures to service the same. A reclamation bond is required (see [Section 4-X](#)).
- (N) Service station/car wash.
- (O) Concrete, asphalt, or clay production. A reclamation bond is required (see [Section 4-X](#)).
- (P) Energy conversion facilities as defined in NDCC. 49-22.01
- (Q) Utility-scale wind energy conversion system. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-7](#)).
- (R) Licensed child care facilities, including:
 - (1) Family child care
 - (2) Group child care
 - (3) Preschools
 - (4) Multiple licensed facility, per NDCC. 50-11.1.
- (S) Signs and billboards. Special use standards apply (see [Section 4-2](#)).
- (T) Medical Marijuana Manufacturing Center. Special use standards apply (see [Section 4.16](#)).
- (U) Oil and gas bulk storage, explosives, and other hazardous material storage, sales, and distribution. Special use standards apply (see [Section 4-X](#)).
- (V) Utility-scale solar energy system. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-X](#)).

- (W) Data center/bitcoin mining facility. Special use standards apply (see [Section 4-X](#)).
- (X) Temporary storage of oil drilling rigs and related equipment (over 1 year). A reclamation bond is required (see [Section 2-13](#)).
- (Y) Any other temporary use not listed in [Section 3-6-3](#) below.

3-6-4 Conditional Uses with Administrative Permit

Conditional uses that are subject to approval by the Planning Director are indicated as "A" in [Table 3-1](#) and are listed below:

- (A) Communication towers.
- (B) Electrical substations.
- (C) Excavation, crushing, and handling of sand, gravel, rock, stone, scoria, or clay for public projects.
- (D) Temporary farmers market (not to exceed 6 months).
- (E) Temporary freshwater facility (not to exceed 6 months).
- (F) Temporary public gathering for a single-purpose event, such as a concert, fair, or festival (not to exceed 1 month).
- (G) Temporary fireworks sales (not to exceed 3 months).

3-6-5 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the Agricultural District are listed in [Table 3-2](#).

Sec. 3-7 Recreational District (REC)

3-7-1 Intent

The purpose of the Recreational District is to protect sensitive, unique, or vulnerable lands, vegetation, wildlife, and historic sites and monuments. Furthermore, this district is intended to promote the wise use of lands for recreational activity and residency around rivers, lakes, and other water courses to maintain the quality of the environment.

3-7-2 Permitted Uses

Uses that are permitted by right in the Recreational District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) Hunting, fishing, and trapping.
- (B) Raising of game animals, fowl, and fish.
- (C) Harvesting of natural crops.
- (D) Cropping and grazing activities that do not require the construction of any permanent structures.
- (E) Fire station.
- (F) Sheriff's office.
- (G) Post office.
- (H) Public parks, including golf courses and outdoor recreation facilities.
- (I) Historical monuments and structures accessory to any allowed uses.
- (J) Restaurants.
- (K) Equestrian arenas.
- (L) Freshwater pipelines for non-industrial use.
- (M) Recreational vehicle park. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-16](#)).
- (N) Accessory solar energy system (ground-mounted or roof-mounted).

3-7-3 Conditional Uses

Uses in the Recreational District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) Single-family dwellings, cabins, and seasonal residences.
- (B) Cultural center.
- (C) Bar/tavern.
- (D) Electrical substation.
- (E) Freshwater pipelines for industrial use. A reclamation bond is required (see [Section 2-13](#)) and additional provisions apply (See [Section 4-10](#)).

3-7-4 Conditional Uses with Administrative Permit

- (A) Communication towers.

3-7-5 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the Recreational District are listed in [Table 3-2](#).

3-7-6 Parking

Parking standards are listed in [Section 2-11](#).

Sec. 3-8 Residential Low Density District (R-1)

3-8-1 Intent

The Residential Low Density District is intended to provide for orderly single-family residential development with a maximum density of one (1) dwelling unit per acre.

3-8-2 Permitted Uses

Uses that are permitted by right in the R-1 District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) Single-family dwellings (1 dwelling per lot), including manufactured homes.
- (B) Churches.
- (C) Clubs/assembly halls.
- (D) Parks and playgrounds.
- (E) Fire station.
- (F) Sheriff's office.
- (G) Post office.
- (H) Home occupations (see [Section 4-5](#)).
- (I) Domestic farm animal(s). Special use standards apply (see [Section X](#)).
- (J) Recreational vehicles. Special use standards apply (see [Section X](#)).
- (K) Licensed family child care and self-declared providers.
- (L) Parking of commercial vehicles.
- (M) Accessory residential structures.
- (N) Accessory solar energy system (roof-mounted).

3-8-3 Conditional Uses

Uses in the R-1 District that are subject to conditional approval by the Board of County Commissioners are indicated as “C” in [Table 3-1](#) and are listed below:

- (A) Group home.
- (B) Licensed child care facilities, including:
 - (1) Family child care
 - (2) Group child care
 - (3) Child care center
 - (4) Preschools
 - (5) School-age programs
 - (6) Multiple-licensed facility
- (C) Schools.
- (D) Freshwater pipelines for industrial use. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-X](#)).

3-8-4 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the R-1 District are listed in [Table 3-2](#).

Sec. 3-9 Rural Residential District (R-5A)

3-9-1 Intent

The purpose of the Rural Residential District is to provide for rural residential communities with a minimum lot size of 5 acres, where water is provided by a rural water district or private wells and wastewater is treated by on-site septic systems.

3-9-2 Permitted Uses

Uses that are permitted by right in the R-5A District are indicated as “P” in [Table 3-1](#) and are listed below:

- (A) All uses allowed in R-1, except duplexes are prohibited, ground-mounted accessory solar energy systems are permitted, and accessory wind energy conversion systems are permitted.

3-9-3 Conditional Uses

Uses in the R-5A District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and include all conditional uses that are allowed in R-1.

3-9-4 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the R-5A District are listed in [Table 3-2](#).

3-9-5 Parking

Parking standards are listed in [Section 2-11](#).

Sec. 3-10 Residential Medium Density District (R-2)

3-10-1 Intent

The purpose of the Residential Medium Density District is to support residential neighborhoods with diversified housing stock to satisfy market demand and consumer preferences. This district must be served by a state-approved water system and sewer system.

3-10-2 Permitted Uses

Uses that are permitted by right in the R-2 District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) All uses allowed in R-1, except the keeping of domestic farm animals.
- (B) Attached dwellings, up to four units per building.
- (C) Manufactured home community. Special use standards apply (see [Section 4-14](#)).

3-10-3 Conditional Uses

Uses in the R-2 District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) All conditional uses that are allowed in the R-1 District.
- (B) Recreational vehicle parks. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-15](#)).

3-10-4 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the R-2 District are listed in [Table 3-2](#).

3-10-5 Development Standards

- (A) **Landscaping Plan.** A landscaping plan shall be submitted for new developments, building expansions, and parking improvements as required under [Section 2-12](#).
- (B) **Parking.** Parking standards are listed in [Section 2-11](#).

Sec. 3-11 Residential High Density District (R-3)

3-11-1 Intent

The purpose of the Residential High Density District is to support residential neighborhoods with diversified housing stock to satisfy market demand and consumer preferences. This district must be served by a state-approved water system and sewer systems.

3-11-2 Permitted Uses

Uses that are permitted by right in the R-3 District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) All uses allowed in the R-2 District.
- (B) Attached dwelling units, over four units per building.
- (C) Colleges.

3-11-3 Conditional Uses

Uses in the R-3 District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) All conditional uses allowed in the R-1 District and the R-2 District.

3-11-4 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the R-3 District are listed in [Table 3-2](#).

3-11-5 Development Standards

- (A) **Landscaping Plan.** A landscaping plan shall be submitted for new developments, building expansions, and parking improvements as required under [Section 2-12](#).
- (B) **Parking.** Parking standards are listed in [Section 2-11](#).

Sec. 3-12 Commercial District (C-1)

3-12-1 Intent

The purpose of the Commercial District is to organize retail establishments offices, wholesale, and service activities in areas with access to paved roads, water, sewer, and utilities.

3-12-2 Permitted Uses

Uses that are permitted by right in the C-1 District are indicated as "P" in **Table 3-1** and are listed below:

- (A) Service station/car wash
- (B) Retail sales, indoor.
- (C) Personal services.
- (D) Repair services.
- (E) Offices.
- (F) Health care facilities.
- (G) Wholesale activities without storage yards.
- (H) Hotels and motels.
- (I) Entertainment establishments.
- (J) Clubs/assembly halls.
- (K) Churches.
- (L) Fire station.
- (M) Sheriff's office.
- (N) Post office.
- (O) Bus stations and taxi shelters.
- (P) Restaurants.
- (Q) Self-service storage facilities.
- (R) Accessory solar energy systems (roof-mounted)

3-12-3 Conditional Uses

Uses in the C-1 District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in **Table 3-1** and are listed below:

- (A) One (1) live-work unit is permitted per lot, parcel, or tract.
- (B) Warehouse.
- (C) Commercial grain bins or related activities.
- (D) Freshwater depots and freshwater pipelines. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-10](#)).
- (E) Signs and billboards. Special use standards apply (see [Section 4-2](#)).

3-12-4 Conditional Uses with Administrative Permit

Conditional uses that are subject to approval by the Planning Director are indicated as "A" in [Table 3-1](#) and are listed below:

- (A) Temporary outdoor sales event (1 week).
- (B) Temporary farmers market (6 months).
- (C) Temporary Christmas tree sales (2 months).

3-12-5 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the C-1 District are listed in [Table 3-2](#).

3-12-6 Development Standards

- (A) **Landscaping Plan.** A landscaping plan shall be submitted for new developments, building expansions, and parking improvements as required under [Section 2-12](#).
- (B) **Highway Corridor Overlay.** Any commercial development within five hundred (500') feet of the centerline of any federal, state or paved county road shall additionally be subject to the requirements of [Section 3-11](#).
- (C) **Design Review.** Site plans, architectural elevations, and proposed materials must be submitted to the Planning Department for design review for allowed and conditional uses.
- (D) **Parking.** Parking standards are listed in [Section 2-11](#).

Sec. 3-13 Light Industrial District (I-1)

3-13-1 Intent

The intent of the Light Industrial District is to designate areas for wholesale commercial, manufacturing, trucking, limited retail sales and service, and the like. All manufacturing activity must be conducted within and shall not emit fumes, odor, dust, smoke, gas, or vibrations beyond the confines of property.

3-13-2 Permitted Uses

Uses that are permitted by right in the I-1 District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) All uses that are permitted by right in the C-1 District, with the exception of child care facilities, restaurants, and bars/taverns.
- (B) Animal hospitals and clinics.
- (C) Warehouse.
- (D) Contractor's office/workshop.
- (E) Dry bulk storage (non-hazardous).
- (F) State and County maintenance yards and facilities.
- (G) Grain mills/elevators.
- (H) Automotive repair services.
- (I) Light manufacturing.
- (J) Radio and television broadcasting stations.
- (K) Commercial truck parking, truck garages, and all associated structures to service the same. A reclamation bond is required (see [Section 2-13](#)).
- (L) Concrete and asphalt plants. A reclamation bond is required (see [Section 2-13](#)).
- (M) Governmental administrative/maintenance facilities.
- (N) Freshwater depots and freshwater pipelines. A reclamation bond is required for freshwater depots and freshwater pipelines for industrial use (see [Section 2-13](#)).
- (O) Accessory solar energy systems (ground-mounted or roof-mounted).
- (P) Accessory wind energy conversion system.

3-13-3 Conditional Uses

Uses in the I-1 District that are subject to conditional approval by the Board of County Commissioners are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) All conditional uses allowed in the C-1 District, except those that are permitted by right in the I-1 District.
- (B) Adult entertainment centers. Special use standards apply (see [Section 4-6](#)).
- (C) Heavy vehicle/machinery storage and repair.
- (D) Railroad tracks and spurs.
- (E) Freight terminal (truck or rail).
- (F) Temporary workforce housing. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section 4-8](#)).
- (G) Excavation crushing, and handling of sand, gravel, rock, stone, scoria, or clay for non-public projects. A reclamation bond is required (see [Section 2-13](#)) and special use standards apply (see [Section X](#)).
- (H) Storage of oil drilling rigs and related equipment for a period exceeding one (1) year. A reclamation bond is required (see [Section 2-13](#)).
- (I) Medical Marijuana Manufacturing Center or Distribution Center. Special use standards apply (see [Section 4-16](#)).

3-13-4 Conditional Uses with Administrative Permit

Uses in the I-1 District that are subject to conditional approval by the Planning Director are indicated as "A" in [Table 3-1](#) and are listed below:

- (A) Temporary storage of oil drilling rigs and related equipment (1 year).
- (B) Temporary freshwater pipelines (6 months).
- (C) Temporary Christmas tree sales (2 months).
- (D) Temporary firework sales (3 months).
- (E) Communication towers. Special use standards apply (see [Section 4-X](#)).
- (F) Electrical substations.
- (G) Excavation, handling, or crushing of sand, gravel, rock, stone, scoria, or clay for public projects.

3-13-5 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the I-1 District are listed in [Table 3-2](#).

3-13-6 Development Standards

- (A) **Landscaping Plan.** A landscaping plan shall be submitted for new developments, building expansions, and parking improvements as required under [Section 2-12](#).
- (B) **Highway Corridor Overlay.** Any commercial or industrial development within five hundred (500') feet of the centerline of any federal, state or paved county road shall additionally be subject to the requirements of [Section 3-11](#).
- (C) **Parking:** Parking standards are listed in [Section 2-11](#).

Sec. 3-14 Heavy Industrial District (I-2)

3-14-1 Intent

The purpose of the Light Industrial District is to provide for the development of the mineral and agricultural resources of McKenzie County; to provide for the refining and processing of unfinished and partially finished resources and products; and to isolate industrial activities in locations where conflicts with other uses will be minimized.

3-14-2 Permitted Uses

Uses that are permitted by right in the I-2 District are indicated as "P" in [Table 3-1](#) and are listed below:

- (A) All uses permitted in the I-1 District.
- (B) Heavy manufacturing.
- (C) Heavy vehicle/machinery storage and repair.
- (D) Freight terminals (truck or rail)
- (E) Concrete, asphalt, or clay production
- (F) Energy conversion facilities.

3-14-3 Conditional Uses

Uses in the I-2 District that are subject to conditional approval by the Board of County Commissioners in the I-2 District are indicated as "C" in [Table 3-1](#) and are listed below:

- (A) All conditional uses allowed in the I-1 District, except those that are permitted by right in the I-2 District.
- (B) Oil and gas bulk storage, explosives and other hazardous material storage, sales and distribution. A reclamation bond is required (see [Section 2-13](#)).
- (C) Sewage lagoons and sediment ponds in compliance with North Dakota Department of Health standards. A reclamation bond is required (see [Section 2-13](#)).
- (D) Waste management facilities, sanitary landfills, and hazardous waste sites in compliance with State Health standards. A reclamation bond is required (see [Section 2-13](#)).
- (E) Salvage yards. A reclamation bond is required (see [Section 2-13](#)).
- (F) Stockyards and commercial livestock feedlots and slaughterhouses. A reclamation bond is required (see [Section 2-13](#)).

3-14-4 Setbacks and Dimensional Standards

Setbacks and dimensional standards for the I-2 District are listed in [Table 3-2](#).

3-14-5 Development Standards

- (A) **Landscaping Plan.** A landscaping plan shall be submitted for new developments, building expansions, and parking improvements as required under [Section 2-12](#).
- (B) **Highway Corridor Overlay.** Any commercial or industrial development within five hundred (500') feet of the centerline of any federal, state or paved county road shall additionally be subject to the requirements of [Section 3-11](#).
- (C) **Residential Buffer.** No building or structure shall be located within one thousand two hundred fifty (1,250') feet from the boundary of a residential district or five hundred (500') feet from any dwelling unit.

3-14-6 Performance Standards

- (D) All combustible material shall be stored in such a way to permit free access to firefighting equipment.
- (E) Dust, fumes, odors, smoke, vapor, noise, lights, and vibrations shall be confined within the industrial district.

Sec. 3-15 Planned Unit Development District (PUD)

3-15-1 Purpose

The Planned Unit Development (PUD) District provides an alternative to conventional zoning to facilitate design for unique development proposals, including area master plans and mixed-use concepts. Uses incorporated within a PUD may deviate from base zoning district standards, pending County approval. In exchange for greater development flexibility, the County may require the developer to provide additional amenities or enhancements.

3-15-2 PUD Standards

- (A) The PUD shall allow only uses that are permitted in base zoning districts.
- (B) The Minimum PUD area shall be five (5) acres.
- (C) Any PUD that falls within a Highway Corridor Overlay District shall be subject to the requirements of [Section 3-11](#).
- (D) Development shall commence within two years from the date of approval. If development does not commence within this timeframe, the subject property shall be rezoned to its previous zoning district(s).
- (E) Any change in use within an approved PUD shall require approval of the County Board.
- (F) Any expansion of a use within an approved PUD that increases the total building area by 20 percent or more shall require approval of the County Board.
- (G) Other modifications may be approved by the Planning Director.

3-15-3 PUD Application and Plan

- (A) **Development Plan.** The submittal of a PUD application requires a physical plan, images, and narrative that describe all uses within the PUD, the conventional zoning districts under which those uses are normally permitted, and the proposed dimensional standards and requirements that will apply to each use in the PUD. The application shall indicate where the developer requests deviation from base zoning standards. The narrative shall describe the additional amenities/enhancements of the project, which may include but are not limited to improved site design; open space preservation; and improved parks, trails, or recreation facilities.

- (B) **Site Plan.** The site plan and accompanying narrative shall include the following:
 - (1) **Setting.** The physical characteristics of the site and adjacent land uses.
 - (2) **Dimensional Standards.** Setbacks, densities, and building heights.
 - (3) **Design Standards.** Architectural standards, street section design, landscaping, and signage.
 - (4) **Development Concept.**
 - (a) Location and size of each land use
 - (b) Open space quantity and amenities provided.
 - (c) Parks, trails, and pedestrian connections
 - (d) Street concept
 - (5) **Phasing Plan.**
 - (a) A map indicating each stage of development.
 - (b) Timeframe for construction and installation of infrastructure and structures.
 - (6) Any additional information deemed necessary by the Planning Director.
- (C) **Reclamation Bond.** A PUD or sections of the PUD may be subject to a reclamation bond if deemed necessary by the Planning Commission.

Sec. 3-16 Floodplain Overlay District

3-16-1 Intent

The purpose of this district is to minimize private and public losses due to flood conditions.

3-16-2 District Application

The floodplain shall use maps as delineated or defined by the Federal Emergency Management Agency (FEMA) for administration of the National Flood Insurance Program or other maps and information provided by the State of North Dakota. The areas delineated as floodplain shall be an overlay for all zoning districts.

3-16-3 Remediation Plan

An applicant that has land that is in a floodplain as delineated by FEMA or land that is known to periodically flood or contains marshes, standing water for more than thirty (30) days per year, or has the presence of cattails or other aquatic vegetation shall have a certified North Dakota licensed civil engineer provide a plan to remediate the hazard. No building permit shall be issued without a remediation plan.

Sec. 3-17 Highway Corridor Overlay District

3-17-1 Intent

The purpose of the Highway Corridor Overlay District is to have higher standards adjacent to highways and to promote and protect the public health, safety, and welfare by providing for the aesthetic and coordinated treatment of properties bordering and within identified transportation corridors in McKenzie County. These transportation corridors are expected to carry significant volumes of traffic, making development along these corridors highly visible to the traveling public. Therefore, it is the purpose of this district to ensure high aesthetic quality of development along these important transportation corridors through:

- (A) The establishment of enhanced standards for buildings, landscaping, and other improvements constructed on the properties bordering and within the transportation corridors; and
- (B) The establishment of development requirements which will encourage high quality of design of development of those properties and promote the quality, scale, and character of development consistent with existing and planned uses bordering and within the transportation corridors.
- (C) These standards and requirements shall apply to any parcels that are within five hundred (500') feet of the centerline of any federal, state or paved county road.

3-17-2 Exemptions

Agricultural structures are exempt from these requirements provided they meet the base zoning district requirements.

3-17-3 Standards

- (A) **Design Review.** Any and all site plans, architectural elevations, and proposed materials must be submitted to the Planning Department for design review prior to a building permit being issued.
- (B) **Building Design.** Building design shall incorporate materials to convey permanence, substance, timelessness, and restraint. Each building shall be constructed with one or more of the following material(s) consisting of at least fifty percent (50%) of the exterior materials:
 - (1) Clay or masonry brick.
 - (2) Customized concrete masonry.
 - (3) Architectural flat metal panels or glass.
 - (4) Stucco or Exterior Finish Insulation.
 - (5) Natural stone.
 - (6) Residential grade permanent siding with brick decorative masonry.
 - (7) Metal siding systems may be used along the corridor provided that metal is limited to fifty percent (50%) of the building face. In addition, the building must be enhanced by the application of brick, decorative masonry, or decorative stucco surfaces in combination with decorative fascia, overhangs, and trim.
 - (8) Post and Beam – Log structures and/or entries.
- (C) **Multi-building and Mixed-Use Projects.**
 - (1) Prior to issuance of a building permit on a multi-building development, the applicant shall submit plans that demonstrate the use of consistent design elements throughout the project. Subsequent building permits shall conform to the design elements presented.
 - (2) Multi-building developments shall include prominent focal points, which shall include, but not be limited to architectural structures, art, historical and/or landscape features. These features shall be located at or visible from vehicular and pedestrian entrances to the site.
 - (3) Free-standing garage clusters of multiple family residential sites shall not be placed along the corridor overlay districts unless the overall appearance is similar to the primary building.

(D) **Site Design.**

- (1) Trash enclosures and trash compactors shall be located such that they are not visible from the identified corridor.
- (2) Outdoor storage that does not consist of display of merchandise shall be located such that it is not visible from the identified corridor, by placing the outdoor storage on the opposite side of the building from the identified corridor, or by placing outdoor storage in an enclosure that has the appearance of being integral to the building. All outdoor storage shall be fully screened from view through the use of an opaque decorative fencing material or architectural screen walls.
- (3) Loading and delivery areas shall not be located along the front side of the building that fronts on the identified corridor.
- (4) Contractor yards, service yards, heavy equipment, salvage, and items of a similar nature shall be located away from public street frontages and shall be screened with opaque fencing.
- (5) Pedestrian walkways shall be provided between building entrances/exits and parking areas. On multi-building sites and mixed-use sites, the site design shall provide functional pedestrian spaces, plazas, and seating areas between or in front of buildings. Designs shall include weather protection, such as overhangs, awnings, and canopies to increase usefulness in a variety of weather conditions.

Sec. 3-18 Firearms Facility Overlay District

3-18-1 Intent

The purpose of this district is to minimize the risk of safety hazards attendant with a facility at which firearms or other weapons are regularly discharged.

3-18-2 Definitions

The following definitions are added to the McKenzie County Zoning Ordinance:

Archery Range. Any building, parcel of land, or other site at which persons regularly engage in archery activities, including but not limited to training, practice, and competition in the use of bow and arrow, crossbow, or spear.

Firearm. Any firearm as defined by NDCC. § 62.1-01-01(3), any rifles and shotguns expressly excluded by NDCC. § 62.1-01-01(3)(a) through (c), any

weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun, or any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

Firearms Facility. An Archery Range, Munitions Range, Shooting Range, or any combination of them that is operated by a single operator upon one contiguous parcel of land that the operator owns or leases for the facility.

Munitions Range. Any building, parcel of land, or other site at which persons regularly engage in the use of munitions of any sort, including but not limited to explosives, emitters of noxious substances, and inert munitions, for the purposes of training, practice, or competition.

Shooting Range. Any building, parcel of land, or other site at which firearms of any sort are regularly discharged, whether indoors or outdoors, including but not limited to target ranges, skeet ranges, training sites, and testing sites.

3-18-3 District Application

A firearms facility overlay district consists of lands designated by McKenzie County as being affected by the safety hazards attendant with a facility at which firearms are regularly discharged. This district is an overlay for other zoning districts. Each firearms facility overlay district is independent from all other firearms facility overlay districts.

3-18-4 Warning and Disclaimer of Liability

The degree of protection required by this Ordinance is considered reasonable for regulatory purposes and is based on the discretion of McKenzie County. This Ordinance does not imply that lands outside of the district are not subject to safety hazards attendant with a facility at which firearms are regularly discharged, nor does it imply that lands within the district are not subject to such safety hazards when used for the allowed and conditional uses therein. McKenzie County and its officers and employees disclaim all liability arising from such hazards or otherwise from a facility permitted within the district.

3-18-5 Permitted Uses

Within a firearms facility overlay district, the firearms facility for which the district was created is a permitted use to the extent it is constructed and operated in the manner described in the application to create the district. No other use of land within the firearms facility overlay district shall be

considered a permitted use, except for uses outside the jurisdiction of this Ordinance.

3-18-6 Conditional Uses

All uses that are, in the underlying district, either permitted uses or conditional uses shall be conditional uses within the firearms facility overlay district. A firearms facility other than the original firearms facility for which the overlay district was created shall also be a conditional use therein.

3-18-7 Application Requirements

All applications to create a firearms facility overlay district must include the following:

- (A) A description of the type of firearms facility that will be operated, including whether it will be an archery range, munitions range, shooting range, or specific combination thereof
- (B) The legal description of the parcel of land upon which the firearms facility will be operated
- (C) A detailed, to-scale site plan of the parcel that shows all buildings, earthworks, and other features relating to the use and safety of the facility
- (D) Detailed, to-scale plans of all buildings within which the facility will operate
- (E) The legal description of each parcel of land that will be included within the district along with the name and address of the record owner of each such parcel and proof that the record owner of each such parcel has been notified of the application and the date it will come up for public hearing by certified mail, which notice must clearly and expressly state that that person's land will, if the application is approved, be included within the district and will be subject to restrictions on its use
- (F) The legal description of each parcel of land that is, in whole or in part, less than one mile from any parcel of land that will be included within the district along with the name and address of the record owner of each such parcel and proof that the record owner of each such parcel has been notified of the application and the date it will come up for public hearing by certified mail
- (G) All regulations for the use of the facility

- (H) Evidence that the facility is capable of being operated according to its regulations
- (I) Evidence that the facility, if operated according to its regulations, does not pose any direct risk to any person or property upon any parcel of land that will not be included within the district
- (J) Evidence that the facility, if operated according to its regulations, does not pose an unreasonable risk to any person or property upon any parcel of land that will be included within the district
- (K) An agreement that the applicant and its heirs and assigns will indemnify and hold harmless McKenzie County and its officers and employees for all claims and liabilities arising from any safety hazards attendant with the facility for which the district was created
- (L) Emergency contact information to report legitimate safety concerns that the caller has reason to believe arise from activities at the firearms facility for which the district was created

3-18-8 Conditional Use Permit Application Requirements for Other Uses

All applications for conditional use permits for uses other than for a firearms facility within the firearms facility overlay district must include the following:

- (A) Proof that all record owners of parcels within the district where there are existing or approved firearms facilities have been notified of the application and the date it will come up for public hearing by certified mail.
- (B) Evidence that the proposed use will, if all currently existing or approved firearms facilities within the district are operated according to their regulations, result in an unreasonable risk to any person or property upon the parcel of land where the proposed use will occur.
- (C) An agreement that the applicant and its heirs and assigns will indemnify and hold harmless McKenzie County and its officers and employees for all claims and liabilities arising from any safety hazards attendant with any firearms facility within the district.

3-18-9 Performance Standards

All firearms facilities must, at all times, be operated according to the following minimum standards:

- (A) Compliance with all applicable federal, state, and local laws.

- (B) Compliance with all specifications, standards, and procedures specified in the application to create a firearms facility overlay district or for a conditional use permit for a firearms facility.
- (C) Strict enforcement of all regulations that were proposed with the application to create a firearms facility overlay district or for a conditional use permit for a firearms facility.
- (D) Adequate security measures reasonably to ensure compliance with all federal, state, and local laws by all persons entering the facility, lawfully or unlawfully, and reasonably to ensure the apprehension of any person who violates federal, state, or local law while at the facility, lawfully or unlawfully.
- (E) Taking reasonable measures to ensure that the emergency contact information provided to McKenzie County is kept up-to-date and will reach a live person twenty-four hours per day, three hundred sixty-five days per year, to respond to legitimate safety concerns that arise from activities at the facility.
- (F) Notifying, as soon as is practicable, the McKenzie County Sheriff of each call placed to the emergency contact telephone number.
- (G) Providing a detailed incident report as requested by the McKenzie County Sheriff and each time the owner or operator of the facility has reason to believe that an injury or damage to person or property has occurred as a result of activities at the facility, as soon as practicable after the owner or operator of the facility learns of or reasonably should have learned of the injury or damage.
- (H) Ensuring that there is, at all times, a person designated to speak with law enforcement on behalf of the facility and that the McKenzie County Sheriff is, as soon as is practicable, notified of all changes in this designation.

3-18-10 Amendments

The operator of the firearms facility for which the district was created may apply to amend the district, including making changes to the firearms facility for which the district was created and adding or removing parcels of land from the district. An application to amend a firearms facility overlay district must include the following:

- (A) A description of the proposed changes in the firearms facility

- (B) A description of the proposed changes to the site plan
- (C) A description of the proposed changes to the buildings within which the facility will operate
- (D) Proof that the record owner of each parcel of land currently within the district has been notified of the application and the date it will come up for public hearing for certified mail
- (E) The legal description of each parcel of land that will be added to the district along with the name and address of the record owner of each such parcel and proof that the record owner of each such parcel has been notified of the application and the date it will come up for public hearing by certified mail, which notice must clearly and expressly state that that person's land will, if the application is approved, be included within the district and will be subject to restrictions on its use
- (F) The legal description of each parcel of land that is not within the district and will not be added to the district and that is, in whole or in part, less than one mile from any parcel of land that will be added to the district along with the name and address of the record owner of each such parcel and proof that the record owner of each such parcel has been notified of the application and the date it will come up for public hearing by certified mail
- (G) All proposed changes to the regulations for the use of the facility and, if any such changes are proposed:
 - (1) Evidence that the facility is capable of being operated according to its regulations
 - (2) Evidence that the facility, if operated according to its regulations, does not pose any direct risk to any person or property upon any parcel of land that will not be included within the district
 - (3) Evidence that the facility, if operated according to its regulations, does not pose an unreasonable risk to any person or property upon any parcel of land that will be included within the district
- (H) An agreement that the applicant and its heirs and assigns will indemnify and hold harmless McKenzie County and its officers and employees for all claims and liabilities arising from any safety hazards attendant with the facility for which the district was created

Sec. 3-19 Public-Use Airport Overlay District

3-19-1 Intent

The intent of this district is to restrict the height of structures and objects of natural growth and otherwise regulate the use of property in the vicinity of public-use airports.

3-19-2 Definitions

For the purposes of **Section 3.13** of this Ordinance, the following definitions apply:

Airport. A public-use airport for which a Public-Use Airport Overlay District is established by McKenzie County.

Airport Elevation. The highest point of an Airport's usable landing area measured in feet from mean sea level.

Approach End of Runway. The first portion of the Runway available for landing. If the Runway threshold is displaced, the displaced threshold serves as the Approach End of Runway.

Approach Surface. A surface longitudinally centered on the extended centerline of each Instrument Runway, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope. The approach surface is five hundred (500) feet wide at the edge adjacent to the Primary Surface and expands outward uniformly to a width of three thousand five hundred (3,500) feet at a horizontal distance of ten thousand (10,000) feet from the primary surface.

Conical Surface. A surface extending outward and upward from the periphery of the Horizontal Surface at a slope of 20 to 1 for a horizontal distance of four thousand (4,000) feet.

Departure End of Runway. The end of the Runway available for the ground run of an aircraft departure.

Hazard to Air Navigation. An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Height. The elevation above mean sea level.

Horizontal Surface. A horizontal plane one hundred fifty (150) feet above the Airport Elevation that is established by swinging arcs ten thousand (10,000) feet in radius from the center of each end of the primary surface of each

runway and connecting the adjacent arcs by drawing lines tangent to those arcs.

Instrument Runway. A Runway having an existing, approved, or planned instrument approach procedure.

Obstruction. Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in **Section 3.13** of this Ordinance.

Primary Surface. A surface longitudinally centered on a Runway. The Primary Surface extends two hundred (200) feet beyond the Approach End of Runway / Departure End of Runway point for each Runway. The width of the Primary Surface shall be established for each Runway at each Airport for which a Public-Use Airport Overlay District is established.

Runway. A defined area on an Airport prepared for landing and takeoff of aircraft along its length.

Structure. An object, including a mobile object, constructed or installed by man, including but without limitation buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

Transitional Surface. A surface extending outward at a 90-degree angle to the Runway centerline and the Runway centerline extended at a slope of 7 to 1 from the sides of the Primary Surface and Approach Surface to where they intersect the Horizontal Surface and Conical Surface.

Tree. Any object of natural growth.

3-19-3 District Application

A public-use airport overlay district consists of lands designated by McKenzie County for an Airport. The specific dimensions, slopes, and measurements specified in this section may be modified for the overlay district created for an Airport, as part of the application for the overlay district or an application to amend the overlay district.

3-19-4 Airport Zones

Each public-use airport overlay district consists of certain zones, which are hereby created and established and include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Airport for which the district is created. Land located in more than one of the following zones is considered to be only in the

zone with the most restrictive height limitation. The zones are established and defined as follows:

- (A) **Approach Zone:** The area covered by the Approach Surface.
- (B) **Transitional Zone:** The area covered by the Transitional Surface.
- (C) **Horizontal Zone:** The area covered by the Horizontal Surface, exclusive of the primary, approach, and transitional zones.
- (D) **Conical Zone:** The area covered by the Conical Surface.

3-19-5 Airport Zone Height Limitations

- (A) **Height Standards:** Except as otherwise provided in this [Section 3.13](#), no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this [Section 3.13](#) to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:
 - (1) **Approach Zone.** The height of the Approach Surface.
 - (2) **Transitional Zone.** The height of the Transitional Surface.
 - (3) **Horizontal Zone.** The height of the Horizontal Surface.
 - (4) **Conical Zone.** The height of the Conical Surface.
- (B) **Exceptions.** Outside of the Approach Zone and Transitional Zone, nothing in this [Section 3.13](#) shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree, to a height up to fifty (50) feet above the natural surface of the land.

3-19-6 Use Restrictions

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this [Section 3.13](#) in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

3-19-7 Nonconforming Uses

- (A) **Regulations Not Retroactive.** The regulations prescribed in this **Section 3.13** shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this **Section 3.13**, or otherwise interfere with the continuance of nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this **Section 3.13**, and is diligently prosecuted.
- (B) **Marking and Lighting.** Notwithstanding the preceding provision of this **Section 3.13.7**, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Planning Director to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the owner or operator of the airport.

3-19-8 Permits

- (A) **Future Uses.** Except as specifically provided in **1, 2, and 3** hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone created by this **Section 3.13** unless a permit therefor shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this **Section 3.13** shall be granted unless a variance has been approved in accordance with **Section 3.13.8(4)**.
 - (1) In the horizontal zone and conical zone, no permit shall be required for any tree or structure less than one hundred (100) feet of vertical height above the natural ground level, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

- (2) In the approach zone but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runway, no permit shall be required for any tree or structure less than one hundred (100) feet of vertical height above the natural ground level, except when such tree or structure would extend above the height limit prescribed for such approach zones.
 - (3) In the transition zone beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than one hundred feet of vertical height above the natural ground level, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zone.
 - (4) Nothing prescribed in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure or growth of any tree in excess of any of the height limits established by this [Section 3.13](#) except as set forth in [Section 3.13.5](#).
- (B) **Existing Uses.** No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this [Section 3.13](#) or any amendments thereto or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.
- (C) **Nonconforming Uses Abandoned or Destroyed.** Whenever the Planning Director determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the regulations of this [Section 3.13](#).
- (D) **Variances.** Any person desiring to erect or increase the height of any structure, permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this [Section 3.13](#), may apply to the Board of Adjustment for a variance from such regulations. The application for a variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will

result in unnecessary hardship and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this **Section 3.13**. Additionally, no application for a variance to the requirements of this **Section 3.13** may be considered by the Board of Adjustment unless a copy of the application has been furnished to the owner and operator of the airport for advice as to the aeronautical effects of the variance. If the owner or operator of the airport does not respond to the application within fifteen (15) days after receipt, the Board of Adjustment may act on its own to grant or deny said application.

- (E) **Obstruction Marking and Lighting.** Any permit or variance granted, may, if such action is deemed advisable to effectuate the purpose of this **Section 3.13** and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Board of Adjustment, this condition may be modified to require the owner to permit the owner or operator of the airport, at its own expense, to install, operate, and maintain the necessary markings and lights.