

## **Subdivision Ordinance No. 2022-02**

### **Butte County, South Dakota**

**Titled: “An Ordinance of Butte County providing regulations for the Subdivision of Land”.  
The Governing Body of Butte County does hereby ordain as follows:**

#### **ARTICLE I AUTHORITY AND JURISDICTION**

##### ***Section 1 - Authority:***

Pursuant to the authority granted by SDCL Chapter 11-2, the following regulations are hereby adopted by the County Commissioners of Butte County, South Dakota.

##### ***Section 2 - Statement of Purpose:***

The purpose of this Ordinance is to (1) promote the orderly division and development of all land within Butte County; (2) promote the health, safety, and welfare of occupants of newly subdivided lands as well as adjoining property owners and occupants; (3) to protect the interest of agricultural producers of Butte County; and (4) to consider the social, economic, health, and environmental impact to Butte County, including the vested property rights of Butte County residents in the consideration of further subdivision within the County.

##### ***Section 3 - Jurisdiction:***

This Ordinance shall govern the subdivision of all land within Butte County except for land located within a municipality. Land lying within any extra-territorial jurisdictional area(s), as per SDCL 11-6-26, will be required to comply with both this Ordinance and any applicable municipalities' subdivision regulations. This Ordinance shall also apply to further subdivision of lands which have been previously subdivided prior to the adoption of this Ordinance.

#### **ARTICLE II DEFINITIONS**

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

For the purposes of this Ordinance, and to carry out the provisions and intentions as set forth herein, certain words, terms and phrases are to be used and interpreted as defined hereafter. Words used in the present tense shall include the future tense; words in the singular number

include the plural, and words in the plural number include the singular; the word “person” includes a firm, partnership, or corporation as well as an individual; the term “shall” denotes mandatory actions whereas the word “may” denotes optional actions.

ARSD: Administrative Rules of South Dakota.

BOARD: The Butte County Board of County Commissioners.

BOARD OF ADJUSTMENT: The body appointed by the Board to consider variances to the regulations adopted herein and acting in accordance with SDCL 11-2-49–61 (inclusive). The Board is designated as the Board of Adjustment in Butte County.

CHECKLIST: The form which itemizes the proposed provisions, such as utilities, access, etc., of a subdivision. There is a Sketch Checklist and a Preliminary Checklist. Both can be obtained from the Planning Department or from the website: [www.buttesd.org/planning](http://www.buttesd.org/planning). The Checklist must be signed by the property owner(s) and the Planning Director.

COMMUNITY WATER SYSTEM: A water system that has at least 15 service connections for year-round residents or that serves at least 25 year-round residents and, for the purpose of this Ordinance, serves 10 or more lots.

DANR: South Dakota Department of Agriculture and Natural Resources.

DEDICATED PRIVATE ROAD: A road leading to or within a subdivision, which is specifically designed and built according to Butte County Highway standards, and which is reflected on the plat as not available or intended for public use, or which use is limited to serve property within the subdivision.

DEDICATED PUBLIC ROAD: A road leading to or within a subdivision, which is specifically designed and built according to Butte County Highway standards, and which is reflected on the plat as open to the public.

DENSITY: The ratio of lot size to the number of lots created in a subdivision.

- LOW DENSITY: A subdivision created by division of land into one or more lot(s), where each lot contains five (5) or more acres.
- MEDIUM DENSITY: A subdivision created by division of land into one or more lot(s), where the smallest lot contains one (1) or more acres, but less than five (5) acres.
- HIGH DENSITY: A subdivision created by division of land into one or more lot(s), where any lot contains less than one (1) acre, but ten thousand (10,000) square feet or more.

**DISCLOSURE STATEMENT:** A recordable document listing provisions for the subdivision required for the approval of the Final Plan and Plat.

**EPA:** U.S. Environmental Protection Agency.

**FINAL PLAN:** The documentation required by Article IV – Section 3 to accompany the Final Plat.

**FINAL PLAT:** A plat of the proposed subdivision which meets the requirements of Article IV – Section 3 and is in the proper form for recording at the office of the Register of Deeds of Butte County.

**GOVERNING BODY:** The Butte County Board of County Commissioners.

**IMPROVEMENTS:** Any movement or alteration of the natural landscape, including building roads, infrastructure, or structures.

**LETTER OF INTENT:** A written statement that provides sufficient detail to clearly state the nature and purpose of a proposed subdivision of land, and which will discuss or address any unusual or unique circumstances expected with the subdivision of land.

**LOT:** A part of subdivided lands having established boundaries. The term shall include tracts and parcels.

**MOBILE HOME:** Any vehicle, trailer, or portable dwelling which has a manufacturer's serial number, a certificate of title and which is constructed to be towed on its own chassis or propelled under its own power, having either a permanent foundation or supported by wheels, jacks, or blocks, connected to utilities, or designed or constructed to permit occupancy of one (1) or more persons for dwelling purposes. This vehicle, trailer, or portable dwelling structure may consist of one (1) or more units that can be telescoped when towed and expanded later for additional capacity, or two (2) or more units separately towable but designed to be joined as one (1) integral unit. Nothing in this definition shall be construed so as to include prefabricated precut dwelling units or those manufactured in sections or parts away from the site and transported thereto for erection or assembly, provided that when completely erected, such prefabricated, precut, or manufactured dwelling unit shall be placed on and connected to a permanent foundation and in all respects comply with the Uniform Building Code, 1967 Edition and Amendments, thereto recommended by the International Conference of Building Officials. (Refer to Butte County Mobile Home Parks Ordinance.)

**MOBILE HOME PARK:** A parcel of land owned, leased, or controlled by an individual, corporation, partnership, joint venture, or limited partnership that contains more than five (5)

mobile homes on not less than five (5) acres. (Refer to Butte County Mobile Home Parks Ordinance.)

MUNICIPALITY: A city or town, however organized.

NON-CONVENTIONAL WASTEWATER SYSTEM: An on-site wastewater system, other than a conventional septic tank and absorption system, designed to provide adequate wastewater treatment or containment.

PERMANENT FOUNDATION: As this term relates to Mobile Homes, shall mean a foundation meeting the standards of the Federal Housing Administration, after all bolted-on tongue, hitch assemblies, and running gears have been removed.

PHASED SUBDIVISION: A subdivision where the Subdivider proposes or intends to immediately subdivide a portion of the property but will subdivide additional portions of the property over time.

PLANNING COMMISSION: The Butte County Planning Commission.

PLANNING DIRECTOR: The person appointed by the Butte County Board of County Commissioners to direct the Butte County Planning Department, or their designee.

PRELIMINARY PLAN: All supporting documents provided by the Subdivider to permit the evaluation of the proposed subdivision in relation to the requirements of Article IV – Section 2, to be submitted along with the Checklist.

PRELIMINARY PLAT: The plat of a proposed subdivision, drawn and submitted in accordance with the requirements of Article IV – Section 2.

PUBLIC WATER SYSTEM: For the purpose of this Ordinance, a water system operated by the City of Belle Fourche or Butte-Meade Sanitary District.

SDCL: South Dakota Codified Law.

SKETCH MAP: The initial map illustrating the basic layout of a proposed subdivision drawn in accordance with Article IV – Section 1. ***Hand-drawn diagrams are not submissible.***

SKETCH PLAN: A summary outlining how a proposed subdivision of land will comply with the requirements of Article IV – Section 1 to be submitted in the form of the Checklist.

**SPECIAL FLOOD HAZARD AREA:** The land in the floodplain subject to a one (1) percent or greater chance of flooding in any given year as designated by Federal Emergency Management Agency (FEMA). (Refer to Butte County Flood Damage Prevention Ordinance.)

**STRUCTURE:** Anything erected, constructed, enlarged, altered, repaired, moved, improved, or converted. The term "Structure" does not include:

- Agricultural or residential fences,
- Any non-commercial structure under 100 square feet,
- Pools,
- Retaining walls, or
- Roofless animal containment or shelter (windbreak).

**SUBDIVIDER:** The person(s), firm(s), or corporation(s) owning or purchasing land in the process of being subdivided.

**SUBDIVISION:** Any division of land into two or more lots, tracts, or parcels describing property by survey and being subdivided for the purpose of sale, lease, or development, immediate or future, and includes re-subdivision.

**SURETY:** A form of security, including a cash deposit or surety bond, in an amount and form satisfactory to the Board.

### **ARTICLE III EXCEPTIONS**

If any of the following situations apply, the Planning Director will present the Sketch Plan and Map, and Letter of Intent to the Planning Commission to determine if it qualifies for an exception. If the Planning Commission determines that it does qualify, the Subdivider shall be exempt from all Preliminary Plan and Plat requirements, including the requirement to hold a public hearing. Proposed lot(s) must still comply with all Butte County Ordinances, including, but not limited to, setbacks, water, and wastewater requirements.

1. Division of land for purposes of road or utility rights-of-way or cemeteries.
2. A sale, lease, or gift of agricultural land (qualifies for Agricultural under SDCL 10-6-112) to be used for agricultural purposes only.
3. A sale of land of 40 or more contiguous acres, to be occupied as a single-family residence only.

4. Any subdivision of agricultural land (qualifies for Agricultural under SDCL 10-6-112) for the primary purpose of providing residential housing for family member(s) engaged in agriculture.
5. Current residential owners, who own 20 acres or more, requesting a division of land at the request of a financial institution or mortgage company because the financial institution or mortgage company will only loan money and accept a mortgage on a smaller tract of land.
6. An alteration of lot line(s) that does not increase the overall number of lots.

## **ARTICLE IV**

### ***PROCEDURE FOR SUBDIVIDING***

Subdividing is a three-step process unless an exception is granted by the Planning Board (see Article III).

#### ***Section 1 - Sketch Plan and Map & Letter of Intent***

Any person seeking to subdivide property shall first submit to the Planning Director a Sketch Plan and Map and Letter of Intent for the purpose of review by the Planning Commission, and to assist in establishing the legality of the proposed subdivision, determining if any unusual conditions or circumstances may arise in development of the subdivision, and to answer questions and assist the Subdivider in the application of this Ordinance.

#### ***1. Submittal Requirements***

A. The Sketch Plan shall consist of the following, at a minimum:

1. Subdivision name and description.
2. Name(s), address(es), and telephone number(s) of owner(s) and Subdivider(s) and any existing mortgage holders.
3. Proposed water supply and distribution system.
4. Present use of land contained within the proposed subdivision.
5. Present use of adjacent land.
6. Proposed improvement to be installed or constructed by the developer.
7. Proposed wastewater disposal system and, if known, soil types and suitability of soils for the proposed wastewater disposal system.
8. Type of structures and density of structures to be contained within the subdivision.

B. The Sketch Map shall include the following, at a minimum:

1. Subdivision name and description.
2. Maps showing the general location of the property in context with surrounding properties. Nearby landmarks should be clearly defined.
3. Proposed property boundaries.
4. Significant natural and man-made features of the proposed subdivision.
5. Lot and street layout (with acreages to one-half (1/2) acre).

## ***2. Planning Commission Review***

After review and consideration of the requirements set forth in this Ordinance, the Planning Commission may:

- Approve the Sketch Plan and Map,
- Approve the Sketch Plan and Map with contingencies to comply with the requirements of this Ordinance,
- Deny the Sketch Plan and Map with explanation.

## ***Section 2 - Preliminary Plan and Plat***

After the Planning Commission approves the Sketch Plan and Map, the Preliminary Plan and Plat may be submitted. The Subdivider shall comply with all the requirements of this Ordinance and any contingencies required by the Planning Commission.

### ***1. Public Hearing Requirements and Agency Notification***

- A. Once a Preliminary Plat and Plan have been submitted to the Planning Director, a public notice advertising the date, time and location for a public hearing shall be published once each week for two consecutive Wednesdays prior to the hearing in the legal newspaper of Butte County. The notice shall describe the general location, nature, and extent of the proposed subdivision, that copies of the Preliminary Plan and Plat may be inspected at the Butte County Planning Department, and that any interested person(s) may appear at the public hearing to comment or may submit written comments on the proposed subdivision prior to the public hearing.
- B. Written notice of the proposed subdivision, in the form of a certified letter with return receipt, shall also be mailed by the Subdivider, or their representative, to all adjacent landowners a minimum of 10 days prior to the public hearing. A copy of the certified letter receipt shall be provided to the Planning Department prior to the public hearing. The written notice shall contain all of the same information as specified for the public notice in A. above.

C. The Planning Director may distribute copies of the Preliminary Plan and Plat, or portions thereof, to those agencies and people having possible interest or concern related to the proposed subdivision. Any comments received shall be shared with the Planning Commission. Such agencies, when applicable, may include, but are not limited to, the following:

- Appropriate school districts,
- Affected municipalities,
- Utility companies,
- South Dakota Department of Transportation,
- Butte County Highway Department,
- USDA Natural Resources Conservation Service,
- South Dakota Department of Agriculture and Natural Resources,
- South Dakota Department of Health,
- Local fire departments, police departments, ambulance services, Butte County Sheriff's Office and Emergency Management, and
- Irrigation districts or ditch companies.

## **2. Submittal Requirements**

A. The Preliminary Plan shall include, at a minimum:

1. Name of proposed subdivision.
2. Name(s), address(es), and telephone number(s) of the Subdivider(s).
3. Name, address, and telephone number of the person responsible for subdivision design, improvement designs and surveys.
4. Present usage within the proposed subdivision and present use of adjacent land.
5. Written reports on water and wastewater systems establishing compliance with DANR requirements including, but not limited to, those contained in ARSD 74:02:01, 74:04:09, and 74:53:01.
6. Letters from utility, water, and sewer/wastewater providers confirming available services, if applicable.
7. Proposed improvements to be installed or constructed by the Subdivider including roads, water systems, wastewater systems, utilities, or other improvements to subdivision property.
8. Type of structures and density of structures to be contained within the subdivision.
9. Reports or certifications establishing compliance with all Design and Plan Standards contained in Article V, and any contingencies or requirements of the Sketch Plan and Map approval.
10. The appropriate road or highway authority's written comments regarding access points, if applicable.



B. The Preliminary Plat shall be prepared by a South Dakota registered, professional land surveyor and include, at a minimum:

1. Date, north arrow, and graphic scale.
2. Location of the property by legal description.
3. Names, addresses, and telephone numbers of all adjacent landowners.
4. Location of existing or proposed development, utilities, power lines, easements and rights-of-way within the proposed subdivision and adjacent area.
5. Location of drainage ways and areas subject to flooding clearly depicted, including FEMA-designated Special Flood Hazard Areas, within the proposed subdivision and adjacent area.
6. Topography of the area displayed in not more than twenty (20) foot contour intervals when the terrain of the proposed area could affect its development.
7. Location, dimension, and area of all proposed and existing lots. All lots and blocks shall be numbered or lettered consecutively.
8. Names, locations, and widths of all existing and proposed streets or roads within the proposed subdivision and adjacent area, together with a map showing the point of connection with existing federal, state and/or county roads.
9. Location and dimensions of all land proposed to be dedicated or reserved for parks, schools, or other public uses.
10. If any existing structures or improvements, these must be shown with setbacks indicated. Setbacks for structures shall be at least 50 feet from the front of the lot, and at least 25 feet from the sides and rear boundaries of each lot. (Regarding setbacks for water and wastewater systems, refer to ARSD.)

C. A draft of covenants shall be provided to be recorded and run with the land, identifying, and providing for, at a minimum:

1. A minimum of twenty (20) years that the covenants will be in effect.
2. Limiting amendment/dissolution of covenants without the approval of the Planning Commission and Board. A public hearing shall be required for any amendments to, or dissolution of, existing covenants, following the same notification procedures as for a Preliminary Plan and Plat.
3. The uses allowed on each lot within the subdivision. The primary use shall be designated as single family residential, unless otherwise indicated.
4. The types of homes and other structures permitted within the subdivision.
5. Any restrictions the Subdivider wishes to impose to ensure the desirability of the subdivision, including, but not limited to:
  - Property maintenance,
  - Accumulation of junk/debris/refuse,
  - Animal/pet care and control, or
  - Perimeter fence construction/maintenance (refer to SDCL 43-23).

6. The Planning Commission may require additional provisions if deemed necessary to serve and protect the public interest in safety, health, and welfare.

#### D. Homeowners' or Landowners' Association Requirements

1. Any subdivision consisting of three (3) or more lots shall show provision for the creation of a homeowners' or landowners' association, or equivalent. A copy of the by-laws shall be provided to be recorded with the Final Plat. The homeowners' or landowners' association, or equivalent, shall include covenants that will run with the land. Phased subdivisions require homeowners' or landowners' associations, or the equivalent, that run with the land on ***all*** phases of the subdivision, even when the phases of the subdivision are approved at different times, and despite the number of lots in each phase.
2. The homeowners' or landowners' association, or equivalent, through its constitution or by-laws shall, at a minimum, provide for the following:
  - a. Provisions for mandatory membership for all owners of lots within the subdivision.
  - b. Provisions to provide for repair and maintenance of common areas.
  - c. Provisions for enforcement of covenants.
  - d. Provisions for adequate funding, if required, for enforcement of covenants and internal rules adopted by the association.
  - e. Association fees should be listed and described as to allocations of funds, penalties for non-payment, and the procedure for change in fees.
  - f. No homeowner's or landowner's association's covenants or agreements, or the equivalent, may be amended until a majority of lots within the proposed subdivision have been sold, and thereafter, may be amended according to the terms of the covenants, articles of incorporation, and/or by-laws.
  - g. Provisions requiring all property owners within the subdivision to mark or identify each improved property in accordance with rules adopted by the Butte County E-911 Coordinator.
  - h. Provision for assessment of individual lots for the purpose of maintenance of common roads, water systems, and any other common improvements within the subdivision.
  - i. Provisions for receiving and processing complaints.
  - j. Provisions for dissolution of the homeowners' or landowners' association. No homeowners' or landowners' association, or the equivalent, may be dissolved without a public hearing, following the same notification procedures as for a Preliminary Plan and Plat, and approval of the Planning Commission and the Board.

### **3. *Public Hearing and Planning Commission Review***

A public hearing shall be held before the Planning Commission at the same meeting the Preliminary Plan and Plat will be considered. At the public hearing, an opportunity shall be provided for any interested person to comment on the proposed subdivision.

After review and consideration of the requirements set forth in this Ordinance, and any public comments received, the Planning Commission may:

- Approve the Preliminary Plan and Plat,
- Approve the Preliminary Plan and Plat with contingencies to comply with the requirements of this Ordinance, or
- Deny the Preliminary Plan and Plat with explanation.

### ***Section 3 - Final Plan and Plat***

After the Planning Commission approves the Preliminary Plan and Plat, or Sketch Plan and Map for Exceptions, the Final Plan and Plat may be submitted. The Subdivider shall comply with all requirements of this Ordinance and any contingencies required by the Planning Commission.

#### **1. *Submittal Requirements***

A. The Final Plan shall include, at a minimum:

1. Written narratives and/or supporting documentation verifying compliance with this Ordinance and any contingencies required with approval of the Preliminary Plan and Plat, or Sketch Plan and Map, by the Planning Commission.
2. Written narratives establishing compliance with DANR requirements pertaining to water and wastewater systems, including, but not limited to, those contained in ARSD 74:02:01, 74:04:09, and 74:53:01.
3. Reports or certifications establishing compliance with all Design and Plan Standards contained in Article V.

B. The Final Plat shall be prepared by a South Dakota registered, professional land surveyor and include, at a minimum:

1. An original or reproducible final plat drawn in accordance with SDCL 11-3-10 (preferred size is 11"x17"). The scale shall be one (1) inch equals one hundred (100) feet for tracts under forty (40) acres, and one (1) inch equals four hundred (400) feet for tracts over forty (40) acres.
2. The boundary lines of the subdivision, including distances and angles or bearings and all section lines.

3. Street lines, pedestrian ways, lots, reservations, easements, and areas to be dedicated to public use, to include acreage contained in each.
4. All roads, streets, and alleys shall be designated as "DEDICATED PUBLIC RIGHT-OF-WAY" or "DEDICATED PRIVATE ROAD", except for private driveways.
5. Location of drainage ways and areas subject to flooding clearly depicted, including FEMA-designated Special Flood Hazard Areas, within the proposed subdivision and adjacent area.
6. The length of all straight lines, angle of intersection, length of curves and radius. All dimensions of each lot shall also be shown thereon. All dimensions shall be shown in feet and decimals of a foot. The boundaries of the property locations and the acreage of each lot to two decimal places shall be shown.
7. Number or letter to identify each lot and block.
8. Minimum building and setback lines on all lots and other sites. Setbacks for structures shall be at least 50 feet from the front of the lot, and at least 25 feet from the sides and rear boundaries of each lot. (Regarding setbacks for water and wastewater systems, refer to ARSD.)
9. Easement lines for services or utilities.
10. Subdivision name, scale, north point, and date.
11. Signature blocks signed by the land surveyor, landowner(s), Treasurer, Director of Equalization, and highway authority, or any other applicable entities.
12. A notation specifying lots where non-conventional wastewater systems will be required, if applicable.

C. Disclosure Statement (Not required for Exceptions per Article III)

1. A Disclosure Statement shall be submitted for review by the Planning Commission prior to approval of a Final Plat. The Disclosure Statement shall be recorded with the Register of Deeds, along with the Final Plat. Copies of Disclosure Statements shall be provided by the Subdivider to each prospective purchaser prior to entering into any binding sale agreement. Disclosure Statements shall clearly and concisely present all the facts related to the following items, at a minimum:
  - a. Street construction and maintenance (including snow removal responsibility).
  - b. Water supply - design criteria and maintenance responsibilities.
  - c. Wastewater disposal - design criteria and maintenance responsibilities.
  - d. Restrictive covenants - where copies are available and describe how they are enforced and the manner in which amendments to any covenant(s) may be made.
  - e. Homeowners' association fees, if applicable - should be listed and described as to allocation of funds, penalties for non-payment, and the procedure for change in fees.
  - f. Garbage disposal - statement to define financial and physical responsibilities.

- g. Street and traffic control signs and devices - statements to define construction and maintenance responsibilities.
- h. Street lighting, if required - define construction and maintenance responsibilities.
- i. Culverts and drainage - define construction and maintenance responsibilities.
- j. Electricity - statement to define financial responsibility for construction and connections.
- k. Postal Service - define level of service and responsibility of homeowner and developer as concerns mailbox construction and maintenance.

## ***2. Review and Recording Requirements***

- A. The Planning Commission shall forward the Final Plan and Plat, accompanied by their recommendation, with all supporting documents and public comments to the Board for their consideration. The Board may:
  - Approve the Final Plan and Plat,
  - Approve the Final Plan and Plat with contingencies to comply with the requirements of this Ordinance, or
  - Deny the Final Plan and Plat with explanation.
- B. To ensure that the Subdivider installs or constructs those improvements listed in Article V and/or required by the Planning Commission, the Final Plat will not be approved until such improvements are completed or provided for by surety.
- C. No Final Plat will be executed by the Chairman of the Board until all other signatures required by law, and/or this Ordinance, shall have been obtained.
- D. Upon approval by the Board, and all contingencies having been met and all applicable filing fees having been paid by the Subdivider, the Planning Director will forward the Final Plat to either the appropriate municipality, if applicable, or directly to the Register of Deeds to be recorded, including signed and notarized originals of the following, as required:
  - Covenants,
  - Disclosure Statement, and
  - Homeowners' or Landowners' Association, or equivalent, Articles of Incorporation and/or By-Laws.

## ***Section 4 - Additional Provisions***

1. The Planning Commission or the Board may adopt official forms for use in carrying out any provisions of this Ordinance.
2. The Subdivider shall pay a non-refundable fee of \$100.00 per lot within the proposed subdivision at the time of submittal of the Preliminary Plan and Plat (or Final Plan or Plat for plats qualifying for an Exception). Phased subdivisions will pay only for the lots currently being proposed.
3. The Planning Commission or the Board may impose additional requirements or restrictions that will serve and protect the public interest in safety, health, and welfare, but only under extraordinary circumstances.
4. If a Subdivider, or any aggrieved person, disagrees with the Planning Commission's decision, they may appeal directly to the Board. Any appeal shall be filed with the Planning Department within five (5) business days from the date of decision by the Planning Commission.
5. Any approved plans and/or plats shall be effective for one (1) year from the date of approval by the Planning Commission.

## **ARTICLE V**

### ***DESIGN AND PLAN STANDARDS***

The Design and Plan Standards set forth in this Ordinance shall be considered as minimum requirements and may be exceeded by the Subdivider.

#### ***Section 1 - General Design and Plan Standards***

The following standards shall be followed when planning a subdivision:

1. Topsoil and natural vegetation shall be disturbed as little as possible. Topsoil removed in the grading of the subdivision shall not be used as spoil but shall be redistributed over the disturbed area. All disturbances shall be stabilized by seeding or planting within the next growing season.
2. Existing features which would enhance the development of the area, such as trees, historic sites, and similar irreplaceable assets, shall be preserved in the design of the subdivision.
3. Land adjacent to a proposed subdivision shall not be left land-locked by such proposed subdivision.

4. Each lot shall be provided with dedicated access to a street.
5. Easements for utilities and drainage ways shall be provided.
6. For areas lying within a FEMA-designated Special Flood Hazard Area where proposed development will occur, the Subdivider shall be required to show the Planning Commission and potential buyers remedial actions being taken, such as a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), or Elevation Certificate applications, except for uses that are compatible with such an area, such as recreational uses, parks, or other purposes and uses permitted by the Butte County Flood Damage Prevention Ordinance.
7. Land shall not be subdivided in a manner which omits part of the original tract to avoid otherwise necessary improvements, such as drainage, access, utilities, etc.
8. Street names shall not duplicate by spelling or sound or otherwise be confused with the names of existing streets. Such names shall also comply with any E-911 standards.
9. When determining individual lot sizes within a proposed subdivision, the following standards shall be followed for health and safety reasons:
  - a. If a lot is to have its own well and wastewater system, the minimum lot area is five (5) acres, (Low Density).
  - b. If a lot is serviced by either a public water or sewer system, the minimum lot area is one (1) acre, (Medium Density).
  - c. If a lot is serviced by both public water and sewer systems, the minimum lot area required is ten thousand (10,000) square feet, (High Density).
  - d. If a lot is serviced by a public water system and not serviced by a public sewer system, but the wastewater generated on that lot is collected in a holding tank, the minimum lot area is one (1) acre.
10. Every subdivision consisting of three (3) or more lots shall create and maintain a homeowners' association, landowners' association, or equivalent, prior to the approval of the Final Plan and Plat (see Article IV).
11. If the subdivision is located within the boundaries of an irrigation district, or within lands served by a ditch, irrigation company or association, or by an unorganized ditch, evidence shall be provided in writing that the plan has been approved by the district board, company, or association, or the remaining appropriators in the case of an unorganized ditch.

12. Where an irrigation ditch or canal traverses land proposed for subdivision, evidence shall be provided that provisions have been made to ensure access to the ditch for maintenance and operational purposes.

## ***Section 2 - Design Standards for Water and Wastewater Systems***

The following standards are to be used when designing water and wastewater systems within a proposed subdivision:

### ***1. Water System Standards***

All water systems shall be defined, designed, permitted, installed, constructed, and maintained in accordance with DANR requirements (refer to SDCL Title 34A and ARSD 74:02, 74:04, and 74:53).

- A. Individual Water Systems: For subdivisions with fewer than ten (10) lots (and known to have fewer than 15 service connections), individual water systems are allowed.
  1. Where individual water systems, such as wells, are proposed, the Subdivider shall demonstrate the availability of an adequate supply of potable water suitable for human consumption.
  2. Where individual water systems are proposed, which include the use of cisterns and hauling potable water, the Subdivider shall demonstrate the availability of an adequate supply of potable water suitable for human consumption. The Subdivider shall also show that other adequate water systems are not able to be developed in accordance with DANR requirements.
- B. Community Water Systems: For subdivisions with ten (10) lots or more (or known to have 15 service connections or more), a community water supply and distribution system shall be required, unless a public water system is available.
  1. Community water systems shall undergo the New Water System Planning process with DANR and be designed in accordance with all DANR requirements. DANR approval of such shall be submitted by the Subdivider with the Preliminary Plan and Plat.
  2. Construction of community water systems shall also be in accordance with all DANR requirements and verification of such shall be submitted by the Subdivider with the Final Plan and Plat.



3. If a Subdivider is proposing to utilize an existing community water system, a letter from the water system shall be required verifying an adequate supply of potable water to serve the new subdivision.
- C. Public Water Systems: For subdivisions of any number of lots or service connections, a subdivision shall connect to a public water system, where available.
1. If access to a public water supply system and public water main is available within one-half (1/2) mile of a proposed subdivision, the Subdivider shall be required to connect to this system for the purpose of supplying potable water to every lot in the proposed subdivision, except where restricted by capacity of the public water supply system.
  2. Plans for connecting to a public water system and for water distribution within the subdivision shall be prepared by a licensed South Dakota engineer in accordance with all DANR requirements. The plans shall include a written certification verifying the adequacy and safety of the domestic water source intended to be used for the subdivision, and that the domestic water supply meets all local, state, and federal standards. Written approval of the plans by DANR shall be submitted by the Subdivider with the Preliminary Plan and Plat.

## **2. Wastewater System Standards**

All wastewater systems shall be defined, designed, permitted, installed, constructed, and maintained in accordance with DANR requirements (refer to ARSD 74:53) and the Butte County Wastewater Disposal Permit Ordinance.

- A. Where individual wastewater treatment systems will be used, sufficient information shall be provided to determine the suitability of soils for the safe installation of septic systems in accordance with DANR regulations, including, but not limited to, those contained in ARSD 74:53:01. Soil percolation tests shall be conducted by a DANR certified on-site wastewater system installer at a frequency of at least one (1) set of tests per lot. Written certification of the test results and the type of system(s) required to be installed on each lot shall be provided by the installer. For lots where non-conventional wastewater systems will be required, a notation shall be included on the Final Plat.
- B. Where groundwater or surface water concerns exist, the Planning Commission may require written certification from a licensed South Dakota engineer certifying as to the adequacy and safety of individual wastewater treatment systems in relation to the topography of the subdivision, the proposed population density, soil conditions, the

water sheds located on, or draining into or over, the proposed subdivision, and any other pertinent factors.

- C. Where a community wastewater system is proposed by the Subdivider, drawings shall be submitted providing sufficient information to ensure that the proposed wastewater disposal system meets county, state, federal, and other local governing authority standards. The plans shall include written certification by a licensed South Dakota engineer certifying as to the adequacy of the proposed system in relation to the topography of the subdivision, the proposed population density, soil conditions, the water sheds located on, or draining into or over, the proposed subdivision, and any other pertinent factors. Written approval by the DNR shall be submitted by the Subdivider with the Final Plat.

### ***Section 3 - Design Standards for Streets and Alleys***

The following standards are to be used when designing streets within a proposed subdivision:

1. The Subdivider must provide sufficient ingress/egress to allow for public safety. The Planning Commission will take into consideration fire mitigation, flood hazards, topography, and other safety considerations.
  - A. When the subdivision consists of one (1) to three (3) lots, there must be, at a minimum, one (1) point of ingress/egress.
  - B. When the subdivision consists of four (4) to nine (9) lots, the Planning Commission shall make the final determination as to the number of ingress/egress points required, taking into consideration the recommendations of Butte County Highway Superintendent, Sheriff's Office, and/or Emergency Management.
  - C. When the subdivision consists of ten (10) or more lots, there must be, at a minimum, two (2) points of ingress/egress.
  - D. Any secondary access shall be an all-weather road constructed with a 16-foot-wide driving surface and a minimum of six (6) inches of compacted gravel surface, with other design specifications approved by the Highway Superintendent and/or Emergency Management.
  - E. If the topography of the subdivision impedes required ingress/egress requirements, the Subdivider may request a variance (see Article VI).
  - F. If emergency ingress/egress will be provided by way of a private road, proof of easement agreements shall be provided.

- G. New subdivisions or phased subdivisions shall not use existing subdivisions' ingress/egress points, unless agreed upon by all parties concerned and approved by the Planning Commission.

## 2. Street and Alley Design

- A. All streets and alleys shall be constructed in accordance with the requirements and standards set forth in the currently adopted Butte County Road Policy.
- B. The following additional requirements apply:
  - 1. A minimum of six (6) inches of compacted gravel surface shall be applied to all streets in a proposed subdivision, unless the net developed area exceeds three (3) lots per acre, then an asphalt, concrete, or asphaltic concrete surface shall be required.
  - 2. Alleys, when provided, shall be at least fifteen (15) feet wide and surfaced with compacted gravel.
  - 3. The subdividing of land shall be such as to provide each lot with satisfactory access to an approved public road.

## ***Section 4 - Mobile Homes and Mobile Home Parks***

- 1. No subdivision shall permit the placement of any mobile home on any lot within a subdivision that is not placed upon a permanent foundation (see definition in Article II).
- 2. To handle the placement of mobile homes not on permanent foundations, Mobile Home Parks may be established (refer to Butte County Mobile Home Parks Ordinance).
  - A. Mobile Home Parks shall contain not less than ten thousand (10,000) square feet of lot area for each space provided on the site. The space ratio is to include hard surface access roads, auto parking, and recreation area.
  - B. There shall be a lot plan in detail showing the following:
    - 1. Common recreation space shall be provided at the rate of four hundred (400) square feet of space for each mobile home site, but in no case shall the common recreation space be less than ten thousand (10,000) square feet. This requirement may be waived if the Mobile Home Park abuts a public park.
    - 2. Fencing and screen planting on the premises, if required.
    - 3. Provisions for the removal of trash and garbage.

4. Utility service connections, including easements.
  5. Provisions for the lighting of roadways, driveways, and pedestrian walks, if applicable.
  6. Water supply and distribution systems (must be approved by the DANR and South Dakota Department of Health).
  7. Wastewater treatment and disposal systems (lots shall not be serviced by individual wastewater systems, unless in compliance with the density standards set forth in Article V, Section 1-9).
- C. The Mobile Home Park shall conform to all requirements of the South Dakota State Fire Code.

## **ARTICLE VI VARIANCES**

### ***Section 1 - Application and Review***

#### ***1. Application Requirements***

In some instances, a Subdivider may not be able to meet all the criteria laid out in this Ordinance. A Variance request may be submitted by the Subdivider in writing to the Planning Department, demonstrating all of the following factors apply:

- The reason for the Variance must be based on physical aspects of the lot or subdivision, such as physical surroundings, shape, or topography, unique to that particular property.
- Strict adherence to the regulations of this Ordinance would result in a particular hardship, as opposed to a mere inconvenience.
- The Variance will not be detrimental to the public welfare or injurious to other property or improvements.

In addition, the Subdivider shall submit a copy of all supporting documents and/or pictures, maps, or sketches, and pay a required \$100 non-refundable application fee.

## **2. Planning Commission Recommendation**

Following submittal of all required application items, the Planning Commission shall consider the Variance request at a regularly scheduled meeting. Taking into consideration the criteria for determining if a hardship exists (see Section 2), the Planning Commission shall make a recommendation to the Board of Adjustment to: approve the Variance, approve the Variance with contingencies, or deny the Variance with explanation.

## **3. Board of Adjustment Review**

After the Planning Commission makes their recommendation, the Board, convening as the Board of Adjustment, shall then consider the Variance request at a regularly scheduled meeting. A Variance shall only be granted in cases where a hardship exists (see Section 2). *Self-imposed hardships are not a valid reason for the approval of a Variance.* Approval of a Variance request requires a two-thirds (2/3) majority vote by the Board of Adjustment. The decision of the Board of Adjustment may be contested by any aggrieved person in accordance with the provisions of SDCL 11-2-61.

## **Section 2 - Hardship**

Where the Board of Adjustment finds that extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Subdivider, may result from strict compliance with these regulations, the Board of Adjustment may vary the requirements of this Ordinance, in accordance with SDCL 11-2-53, provided that:

- The Variance will not be contrary to the public interest,
- If, owing to special conditions, a literal enforcement of the requirements of this Ordinance will result in unnecessary hardship, and
- The spirit of this Ordinance is observed, and substantial justice is done.

## **Section 3 - Conditions**

In granting Variances, modifications, and approvals for subdivisions, the Board of Adjustment may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so varied, modified, or approved. These conditions may include, without being limited to, personal surety, performance, or maintenance bonds, affidavits, covenants, or other legal instruments.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

### ***Section 1 - Severability***

This Ordinance and the various parts, sections, subsections, and clauses thereof, are hereby declared to be severable. If any part, sentence, paragraph, subsection or section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.

### ***Section 2 - Relationship to Other Laws***

This Ordinance is not intended to interfere with or annul any other ordinance, rule or regulation, state statute, or other provision of law. Where the provisions of this Ordinance impose restrictions, which are different from those imposed by any other ordinance, rule or regulation, statute or other provision of law, whichever provision is deemed most restrictive or imposes a higher standard shall control.

### ***Section 3 - Conflicting Ordinances and Laws***

All ordinances or parts of ordinances in conflict with these Ordinances, or inconsistent herewith are hereby superseded to the extent necessary to give these Controls full force and effect. This Ordinance shall be held to be minimum requirements and shall not be deemed to supersede any more restrictive requirements imposed by any other lawfully adopted ordinances, statutes, or regulations.

## **ARTICLE VIII PENALTIES**

### ***Section 1 - Criminal Penalty***

Any person who intentionally violates any provisions of this Ordinance or any amendment thereto, or who intentionally fails to perform any act required hereunder, shall be guilty of a Class 2 Misdemeanor. (See SDCL 22-6-2)

### ***Section 2 - Injunctive Relief or Other Civil Remedies***

Whoever, being the owner or agent of the owner of any land located within Butte County being found in violation of any of the regulations of this Ordinance shall be subject to an action for injunctive relief brought by Butte County. The Governing Body may recover the same penalty by civil action in any court of competent jurisdiction. (See SDCL 11-2-34) Upon conviction thereof, violators shall be subject to a fine of not more than \$100 per day for each and every day the person is found to be in violation of this Ordinance, or imprisonment in the County Jail for not more than thirty (30) days, or both, for each offense, and in addition, shall pay all costs and expenses involved in the case.

**ARTICLE IX**  
**COURT REVIEW OF DECISION OF GOVERNING BODY**

Appeals from any decision of the Governing Body by any person or persons jointly or severally, aggrieved by any decision of the Governing Body, or any taxpayer, or any officer, department, board or bureau of the cities or county, may be taken to the court of competent jurisdiction. Such appeal shall be taken pursuant to SDCL 7-8-27 et seq.

First Reading: April 18, 2023

Second Reading: May 2, 2023

Adopted: May 2, 2023


Published: May 11, 2023

Effective: May 31, 2023

**THIS ORDINANCE WILL BECOME EFFECTIVE ON THE 20TH DAY AFTER ITS COMPLETED PUBLICATION. THIS ORDINANCE WAS PASSED BY A MAJORITY VOTE OF THE BUTTE COUNTY COMMISSIONERS.**

DATED THIS: 5<sup>th</sup> day of May 2023

ATTEST:




Butte County Auditor

Butte County Commission

The Commissions' decision to adopt this ordinance may be referred to a vote of the people as provided in SDCL 7-18A.

A referendum petition form for the above ordinance may be obtained from the office of the Butte County Auditor.

Dated 5<sup>th</sup> day of May 2023 at Belle Fourche, South Dakota,  
 Board of Butte County Commission

Stan Harms, Chairman  
 Annie Capp, Butte County Auditor