



**RESOLUTION OF THE GOVERNING BODY OF THE  
THREE AFFILIATED TRIBES OF THE  
FORT BERTHOLD INDIAN RESERVATION**

***A Resolution Entitled, "Adoption of the Mandan Hidatsa Arikara Nation Planning & Zoning Ordinance"***

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-Laws pursuant to said Act; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** The Three Affiliated Tribes Tribal Business Council recognizes that in order to protect the lands within the Fort Berthold Reservation it is necessary to provide planning and zoning to all lands within the Reservation; and

**WHEREAS,** The Tribe has reviewed the proposed Planning & Zoning Ordinance and has by the third and final read today has completed all the requirements as contained in the Tribal Business Council Adoption of Policy and Procedure for enacting tribal codes (Resolution. 08-56-MP, April 8, 2008).

**NOW THEREFORE BE IT RESOLVED,** That the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation hereby adopts the attached Mandan Hidatsa Arikara Nation Planning & Zoning Ordinance for such purposes.

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**MHA NATION**

**PLANNING & ZONING**  
**ORDINANCE**

**FOR OIL AND GAS**  
**DEVELOPMENT NEAR**  
**RESIDENTIAL AREAS**

TWYLA GOOD BIRD  
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To: Tribal Council Members/Tribal Programs

From: Twyla Good Bird, Planning & Zoning Assistant

Subject: Preliminary Draft for Residential Planning & Zoning Ordinance

Date: 03/14/2012

Please find attached the preliminary draft. We are asking for comments and suggestions before completing a final draft. If you want to set up a meeting, please give me a call at 421-1889.

Thank you. Twyla

## **PURPOSE:**

The purpose of this ordinance is to provide for the health, safety and welfare of the residents of the Fort Berthold Indian Reservation, through zoning management provisions, for the reasonable development of land while providing adequate health, safety and general welfare protections of the reservation's residents. Oil and gas exploration, drilling and extraction operations involve activities that are economically important and will impact the reservation. Accordingly, it is necessary and appropriate to adopt reasonable requirements for oil and gas resource development so that these resources can be obtained in a manner that is economically remunerative, and that minimizes the potential impact on the residents of the reservation.

## **DEFINITIONS:**

**Applicant** -- Any person, owner, operator, partnership, company, corporation and its subcontractors and agents who has an interest in real estate for the purpose of exploring or drilling for, producing, or transporting oil or gas.

**Building**-- An occupied structure with walls and roof with which persons live or customarily work. The term shall not include a barn, shed or other storage building.

**Collector Street**-- A public street or road which, in addition to providing access to abutting lots, intercepts local streets and provides a route for carrying considerable volumes of local traffic to community facilities and arterial streets.

**Department**-- The Tribal Energy Department.

**Derrick** – Any portable framework, tower mast and/or structure which is required or used in connection with drilling or re-working a well for the production of oil or gas.

**Drilling pad**-- The area of surface operations surrounding the surface location of a well or wells. Such area shall not include an access road to the drilling pad.

**Fracking** – The process of injecting water, customized fluids, sand, steam, or gas into a gas well under pressure to improve gas recovery.

**Local Street** -- A public street or road designed to provide access to abutting lots and to discourage through traffic.

**Oil and Gas** -- Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

**Oil and Gas Development or Development**-- The well site preparation, construction, drilling, redrilling, hydraulic fracturing, and/or site restoration associated with an oil or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters, and other

equipment and structures whether permanent or temporary; and the site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment and activities associated with the exploration for, production and transportation of oil and gas. The definition does not include natural gas compressor stations and natural gas processing plants or facilities performing the equivalent functions.

**Oil or Gas Well**--A pierced or bored hole drilled or being drilled in the ground for the purpose of, or to be used for, producing, extracting or injecting gas, oil, petroleum or another liquid related to oil or gas production or storage, including brine disposal.

**Oil or Gas Well Site** -- The location where facilities, structures, materials and equipment whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, production or operation of an oil or gas well. This definition also includes exploratory wells.

**Operator**-- The person designated as the well operator on the permit application or well registration.

**Owner**-- A person, who owns, manages, leases, controls or possesses an oil or gas well.

**Natural Gas Compressor Station** -- A facility designed and constructed to compress natural gas that originates from a gas well or collection of such wells operating as a midstream facility for delivery of gas to a transmission pipeline, distribution pipeline, natural gas processing plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.

**Natural Gas Processing Plant** -- A facility designed and constructed to remove materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets but not including facilities or equipment designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from the natural gas.

**Storage well**-- A well-used for and in connection with the underground storage of natural gas, including injection into or withdrawal from an underground storage reservoir for monitoring or observation of reservoir pressure.

**Conditional Use** – A use which generally would not be suitable in a particular zoning district, which would be acceptable under certain circumstances. The permit shall be granted for a particular use and not for a particular person or firm.

## DISTRICTS AND BOUNDARIES

**Section 1. ESTABLISHMENT OF DISTRICTS:** In order to effectively carry the provisions of these regulations, the land covered these regulations shall be divided into the following zoning districts:

- AG – Agricultural District
- RR – Rural Residential District
- RE – Residential District
- CO – Commercial District
- IN – Industrial District

**Section 2. ZONING MAP:** The locations and boundaries of the zoning districts are hereby established as shown on the maps attached and made a part of this ordinance. The maps shall be kept on file with the Tribal Energy Department and shall be regularly updated to show any change in the zoning boundary lines resulting from amendments.

**Section 3. INTERPRETATION OF BOUNDARIES:** The following rules shall apply to the boundaries of the zoning districts on the zoning district map.

1. Where zoning district's boundaries follow streets, highways, roads, railroad lines, or extensions thereof, such boundary lines shall be the centerlines of those streets, highways, road, railroad lines, or extensions thereof.
2. Zoning district's boundaries indicated as approximately following platted lot lines or other property lines shall be constructed to follow such lines or extensions thereof.
3. Zoning district boundaries which do not follow streets, highways, roads, railroad lines, property lines, or lot lines or extensions thereof shall be determined by the use of a scale or dimensions appearing on the map.

### AGRICULTURAL DISTRICT (AG):

1. **INTENT AND PURPOSE:** This district is established for the purpose of preserving and protecting agricultural uses and other natural land uses which do not significantly change the character of the area.
2. **PERMITTED USES:** The following uses shall be permitted in this district:
  - A. Agriculture and agriculture related buildings and farm dwellings (provided such uses are maintained in connection with a farm or farming operation where the primary source of the operator's income is derived from farming).



- B. Park and outdoor recreational facilities and related buildings for outdoor recreation.
- C. Single family non-farm dwellings (subject to the Residential Guidelines of this Section).
- D. Churches and similar places of worship and parish house.
- E. Greenhouses, nurseries, and garden centers.
- F. Home Occupations.

**3. CONDITIONAL USES:** The following uses shall be considered conditional uses and shall be permitted only after a conditional use permit has been obtained in accordance with these zoning regulations:

- A. Mineral extraction and exploration (including sand and gravel).
- B. National Wildlife Refuges and Waterfowl Management Areas.
- C. Multiple family non-farm dwellings.
- D. Mobile home parks subject to the requirements of Article 2, Section 5 of these regulations.
- E. Recreational Vehicle Park.
- F. Commercial Feedlots.
- G. Radio or TV towers, utility lines, substations and pipelines.
- H. Commercial grain elevators.
- I. Cemetery.
- J. Junk yards and automobile salvage operations, provided all operations are conducted within the area enclosed on all sides with a solid fence or wall not less than 8 feet in height.
- K. Private waste disposal sites subject to requirements contained in these regulations.

**4. PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.

5. **SHELTERBELTS:** No shelterbelts or major tree plantings shall be established closer than 115 feet for planting on the windward side (generally north and west) and 99 feet for planting on the south and east. This is to be measured from all section lines and centerlines of all improved and unimproved roads.
6. **RESIDENTIAL DEVELOPMENT:** The following regulations shall be applied to the construction of individual nonfarm dwelling units: (The terms of lot size shall exclude the immediate family of the surface owner.)
  - A. Lot Size – Not less than three (3) acres.
  - B. Lot Density – Not more than one one-farm dwelling per 40 acres.
  - C. Lot Location – The development and location of all lots related to non-farms shall abut an existing improved road (An improved road is one which is gravel or hard surfaced and is regularly maintained in good driving condition.)
7. **DIMENSIONAL STANDARDS:** A Building and Structure Setbacks – One hundred fifty (150) feet from all section lines and the centerlines of all townships and county roads; or two hundred fifty (250) feet from the centerline of all state and federal highways.

## **RURAL RESIDENTIAL DISTRICT (RR)**

1. **INTENT AND PURPOSE:** This district is established for the purpose of providing for and guiding the development of any rural subdivisions and for preserving and protecting the character of those residential areas.
2. **PERMITTED USES:** The following uses shall be permitted in this district.
  - A. All single family dwellings.
  - B. Parks and outdoor recreational facilities and related buildings for outdoor recreation.
  - C. Churches and facilities related to religious activities.
  - D. Public and parochial schools.
  - E. Utility facilities necessary to serve the area.
3. **CONDITIONAL USES:** The following uses shall be considered conditional uses only and shall be permitted only after conditional use permit has been obtained in accordance with these zoning regulations:



- A. Multiple family dwellings.
- B. Mobile home parks subject to the requirements contained in these regulations.
- C. Recreational Vehicle Parks
- D. Home Occupations.

**4. PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.

**5. DIMENSIONAL STANDARDS:**

- A. Lot size – not less than 5,000 square feet if served by a sewer collection system common to other adjoining users; not less than three (3) acres if the sewer is drained into an onsite user owned drainage field.
- B. Setbacks:
  - a. Front yard – 20 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.
  - b. Side yard – 6 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.

The required side yard on the street side of a corner lot shall be one-half the required front yard on such a street for the principal building and all accessory buildings provided that no adjacent dwellings front on the same street, in which case the entire front yard will be required.

- c. Rear yard – 20 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.

An accessory building that is detached (more than 10 feet from the dwelling) may be no closer than 10 feet from the rear lot line.

- C. Lot coverage by buildings: Not more than fifty percent of the lot shall be covered by the principal building and all accessory buildings.

**RESIDENTIAL DISTRICT (RE):**

- 1. INTENT AND PURPOSE:** This district is established for the purpose of providing for and guiding the development of general residential neighborhoods which provide

a full range of public services including sewer, water, drainage, lighting and streets and the protection of those residential areas.

2. **PERMITTED USE:** The following uses shall be permitted in this district.
  - A. Single family dwellings.
  - B. Parks and outdoor recreational facilities and related buildings for outdoor recreation.
  - C. Churches and facilities related to religious activities.
  - D. Public and parochial schools.
  - E. Utility facilities necessary to serve the area.
3. **CONDITIONAL USES:** The following uses shall be considered conditional uses only and shall be permitted only after conditional use permit has been obtained in accordance with these zoning regulations:
  - A. Mobile Home/Parks.
  - B. Multiple family dwellings.
  - C. Home Occupations.
  - D. Assisted living facilities, basic care and long-term nursing care facilities or other institutional facilities.
4. **PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. **DIMENSIONAL STANDARDS:**
  - A. Lot size – not less than 7,500 square feet for a single family residential dwelling and not less than 2,500 square feet per family for a multiple family dwelling and all dwellings must be served by a sewer collection system common to other adjoining users.
  - B. Setbacks:
    - a. Front yard – 25 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.

- b. Side yard – 10 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.

The required side yard on the street side of a corner lot shall be one-half the required front yard on such a street for the principal building and all accessory buildings provided that no adjacent dwellings front on the same street, in which case the entire front yard will be required.

- c. Rear yard – 30 feet from lot line, or 100 feet from the centerline if abutting a federal, state, county or township road.

An accessory building that is detached (more than 10 feet from the dwelling) may be no closer than 10 feet from the rear lot line.

- C. Lot coverage by buildings: Not more than fifty percent of the lot shall be covered by the principal building and all accessory buildings.
- D. Visibility at Intersections in Residential Districts – On a corner lot in any residential district, nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision between a height of three feet and ten feet above the centerline grades of the intersecting street in an area bounded the street lines of such corner lots and a line joining those street lines 30 feet from the point of the intersection.

## **INDUSTRIAL DISTRICT (IN)**

1. **INTENT AND PURPOSE:** This district is intended to provide areas for industrial development and those land uses which are generally not compatible with agricultural, commercial, or residential land uses.
2. **PERMITTED USES:** The following uses shall be permitted in this district.
  - A. All Commercial (CO) Districts permitted uses and conditional uses.
  - B. Airports, railroads, essential public utilities, and public service installations.
  - C. Radio or television transmitting stations.
  - D. Overhead, above grade and underground storage facilities for oil, gas, flammable liquids and gases, as approved by Fire Code regulations.
  - E. Manufacturing industries.
  - F. Processing industries consisting of agricultural products and foodstuffs.
  - G. Concrete mixing and concrete products manufacturing plants.

3. **CONDITIONAL USES:** The following uses shall be considered conditional uses only and shall be permitted only after conditional use permit has been obtained in accordance with these zoning regulations:
  - A. Petroleum or petroleum products refining.
  - B. Junk yard, auto wrecking yard or salvage yard provided that all operations are conducted within an area enclosed on all sides with a solid fence or wall not less than eight (8) feet in height.
  - C. Adult entertainment center provided it is at least 500 feet from any other zoning district boundary.
  - D. Commercial bulk storage of chemicals.
  - E. Commercial waste disposal sites subject to the requirements of these these regulations.
4. **PROHIBITED USES:** Land uses which are not listed in this Section as a permitted use or as a conditional use shall be considered a prohibited use and shall not be allowed in this zoning district without following the amendment or variance procedures of these regulations.
5. **DIMENSIONAL STANDARDS:**
  - A. Lot size – no minimum standard.
  - B. Setbacks – No minimum setbacks, except in the case of the property abutting a federal, state, county or township road. If the property abuts a federal, state, county or township road, building setbacks shall be a minimum of 100 feet from the centerline of that road.
  - C. Lot coverage by buildings- No requirements other than those may exist with regard to fire protection.

**Mobile Home/Parks:**

1. Mobile Home Parks – such parks shall be located and designed as to provide protection for adjacent properties and access for vehicular traffic without traversing streets in adjoining residential neighborhoods.
  - A. Recreational vehicles shall not be occupied as living quarters, except in the case of temporary living quarters for a temporary workforce, but not to exceed ninety (90) days.

- B. Sales lots shall not be permitted; but dwellings may be sold on lots they occupy for residential use.
- C. Dimensional Standards and visibility triangles shall be the same requirements of the Residential (RE) District.
- D. Prior to the development of mobile home parks a site plan must be reviewed by the Planning/Zoning Commission, such plan shall include:
  - a. Principal vehicular access points.
  - b. Internal mobile home street plan (no lot within the park shall have direct vehicular access to any public street bordering the development).
  - c. Lighting plan.
  - d. Water and sewer plan.
  - e. Parking plan.
  - f. Recreational plan- each mobile home park containing more than 25 lots shall provide playground space equivalent to one lot for every 25 lots.
  - g. Mobile home park management plan and/or administrative covenants.
- 1. Mobile Homes – All mobile homes shall:
  - A. Be anchored according to the standards outlined in the State of North Dakota’s Uniform Building Code.
  - B. Have skirting constructed of brick, stone, finished wood or finished metal. The skirting shall be in place within 30 days of placement of the mobile home.
  - C. Rest on a permanent foundation of concrete or other solid material durable enough to support the maximum weight of the mobile home. Loose blocks placed at regular intervals beneath the mobile home substructure shall not constitute an adequate foundation (unless in a mobile home park).
  - D. Have the undercarriage wheels of the mobile home removed prior to occupancy.

**WASTE DISPOSAL SITES:**

- 1. At a minimum the following described waste disposals sites shall comply with all applicable state, federal, local laws, rules and regulations. In addition, the Planning/Zoning Commission and/or other local Planning Commission may require compliance to other conditions.

2. Private Waste Disposal Sites – A solid waste disposal site used by and only for the landowner or tenant engaged in farming. Sites shall be limited to one per landowner and used only for refuse generated from personal farming operations. In addition these sites must comply with Agricultural Stabilization & Conservation (ASC) regulations.
  - A. Private waste disposal sites shall avoid low and steep areas and be a minimum of two hundred fifty (250) feet away from waterways.
3. Commercial Waste Disposal Sites – A solid waste disposal site or facility permitted pursuant to the laws of the Three Affiliated Tribes. Waste which is transported to a disposal site shall be by a waste hauler licensed by the State of North Dakota.
  - A. The site, operation, or facility must meet or exceed all applicable federal, state, and local laws, rules, and regulations.
  - B. The site, operation, or facility shall be limited to inert solid waste and municipal solid waste. Waste that is deemed hazardous in nature or exerts hazardous characteristics or nuclear waste, sewage sludge and incinerator ash are not permitted.
  - C. All areas for cell, excavation or waste filling operations shall maintain a minimum setback of 150 feet from all property lines.
  - D. No fires shall be permitted, except by permission of the Planning/Zoning Commission. Any smoldering flame or spontaneous combustion at the site shall be immediately extinguished.
  - E. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on site, except on areas where active filling operations are taking place.
  - F. Entrance to the site shall be controlled at all times to prevent improper dumping on the site.
  - G. For facilities that manage municipal solid waste, a chain link fence six (6) feet high shall be installed along the boundaries of the area developed or the area of active filling operations and provided with gates of the same construction as the fence.
  - H. For other facilities, other than a municipal solid waste site, a four-wire barbed wire fence, suitable to restrain livestock, shall be placed around the boundary of the permitted site.
  - I. Provisions, approved by the Planning/Zoning Commission, shall be made for the management of surface and storm water falling on or crossing the site at all times,



during and after the completion of the operations. Surface and storm water management also shall comply with all applicable federal, state, and local laws, rules and regulations.

- J. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply or quality of ground water.
- K. Operators of a commercial waste disposal facility or site may have an environmental inspector on site. Provisions shall be made for the cost to be paid by the operator to the State Health Department as may be negotiated with the State Health Department or the Three Affiliated Tribes.

Subject to the provisions of this ordinance:

- A. An oil or gas well site, or a natural gas compressor station, or a natural gas processing plant, or any similar facilities performing the equivalent functions shall be considered a principal use by right within Industrial and Agricultural currently established zoning districts.
- B. An oil or gas well site which would be placed more than 1100 feet from any residential building which is located off the property where the oil or gas well is sited may not be permitted within the Residential or Commercial Zoning District, such siting and/or use shall be prohibited in residential and commercial zones.
- C. A natural gas compressor station or a natural gas processing plant or any similar facilities performing the equivalent functions which would be located more than 1000 feet from any commercial building which is located off the property where the natural gas compressor station or the natural gas processing plant or similar facility is located may not be permitted in the Residential or Commercial Zoning District(s), such siting and/or use shall be prohibited in residential and commercial zones.

#### **APPLICABILITY:**

- A. This ordinance applies to all oil and gas well sites, natural gas compressor stations, and natural gas processing plants that will be permitted or constructed after the effective date of the ordinance.
- B. Oil and gas well sites, natural gas compressor stations, and natural gas processing plants that were permitted or constructed prior to the adoption of this ordinance shall not be required to meet the requirements of this ordinance; provided that any modification to an existing or permitted oil or gas well site that occurs after the effective date of this ordinance and materially alters the size, type, location, number of wells and other accessory equipment or structures, or any physical modifications to an existing natural gas compressor station or natural gas processing plant shall require compliance with and a permit under this ordinance.

- C. Federal law or regulation may preempt some ordinance requirements that conflict with federal statutes or regulation. The Tribal Government acknowledges that it may be pre-empted from regulating some of the operational methods of the oil and gas industry therefore this ordinance regulates land use.

### **PERMIT REQUIREMENT:**

- A. No oil or gas well site, natural gas compressor station, or natural gas processing plant or an addition to an existing oil or gas well site, natural gas compressor station, or natural gas processing plant shall be constructed or located within The Fort Berthold Indian Reservation unless a permit has been issued by the Tribe to the owner or operator approving the construction or preparation of the site for oil or gas development or construction of natural gas compressor stations or natural gas processing plants.
- B. The permit application, or amended permit application, shall be accompanied by a fee as established in the Tribe's schedule of fees.
- C. Any modification to an existing and permitted oil or gas well site that materially alters the size, location, number of wells or accessory equipment or structures, or any modification to an existing natural gas compressor station or natural gas processing plant shall require a modification of the permit under this ordinance. Like-kind replacements shall not require a permit modification.

### **PRE-APPLICATION CONFERENCES: (optional)**

- A. Purpose.
  - 1. Before submitting an application the applicant is strongly encouraged to meet with the Tribal Energy Department and Segment Boards staff to determine the requirements of and the procedural steps and timing of the application. The intent of this process is for the applicant to obtain necessary information and guidance from the relevant parties: Tribal Cultural Historic Preservation Department and the local Community Board before entering into any commitments or incurring substantial expenses with regard to the site and plan preparation.
- B. Process.
  - 1. A pre-application conference is voluntary on the part of the applicant and shall not be deemed the beginning of the time period for review as prescribed by law. The pre-application conferences are intended for the benefit of the applicant in order to address the required permit submittals and are advisory only, and shall not bind the community to approve any application for a permit or to act within any time limit relative to the date of such conference.

## PERMIT APPLICATION:

- A. The applicant shall provide to the Tribal Energy Department at the time of permit application:
1. A narrative describing an overview of the project including the number of acres to be involved, the number of wells to be drilled, the location, number and description of equipment and structures to the extent known.
  2. A narrative describing an overview of the project as it relates to natural gas compressor stations or natural gas processing plants.
  3. The address of the oil or gas well site, natural gas compressor station or natural gas processing plant as determined by the township or county for information of Emergency Responders.
  4. The contact information of the individual or individuals responsible for the operation and activities at the oil or gas well site shall be provided to the Tribal Energy Department and all Emergency Responders. Such information shall include a phone number where such individual or individuals can be contacted twenty-four hours per day, three-hundred sixty-five days a year. Annually, or upon any change of relevant circumstances, the applicant shall update such information and provide it to the Tribal Energy Department, local governing body, and all Emergency Providers.
  5. A location map of the oil or gas well site showing the approximate location of derricks, drilling rigs, equipment and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural and other surroundings. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the transportation of personnel and/or development and use of the site. Such location shall be configured to allow the normal flow of traffic on public streets shall be undisturbed.
  6. A location map of the natural gas compressor station or natural gas processing plant including any equipment and structures and all permanent improvements to the site.
  7. A narrative and map describing the manner and routes for the transportation and delivery of equipment, machinery, water, chemicals and other materials used in the siting, drilling, construction, maintenance and operation of the oil or gas well site.
  8. A certification or evidence satisfactory to the Tribal Energy Department that, prior to the commencement of any activity at the oil or gas well site, the applicant shall have accepted and complied with any applicable bonding and permitting

requirements; and shall have entered into a roadway maintenance and repair agreement with the Tribe, in a form acceptable to the Tribal Energy Department solicitor, regarding the maintenance and repair of the roads, streets, and highways that are to be used by vehicles for site construction, drilling activities and site operations.

9. A description of, and commitment to maintain, safeguards that shall be taken by the applicant to ensure that roads/streets utilized by the applicant shall remain free of dirt, mud and debris resulting from site development activities; and the applicant's assurance that such streets will be promptly swept or cleaned of dirt, mud and debris that occur as a result of applicant's usage.
  10. Verification that a copy of the operation's Preparedness, Prevention and Contingency Plan has been provided to the Tribal Energy Department and all Emergency Responders.
  11. A statement that the applicant, upon changes occurring to the operation's Preparedness, Prevention and Contingency Plan, will provide to the Tribal Energy Department and all Emergency Responders the dated revised copy of the Preparedness, Prevention and Contingency Plan while drilling activities are taking place at the oil or gas well site.
  12. Assurance that, at least 30 days prior to drilling, the applicant shall provide an appropriate site orientation and training course of the Preparedness, Prevention and Contingency Plan for all Emergency Responders. The cost and expense of the orientation and training shall be sole responsibility of the applicant. The applicant shall not be required to hold more than one site orientation and training course annually, under this section.
  13. A copy of the documents submitted to the Tribal Energy Department, or if no document has been submitted to the department, a narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts, with the Tribal Historic Preservation office written comments.
  14. A copy of all permits and plans from appropriate regulatory agencies or authorities issued in accordance to environmental requirements.
  15. A copy of all permits and plans from the appropriate regulatory agencies or authorities issued in accordance with applicable laws and regulations for the proposed use.
- B. Within 15 business days after receipt of a permit application and the required fee, the Tribal Energy Department will determine whether the application is complete and adequate and advise the applicant accordingly.

- C. If the application is complete and fulfills the requirements of this ordinance, the Tribal Energy Department, after consultation with the Tribal Segment affected, shall issue or deny a permit within 30 days following the date the complete application was submitted.
- D. If the application is incomplete and/or inadequate the Tribal Energy Department will notify the applicant of the missing or inadequate material and, upon receiving said material, issue or deny the permit within 30 days following receipt.

## **DESIGN AND INSTALLATION:**

### A. Access.

- 1. No oil or gas well site shall have access solely through a local street. Whenever possible, access to the oil or gas well site should be from a collector street.
- 2. Accepted professional standards pertaining to minimum traffic sight distances for all access points shall be adhered to.

### B. Structure Height.

- 1. Permanent structures associated with an oil and gas site, both principal and accessory, shall comply with the height regulations for the zoning district in which the oil or gas well site is located.
- 2. Permanent structures associated with natural gas compressor stations or natural gas processing plants shall comply with the height regulations for the zoning district in which the natural gas compressor station or natural gas processing plant is located.
- 3. There shall be an exemption to the height restrictions contained in this section for the temporary placement of drilling rigs, drying tanks, and other accessory uses necessary for the actual drilling or re-drilling of an oil or gas well.
  - a. The duration of such exemption shall not exceed the actual time period of drilling or re-drilling of an oil or gas well.
  - b. Provided further the time period of such drilling and exemption shall not exceed 6 months.
  - c. The operator shall give the Tribal Energy Department prior written notice of the beginning date for its exercise of the exemption.

### C. Setbacks.

1. Drilling rigs shall be located a minimum setback distance of 1.5 times their height from any property line, public or private street, or building not related to the drilling operations on either the same lot or an adjacent lot.
2. The drilling pad for the oil or gas well site shall comply with all setback and buffer requirements of the zoning district in which the oil or gas well site is located.
3. Natural gas compressor stations or natural gas processing plants shall comply with all setback and buffer requirements of the zoning district in which the natural gas compressor station or natural gas processing plant is located.
4. Exemption from the standards established in this subsection may be granted by the Tribal Energy Department after consultation with appropriate segment offices upon a showing by the operator that it is not feasible to meet the setback requirements from surface tract property lines and that adequate safeguards have or will be provided to justify the exemption.
5. Drilling pads, natural gas compressor stations or natural gas processing plants shall be set back 1000 feet from buildings or sites registered or eligible for registration on the National Register of Historic Places or deemed "Areas of Concern" by the Tribal Cultural Historic Preservation office.

#### D. Screening and Fencing.

1. Security fencing shall not be required at oil or gas well sites during the initial drilling, or re-drilling operations, as long as manned 24-hour onsite supervision and security are provided.
2. Upon completion of drilling or re-drilling security fencing consisting of a permanent chain link fence shall be promptly installed at the oil or gas well site to secure well heads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the oil or gas well site when located within 1 mile of a residential district.
3. Security fencing shall be at least 6 feet in height equipped with lockable gates at every access point and having openings no less than 12 feet wide when located within 1 mile of a residential district.
4. Emergency Responders shall be given means to access oil or gas well site in case of an emergency.
5. Warning signs shall be placed on the fencing surrounding the oil or gas well site providing notice of the potential dangers and the contact information in case of an emergency.



6. In construction of oil or gas well sites the natural surroundings should be considered and attempts made to preserve existing trees and other native vegetation.

E. Lighting.

1. Lighting at the oil or gas well site, or other facilities associated with oil and gas drilling development, either temporary or permanent, shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and nearby areas within 100 feet of the oil or gas well development.
2. Lighting at a natural gas compressor station or a natural gas processing plant shall, when practicable, be limited to security lighting.

F. Noise.

1. The applicant shall take the following steps to minimize, to the extent possible, noise resulting from the oil or gas well development.
2. Prior to drilling of an oil or gas well or the operation of a natural gas compressor station or a natural gas processing plant, the applicant shall establish by generally accepted testing procedures, the continuous seventy-two hour ambient noise level at the nearest property line of a residence or public building, school, medical, emergency or other public facility, or one-hundred feet from the nearest residence or public building, medical, emergency or other public facilities, whichever point is closer to the affected residence or public building, school medical, emergency or other public facility. In lieu of the establishment of the ambient noise level established by the continuous seventy-two hour test the applicant may assume and use, for the purpose of compliance with this ordinance, a default ambient noise level of 55 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters or an instrument and the associated recording and analyzing equipment, which will provide equivalent data.
3. The applicant shall provide the Tribal Energy Department documentation of the established ambient noise level prior to starting oil or gas drilling and/or production operations.
4. The noise generated during the oil and gas operations or the natural gas compressor station or the natural gas processing plant shall not exceed the average ambient noise level established in subsection (2) by more than:
  - a. 5 decibels during drilling activities.

- b. 10 decibels during hydraulic fracturing operations.
  - c. 5 decibels for a gas compressor station or a natural gas processing plant.
  - d. Allowable increase in subsection c shall not exceed the average ambient noise level for more than 10 minutes within any one hour period.
5. Effective sound mitigation devices shall be installed to permanent facilities to address sound levels that would otherwise exceed the noise level standards when located near a residence, public building, and school, medical, emergency or other public facilities.
  6. Exemption from the standards established in this subsection may be granted by the Tribal Energy Department, after consultation with local Segment Board, during the drilling stage or at the oil or gas well site, or the gas compressor station, or at the natural gas processing plant for good cause shown and upon written agreement between the applicant and the local Segment Board.
  7. Complaints received by the Tribal Energy Department shall be addressed by the applicant, within 24 hours following receipt of notification by continuously monitoring for a period of forty-eight hours at the nearest property line to the complainant's residential or public building or one hundred feet from the complainant's residential or public building, school medical, emergency or other public facilities, whichever is closer. The applicant shall report the findings to the Tribal Energy Department (The Tribal Energy Department will distribute the report to the public) and shall mitigate the problem to the allowable level if the noise level exceeds the allowable rate.
  8. Natural gas compressor stations and natural gas processing plants or facilities performing the equivalent functions shall be constructed so as to mitigate sound levels, or have installed mitigation devices to mitigate sound levels that would otherwise exceed the ambient noise level standards at residential or public buildings, medical, emergency or other public facilities.

#### G. Prohibitions.

1. No drilling shall be allowed in the floodway designated as such in the Flood Insurance Study (FIS) and shown on the Federal Emergency Management Agency (FEMA) maps.
2. Oil and gas drilling in the 100 year Floodplain is discouraged but may be permitted by the Tribal Energy Department in its discretion if the following provisions are met.

- a. If no other area provides access to the oil or gas deposit, then oil and gas drilling may be permitted in the floodplain. The applicant must provide conclusive documentation that no other location allows access to the oil or gas deposits other than a location within the floodplain.
- b. An adequate Emergency Evacuation Plan shall have been produced by the applicant and filed with the Tribal Energy Department.
- c. No storage of chemicals shall be permitted within the floodplain. An exemption from this requirement may be granted by the Tribal Energy Department, after consultation with local boards if the applicant can show that such storage will not potentially cause any harm to property, persons or the environment in the case of a 100-year flood; and further provides security to the Township assuring the applicant's ability to remedy any damage or injury that may occur.
- d. Only necessary and needed structures will be permitted within the floodplain.
- e. All structures within the flood zone shall be designed to withstand a 100-year storm event.
- f. An Engineer registered in North Dakota and qualified to present such documentation that structures will not cause additional flooding on adjacent, upstream and/or downstream properties shall provide such documentation to the Tribal Energy Department.

### **SEVERABILITY:**

If any section, subsection, sentence, clause or phrase or portion of this document is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion thereof.

### **PENALTIES:**

Any owner, operator, or other person who violates or permits a violation of this chapter upon being found liable therefore in a civil enforcement proceeding before a Magisterial or District Judge, shall pay to the Segment Board a fine of not more than \$5,000, plus all court costs, including, but not limited to, reasonable attorney's fees incurred by the Tribal Community Board on account of such violation. No penalty or cost shall be imposed until the date the determination of the violation by the Magisterial District Judge becomes final. If the defendant neither pays nor timely appeals the judgment, the Tribal Community Board may enforce the judgment as provided by law. Each day a violation exists after final judgment shall constitute a separate offense. The amount of the fine imposed shall be multiplied by the number of such days and may be charged and

collected as a judgment without further judicial proceedings. Further, the appropriate officers or agents of the Tribe are hereby authorized, to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith. No Bond shall be required of the local community board if the local community board seeks injunctive relief.

**EFFECTIVE DATE:**

This ordinance shall take effect \_\_\_\_\_.




**CERTIFICATION**

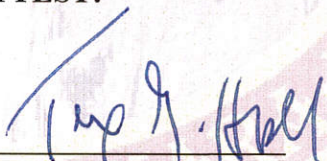
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 5 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 11<sup>th</sup> day of October, 2012, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 11<sup>th</sup> day of October, 2012.

**ATTEST:**

  
\_\_\_\_\_  
Tribal Secretary, V. Judy Brugh  
Tribal Business Council  
Three Affiliated Tribes

  
\_\_\_\_\_  
Tribal Chairman, Tex G. Hall  
Tribal Business Council  
Three Affiliated Tribes