

## ORDINANCE NO. 2008-001

BE IT ORDAINED by the Board of Commissioners of Union County, South Dakota that:

### AN ORDINANCE ESTABLISHING THE ENERGY CENTER PLANNED DEVELOPMENT DISTRICT PURSUANT TO THE UNION COUNTY ZONING ORDINANCE (1978), AS AMENDED

be and is hereby adopted as follows:

#### ARTICLE 1

#### BACKGROUND

Hyperion Refining, LLC ("**Applicant**") proposes to develop a state-of-the-art greenfield refinery, designed for efficient production of ultra low-sulfur fuels and other products with the best available control technology (BACT), and with an Integrated Gasification Combined Cycle (IGCC) facility to supply most on-site electric power requirements, and related office, industrial, temporary residential, and other uses ("**Project**") on an approximately 3,292-acre site described on **Exhibit A** attached to this Ordinance ("**Subject Property**"). The Applicant has submitted to the County an application, along with supplemental and supporting material and information, for the rezoning of the Subject Property to Planned Development and the approval of a planned development district for the Subject Property and the Project ("**Application**"), all in accordance with the Union County Zoning Ordinance (1978), as amended ("**Zoning Ordinance**").

The Planning Commission held a public hearing on the Application on January 16, 2008. Public notice for the public hearing by the Planning Commission was published in the December 27, 2007 edition of the Alcester Union, the January 3, 2008 edition of the Beresford Republic, the December 27, 2007 edition of the Leader Courier, and the December 27, 2007 edition of the North Sioux City Times. The Applicant provided at least seven days prior notice of the petitioned zoning change and public hearing by the Planning Commission to all landowners of record abutting the Subject Property by registered mail. The County Auditor provided at least ten days prior notice of the proposed zoning change by certified mail to the Clay County Auditor and the Lincoln County Auditor. On January 16, 2008, the Planning Commission made a favorable recommendation of the Application in accordance with the requirements of the Zoning Ordinance. All written testimony submitted to the Planning Commission at the public hearing has been made available to the public, and has been provided to the members of the Board of Commissioners of Union County ("**Board**").

The Board held a public hearing on the Application on March 3, 2008. Public notice for the public hearing by the Board was published in the February 21, 2008 and February 28, 2008 editions of the Alcester Union, the February 21, 2008 and February 28, 2008 editions of the Beresford Republic, the February 21, 2008 and February 28, 2008 editions of the Leader Courier, and the February 21, 2008 and February 28, 2008 editions of the North Sioux City Times. The Applicant provided at least seven days prior notice of the petitioned zoning change and public hearing by the Board to all landowners of record abutting the Subject Property by registered mail.

## **ARTICLE 2**

### **FINDINGS PURSUANT TO SECTION 1301 OF THE ZONING ORDINANCE**

The Board has reviewed and considered the Application, the general plans for the Project, the written testimony submitted to the Planning Commission at the January 16, 2008 public hearing, the favorable recommendation of the Planning Commission made at the conclusion of the January 16, 2008 public hearing, and the information and testimony provided in the March 3, 2008 public hearing held by the Board, and does hereby find and determine as follows:

1. The Subject Property is of considerable size; and the Project will allow for the development of the Subject Property as an integrated and harmonious unit through the coordinated development of industrial and related uses and the sharing of infrastructure.
2. The Project is composed of such uses, and in such proportions, as are most appropriate and necessary for the integrated functioning of the planned development and for the County.
3. The design of the Project is unique and outstanding, and will result in a refinery and power plant that are among the cleanest, most environmentally-advanced in the world. The Project will incorporate:
  - a. Best Available Control Technology (BACT): BACT is an emission control technology mandated by the Federal Clean Air Act, 42 U.S.C. § 7601 *et seq.*, that requires implementation of significant pollution reduction measures;
  - b. Integrated Gasification Combined Cycle (IGCC) Technology: IGCC technology will produce combustible gas to operate an efficient combined-cycle combustion turbine generator as a source of clean power, converting waste produced by the refinery into clean energy. The IGCC plant also produces hydrogen through the gasification process, which will be consumed by the refinery;
  - c. Water quality and reuse strategies: The Project will minimize water consumption and maximize water reuse, and provide discharged water from the Project pursuant to all state and federal requirements; and
  - d. Innovative controls: The Project will employ innovative site layout, designs, control technologies, processes, and construction methods to minimize light, noise, odor and other impacts from the Subject Property.
4. The planned development proposed in the Application is designed to minimize the impact of heavy industrial uses on surrounding properties, and provides a minimum of 60% of the Subject Property for usable open space.
5. The Project is so designed in its space allocation, orientation, texture, materials, landscaping, and other features as to produce an environment of stable and desirable character, complementing the design and values of the surrounding area, and showing such unusual merit as to reflect credit upon the Applicant and the County.

6. The Project will include the first greenfield refinery constructed and completed in the United States since 1976.
7. The Project will establish a more secure energy supply for the United States, incentivize Canadian production to stay in North America, lessen the United States' dependence on foreign oil, and advance national security interests.
8. In order to construct and operate the Project, the Applicant must secure numerous permits and approvals from the State of South Dakota and various agencies and authorities of the United States Government, to include, without limitation, the following primary permits and approvals:
  - a. State construction storm water discharge permit;
  - b. State wastewater discharge permit;
  - c. State water rights permit;
  - d. State Prevention of Significant Deterioration (PSD) air quality permit;
  - e. State Section 106 National Historic Preservation Act (NHPA) consultation;
  - f. State and Federal Section 401 water quality certification;
  - g. Federal Section 404/10 permit for impacts on waters of the United States (including wetlands under federal jurisdiction);
  - h. Federal Section 7 Endangered Species Act (ESA) consultation; and
  - i. Federal Aviation Administration (FAA) obstruction and lighting clearance(together with any other permits and approvals required by state and federal law, the "***State and Federal Approvals***").
9. The Applicant may need to modify the design and layout of the Project to obtain the State and Federal Approvals. Accordingly, the zoning and subdivision approvals set forth in this Ordinance are intended to be as flexible as permitted by law to allow for and accommodate such modifications.
10. The planned development proposed in the Application is in accordance with the Union County Comprehensive Plan, 2005-2025, and all other County plans for development, redevelopment, and renewal (collectively, the "***County Plans***"):
  - a. The County Plans seek to promote the economic growth and social development of Union County as a partner in cooperation with the private sector. The Project will directly create on average approximately 4,500 jobs during construction, and approximately 1,800 full-time jobs when fully operational.

- b. The County Plans recognize that certain industrial uses can be appropriately sited within rural areas. The Project will optimize the land use of the Subject Property and is appropriately sited within a rural area because: (i) the Project will develop its own on-site infrastructure to support its operations; (ii) the Project requires convenient highway and rail access, which the Subject Property provides; (iii) agricultural uses in South Dakota and elsewhere rely on products which will be produced by the Project; (iv) the Project will not have an adverse impact on livestock or other agricultural uses; and (v) the Project will provide off-farm employment opportunities for residents of Union County and other nearby counties.
11. All other applicable standards and requirements for establishing a planned development district and granting the requested approvals in the Application have been satisfied, and such relief should be granted, subject to and contingent upon the conditions, restrictions, and provisions set forth in this Ordinance.

### **ARTICLE 3**

#### **AMENDMENT OF ZONING MAP**

The Official Zoning Map of Union County shall be, and is hereby, amended to re-designate the Subject Property from Agricultural District (AG) to Planned Development (PD). The Board shall, and does hereby, authorize the establishment of the Energy Center Planned Development (*ECPD*) District as a planned development district pursuant to Subsection 1304 (2) of the Zoning Ordinance on the Subject Property and for the Project, subject to the terms and provisions of this Ordinance.

### **ARTICLE 4**

#### **ENERGY CENTER PLANNED DEVELOPMENT DISTRICT REGULATIONS**

##### **Section 401. General Provisions.**

A. Intent. It is the intent of the ECPD District to provide land for the development and operation of (i) a highly complex, full conversion refinery facility producing ultra low-sulfur gasoline, ultra low-sulfur diesel fuels, and other products; (ii) an integrated gasification combined cycle (IGCC) power plant producing hydrogen, power and steam; and (iii) other uses as further described in this Article 4 and on **Exhibit C** attached to this Ordinance.

B. Phases of Development. The Project may be developed in multiple phases of development.

C. General Plans. The general plans for the Project submitted with the Application ("*General Plans*") identify the nature of the improvements that the Applicant intends to construct on the Subject Property within the first phase of development, the relationship between and among uses within the Project, and the relationship of the Project to properties surrounding the Subject Property. The Applicant intends that the improvements to be constructed within the first phase of development will be located as generally designated on the General Plans.

However, the final location of such improvements may be modified by the Applicant during the final design and engineering process and as necessary to secure all necessary State and Federal Approvals.

D. Zones of Development. The ECPD District consists of the following two zones of development, with separate requirements applicable to development within each zone as set forth in this Ordinance:

1. Industrial Zone: The "**Industrial Zone**" requirements shall apply to all portions of the Subject Property that are designated and depicted as "Industrial Zone" on the Master Zone Plan attached to this Ordinance as **Exhibit B**. The Applicant may, at any time, include additional portions of the Subject Property within the Industrial Zone by delivering a revised Master Zone Plan to the Zoning Administrator, provided that the Industrial Zone must always be located more than one-eighth (1/8) of a mile (660 feet) inward from the outside property line separating the Subject Property from surrounding properties. Any such revised Master Plan shall, automatically and without further action by the Board, be deemed to be incorporated into this Ordinance as a revised **Exhibit B**.
2. Industrial Transition Zone: The "**Industrial Transition Zone**" requirements shall apply to all portions of the Subject Property that are not within the Industrial Zone.

**Section 402. Permitted Principal Uses and Structures.** The list of permitted principal uses and structures for each zone of development is set forth on **Exhibit C** attached to this Ordinance. More than one permitted principal use may be established on a lot within the ECPD District.

**Section 403. Permitted Accessory Uses and Structures.** The list of permitted accessory uses and structures for the ECPD District is set forth on **Exhibit D** attached to this Ordinance.

**Section 404. Permitted Conditional Uses.** None.

**Section 405. Prohibited Uses and Structures.** Each use not specifically allowed as a permitted principal use or permitted accessory use shall be prohibited.

**Section 406. Performance Standards.** Industrial uses in the ECPD District must meet the following performance standards:

- A. State and Federal Approvals. Air contaminants, odor, and gasses from the Project and the Subject Property shall comply with the State and Federal Approvals.
- B. Additional Performance Standards. In addition to the requirements of State and Federal Approvals, the following performance standards shall apply to industrial uses in the ECPD District.
  1. Fire Hazard. Procedures for handling all flammable substances involved in any activity established within the ECPD District shall conform to the latest edition of the Fire Prevention Code published by the American Insurance Association.

2. Noise. All noises and noise-causing activities from industrial operations shall be controlled so that they do not exceed the greater of the following sound levels, as measured at any portion of the property line separating the Subject Property from surrounding properties used for residential purposes: (a) the acceptable day-night average sound level for U.S. Department of Housing and Urban Development (HUD) programs specified in 24 CFR § 51.03; or (b) a sound level of 5dB(A) greater than the background day-night average sound level. All sound level measurements shall be in accordance with the criteria and standards for sound level measurement set forth in 24 CFR § 51.
3. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, water course or the ground of liquid wastes of any radioactive nature, or liquid wastes of a hazardous nature that are detrimental to normal sewage plant operation or corrosive and damaging to sewer pipes and installations. In addition, no operation shall be carried on in violation of South Dakota or United States law or regulations.
4. Vibration. All machines including punch presses and stamping machines shall be so mounted as to minimize vibration. Vibration shall not be so excessive that it interferes with industrial operations on properties surrounding the Subject Property.

**Section 407. Minimum Lot Requirements.** In the event the Subject Property is subdivided to create multiple interior lots, the minimum lot area of each lot so created shall be ten thousand (10,000) square feet. The minimum lot width of each lot so created shall be eighty (80) feet.

**Section 408. Minimum Yard Requirements.** No minimum yard requirements shall apply to any building or structure in the ECPD District, provided that all buildings and structures in the Industrial Transition Zone shall be located at least fifty (50) feet from any public right-of-way or from the property line of the Subject Property.

**Section 409. Maximum Lot Coverage.**

1. A minimum of 60% percent of the total lot area of the Subject Property shall be usable open space.
2. A minimum of 80% of the total lot area of the Industrial Transition Zone shall be usable open space.

For purposes of this Ordinance, the term "usable open space" shall have the same meaning as "required open space" contained within the definition of "Yard" set forth in Section 2302 of the Zoning Ordinance.

**Section 410. Maximum Height.**

1. In the Industrial Zone, no building predominantly designed for human occupancy shall be in excess of seventy-five feet in height. For purposes of this Ordinance, any portions of a building or structure that are accessed only for maintenance or inspections shall not be deemed to be designed for human occupancy. All other buildings and structures in the Industrial Zone shall be of such height as is consistent with prevailing standards within the refining and energy industries.
2. In the Industrial Transition Zone, the maximum height limitation shall be the same as in the Light Industrial District (I-1) as set forth in Article 10 of the Zoning Ordinance, except that the foregoing height limitation shall not apply to any communication or utility lines or towers or any of the "Exceptions to Height Regulations" as set forth in Section 1405 of the Zoning Ordinance.

**Section 411. Prohibition of Off-Site Advertising Signage.** No off-site commercial signage shall be erected within the ECPD District. For purposes of this Ordinance, directional and informational signage shall not constitute off-site commercial signage.

**Section 412. Waste Products and Materials.** Any solid, hazardous, or other waste which is produced in the ECPD District shall be stored or disposed of in accordance with the Resource Conservation Recovery Act ("RCRA") and other applicable federal and state law and regulations. The provisions of the Union County Zoning Ordinance relating to rubbish, refuse, waste materials, or garbage shall apply only to the storage or disposal of rubbish, refuse, waste materials, and garbage that is not regulated by RCRA or by State or Federal regulatory agencies.

**Section 413. Stormwater and Drainage Systems.** The stormwater and drainage systems for the Project shall: (i) comply with State and Federal Approvals; (ii) incorporate stormwater Best Management Practices (BMPs) to minimize increases in runoff rate, runoff volume, and pollutant loading; (iii) allow no discharge of point source pollutants into Brule Creek; and (iv) prevent discharges of regulated non-point source pollutants into Brule Creek in violation of State and Federal Approvals.

**ARTICLE 5**

**PLAN APPROVALS**

**Section 501. Submission of Detailed Plans.** The Applicant shall submit detailed plans for the construction of improvements for any phase of development of the Project in accordance with Subsection 1305 of the Zoning Ordinance. The detailed plans shall be reviewed by the Planning Commission and Land Use Administrator. The five criteria against which the detailed plans shall be measured are set forth below. The Planning Commission shall approve the detailed plans if each and every one of the following five criteria is met:

1. The detailed plans include the plans and level of detail required by Section 1305 of the Zoning Ordinance;

2. The detailed plans demonstrate that the proposed improvements will comply with all of the following requirements of Article 4 of this Ordinance:
  - a. the use limitations set forth in Sections 402 through 405;
  - b. the performance standards set forth in Section 406 (if the proposed improvement is an industrial use), which performance standards govern fire hazards, noise, sewage and liquid wastes, and vibration;
  - c. the applicable lot, coverage, and height requirements set forth in Sections 407 through 410;
  - d. the signage restriction in Section 411;
  - e. the requirements pertaining to waste products and materials set forth in Section 412; and
  - f. the stormwater and drainage system requirements in Section 413.
3. The detailed plans demonstrate the proposed improvements address light and odor impacts from the Subject Property to the extent practicable consistent with current industry standards with respect to the project;
4. The detailed plans include an emergency response and evacuation plan demonstrating that the Applicant will respond in accordance with industry standards and applicable state and federal requirements in the event of any accident, discharge, fire, or explosion with respect to the Project. The emergency response and evacuation plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with fire protection and emergency response agencies in Union County and other nearby counties, if necessary; and
5. The detailed plans include a security plan for both construction and operations demonstrating the Applicant will provide its own security forces sufficient to address security and police protection needs for residential uses and other Project elements. The security plan shall demonstrate how the Applicant will work cooperatively and establish communication protocols with law enforcement agencies in Union County and other nearby counties, if necessary.

**Section 502. Time for Commencement and Completion of Improvements.** The time period for the construction of improvements that is required to be established by the Planning Commission pursuant to Subsection 1305 (3) of the Zoning Ordinance shall: (i) be consistent with and based upon the estimated construction schedule submitted by the Applicant with the detailed plans and the applicable building permit; and (ii) be extended to include any period of time during which construction has not commenced or is not complete, but the Applicant is using reasonable diligence to commence or complete construction, as the case may be. For purposes of Subsection 1305 (3) of the Zoning Ordinance, "good cause shown" for the granting of extensions of time by the Planning Commission shall include delays in obtaining State and



Federal Approvals, delays in obtaining Project financing, and any other causes beyond the direct and sole control of the Applicant.

## **ARTICLE 6**

### **MODIFICATION OF GENERAL ZONING REQUIREMENTS**

**Section 601. Applicability of General Regulations.** The terms and provisions of this Ordinance apply to the ECPD District in lieu of any zoning regulations or requirements contained in Articles 6 through 12 and Article 14 (except Section 1415) of the Zoning Ordinance. Therefore, the terms and provisions of this Ordinance do not allow for the establishment of either a Junk Yard (as described as a conditional use in 1413) or a Sanitary Landfill (as described as a conditional use in 1414) inside the ECPD District without an additional application and approval and modification to this ordinance.

**Section 602. Building Permit.** Building permits for the Project will be issued for a period of: (a) two years; or (b) if the work described in the building permit request is of such a size, nature and/or scope so as to require a longer period based upon standard construction practices (as certified by a licensed South Dakota engineer or architect) the period of time needed, to complete the work. In determining the length of a building permit, the Land Use Administrator shall consider (i) the proposed construction schedule as outlined in the detailed plans required by sections 501 and 502 above, (ii) standard construction practices for projects within the refining and energy industries, and (iii) the advice of an independent engineer or architect, if any is retained by the Land Use Administrator. The Land Use Administrator may cancel a building permit only if the work described in the building permit has not been substantially completed according to the estimated construction schedule, unless the Applicant can demonstrate with documentation to the Land Use Administrator that the Applicant's failure to comply with the schedule was caused by: (i) delays in obtaining State and Federal Approvals; (ii) delays in obtaining Project financing; (iii) delays in obtaining equipment, materials, or labor; and (iv) any other cause beyond the direct and sole control of the permit holder. If a building permit is cancelled, the Land Use Administrator shall provide written notice thereof to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new building permit has been obtained. The County may enter into a contractual agreement with the Applicant to specify all building permit fees over the course of construction.

**Section 603. Schedule of Fees, Charges, and Expenses.** The Board does not relinquish its right to establish fees, charges, and expenses in a fair and consistent manner within the county consistent with State Law or the State Constitution.

## **ARTICLE 7**

### **MODIFICATION OF SUBDIVISION REQUIREMENTS**

**Section 701. Findings.** In accordance with Section 1306 of the Zoning Ordinance, the Board does hereby find and determine that the modifications set forth in this Article 7 to the County's subdivision requirements contained in the Zoning Ordinance and the 2007 Revised Subdivision Ordinance of Union County, South Dakota ("***Subdivision Ordinance***") provide adequate public

spaces and improvements for the circulation, recreation, light, air, and service needs of the ECPD District when fully developed and populated, and also provide such legal protections as will assure conformity to and achievement of the plan of development for the ECPD District.

**Section 702. Separate Ownership Permitted.** The Subject Property may be subdivided into two or more lots, and the ownership of property within the ECPD District or any portion or interest thereof may be transferred to any person or entity. With respect to the portion of the Subject Property owned by any person or entity other than the Applicant, such owner (i) shall be subject to all of the terms and provisions of this Ordinance applicable to the ownership interest; and (ii) may exercise the rights of the Applicant set forth in this Ordinance.

**Section 703. Subdivision Design Standards.** Any subdivision within the ECPD District will be exempt from the standards and requirements of Article 16 of the Zoning Ordinance (Subdivision Design Standards) and Articles 7 and 8 of the Subdivision Ordinance. In lieu of the foregoing standards and requirements, the following design standards and requirements will apply to any subdivision within the ECPD District:

1. The subdivision must provide sufficient easements for access to any newly created lot;
2. The subdivision must allow the newly created lot to be used safely for its intended purposes without danger to health or peril from fire, flood, erosion or other menace;
3. The arrangement, character, extent, width grade, and location of any streets created within the ECPD District shall promote the convenience and safety of the intended users, and will appropriately relate to the proposed uses of land to be served by such streets;
4. Any streets created within the ECPD District must be designed to provide for the discharge of surface water from the pavement and from the right-of-way by grading and drainage. For adequate drainage, the minimum street grade shall not be less than one-half (1/2) of one (1) percent; and
5. The lot size, width, depth, shape and orientation for a newly created lot shall be appropriate for the type of development and use contemplated.

**Section 704. Required Subdivision Improvements.** The terms and provisions of Article 18 of the Zoning Ordinance (Required Subdivision Improvements Prerequisite to Issuance of Building Permits) have been superseded by the Subdivision Ordinance, and therefore do not apply to the EPCD District. Article 11 of the Subdivision Ordinance shall not be applicable to the ECPD District, except that the Applicant and the County may enter into contracts associated with the construction of improvements containing such terms and provisions as the parties may mutually agree.

## **ARTICLE 8**

### **LEGAL STATUS PROVISIONS**

**Section 801. Severability.** If any provision of this Ordinance is held invalid by any court of competent jurisdiction, such invalidity shall not affect the application or validity of any other provision of this Ordinance, and, for such purposes, this Ordinance is declared to be severable.

**Section 802. Interpretation.** Capitalized terms not defined in this Ordinance shall have the meaning set forth in the Zoning Ordinance. All Article and Section headings in this Ordinance are for the general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not. In the event of any conflict, inconsistency, or ambiguity regarding the various requirements applicable to the development and operation of the ECPD District, the following order of precedence shall govern:

1. State and Federal Approvals;
2. This Ordinance; and
3. The Zoning Ordinance and Subdivision Ordinance, to the extent not modified by this Ordinance.

**Section 803. References to Zoning Ordinance and Subdivision Ordinance.** The zoning and subdivision standards and requirements applicable to the ECPD District consist solely of the standards and requirements set forth in this Ordinance and the Zoning Ordinance and Subdivision Ordinance as in effect on the effective date of this Ordinance. Pursuant to Article 13, once all the conditions have been met, the official Zoning map shall carry a notation of the location and boundaries of the ECPD District and shall give a reference to a file in which full information concerning the provisions applying to the district may be found.

**Section 804. Declaration and Abatement of Public Nuisances.** The County does not abrogate its authority under the following: 1) The County's Ordinance for the Declaration and Abatement of Public Nuisances; 2) SDCL § 7-8-33; or 3) SDCL § 21-10. Any one or more of the following conditions shall be deemed to constitute a public nuisance for purposes of the County's Ordinance for the Declaration and Abatement of Public Nuisances ("***Nuisance Ordinance***"):

1. the abandonment of an open construction site;
2. the abandonment of unused construction materials left at the construction site; or
3. the abandonment of the Subject Property along with the abandonment of crude oil, or crude oil derivatives.

For purposes of this Ordinance, the terms used in this Section shall be as defined in Section 1 of the Nuisance Ordinance. In order to declare any of the foregoing conditions a public nuisance under the County's Ordinance for the Declaration and Abatement of Public Nuisances, the Land Use Administrator must first provide notice of intent to declare a public nuisance to the Applicant, and provide the Applicant with a reasonable period of time to cure the condition,

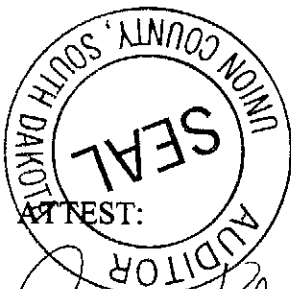
which period of time shall be extended for so long as the Applicant: (a) has established measures to protect users and occupants of the Subject Property and surrounding properties; and (b) is diligently attempting to cure the condition, subject only to delays caused by reasons outside of the control of the Applicant. In any event, the period of time provided by the Land Use Administrator to cure the condition shall be not less than one year. The timeframes for declaring a public nuisance under this Section shall prevail over any timeframes set forth in the Nuisance Ordinance. The County may enter into a contractual agreement with the Applicant to establish a surety or other assurances mutually acceptable to the parties to protect against the abatement of a nuisance.


**Section 805. Repeal of Conflicting Ordinances.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**Section 806. Effective Date.** This Ordinance shall take effect and be in force from and after its passage and publication according to law.

UNION COUNTY BOARD OF  
COUNTY COMMISSIONERS

BY:   
Its: Chairman



  
Union County Auditor

First Reading: March 3, 2008

Second Reading: March 11, 2008

Votes For: 5

Votes Against: 0

Date of Publication: March 20, 2008

Effective Date: April 10, 2008

#46-2008-09

## **EXHIBIT A**

### **SUBJECT PROPERTY**

Section Ten (10) less the Southeast Quarter (SE $\frac{1}{4}$ ), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Eleven (11) less the Southwest Quarter (SW $\frac{1}{4}$ ), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Twelve (12) less the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) and less the North Half of the Northeast Quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$ ) and less the East 1697.5 feet of the South 330 feet of the South Half of the Southwest Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ ) and less parcel conveyed for cemetery in Book 27 of Deeds on page 429 and less the Northeast corner of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section One (1) less the East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$ ) and less the Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) and less the East Half of Lots 1 & 2 of the Northeast Quarter, Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Two (2) Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Section Three (3) less the South Half of the Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$ ) and less the Northwest Quarter (NW $\frac{1}{4}$ ), Township Ninety-two (92) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The West Half of the Southwest Quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$ ) of Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

Replat of Quam Tract Three (3) being the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$ ) and parts of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$ ) and the Northwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ SE $\frac{1}{4}$ ), Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) and the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ), Section Thirty-five (35), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

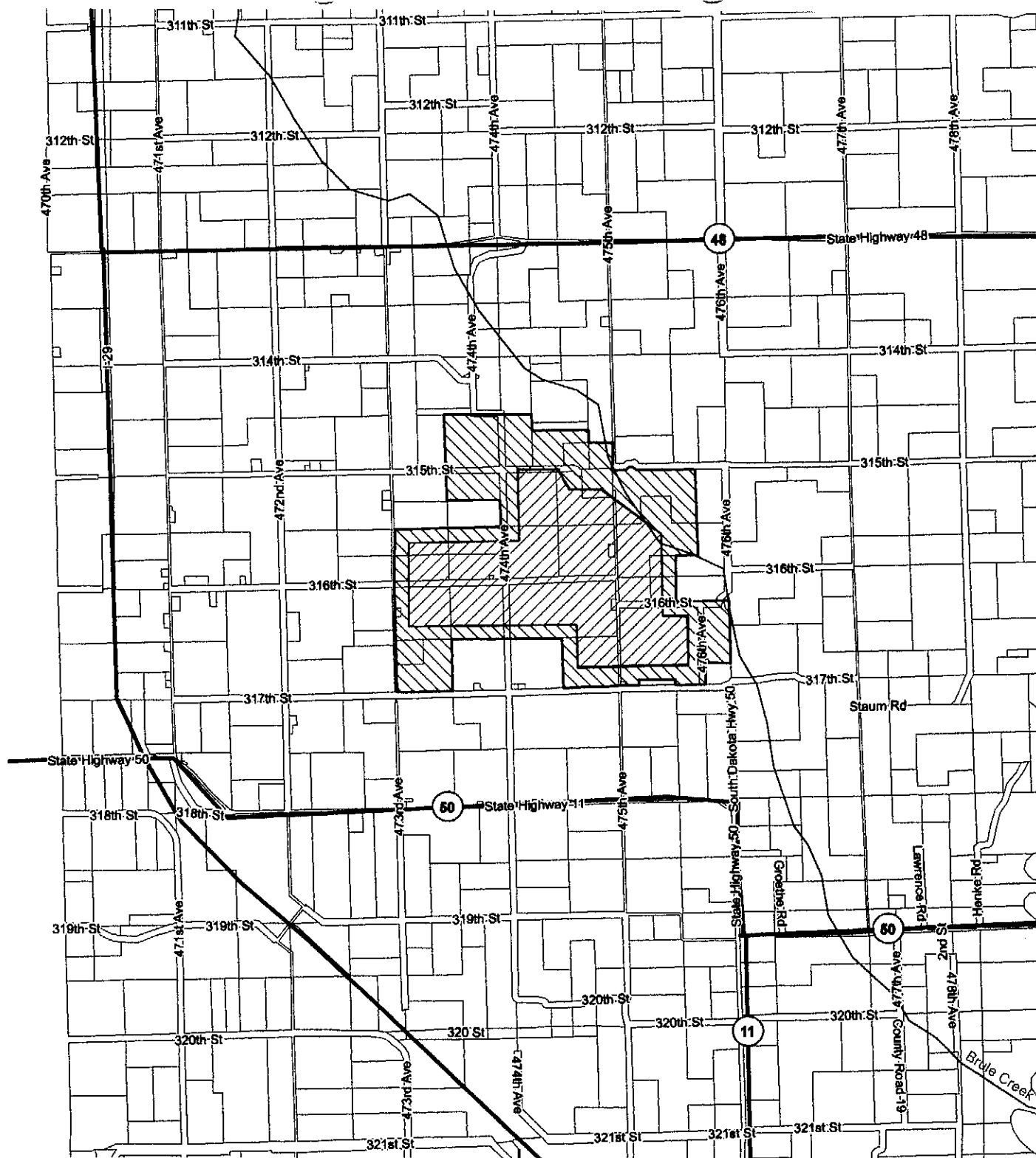
Lot C in the Southeast Quarter (SE $\frac{1}{4}$ ) in Section Thirty-four (34), Township Ninety-three (93) North, Range Fifty (50) West of the 5th P.M., Union County, South Dakota.

The East Half of the Southeast Quarter (E $\frac{1}{2}$ SE $\frac{1}{4}$ ) less Tract 1 of Hatton's Addition in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$ ), Section Thirty-four (34), Township Ninety-three (93) North, Range Fifty (50), West of the 5th P.M., Union County, South Dakota.



All public rights of way within and abutting the border of the Planned Development are included as a part of the Planned Development.

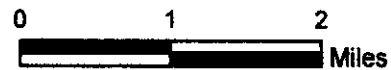
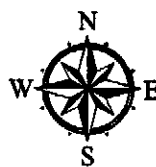
**EXHIBIT B**

**MASTER ZONE PLAN**



**Legend**

-  Industrial Zone
-  Industrial Transition Zone



## **EXHIBIT C**

### **PERMITTED USES AND STRUCTURES**

#### **A. Industrial Zone Permitted Uses and Structures**

1. Any industrial use that can meet the performance standards set forth in Section 406 of this Ordinance. For purposes of this Ordinance, the term "industrial use" includes, without limitation:
  - a. Refineries, power plants, and all related appurtenances and supporting infrastructure, including: (i) emergency flares; (ii) cooling towers; (iii) gas sequestration projects and facilities without on-site underground storage; and (iv) pipelines.
  - b. Tanks, facilities, and areas for the permanent and temporary storage of: (i) all liquids, gases, wastes, and other matters used in or generated by permitted industrial operations; and (ii) all waste resulting from such activities.
  - c. Manufacturing of any type.
  - d. Any use necessary to support the production or manufacture of ethanol and biofuels.
  - e. Wind generation facilities.
  - f. On-site aggregate mining.
  - g. Transportation-related infrastructure and facilities of any type, including road and rail rights-of-way, bridges, and structures; truck and rail loading and unloading; temporary and permanent parking; rail spurs; rail yards; rail car storage; truck and rail cleaning and washing facilities; garages; heliports/helipads; privately owned and operated airports, landing fields and landing strips licensed by the South Dakota Aeronautics Commission; maintenance and repair facilities; locomotive service areas; and intermodal transportation facilities.
2. Residential housing, including modular housing units, residential accessory uses, and residential supporting infrastructure; provided, however, that only the following persons and their families shall be permitted to reside in such residential housing: (a) construction workers and contractors working on the Project; and (b) security, fire protection, and supervisory personnel serving or related to the Project.
3. Fire protection systems and equipment.
4. Any principal or accessory use or structure permitted in the Light Industrial District (I-1) as set forth in Sections 1002 and 1003 of the Zoning Ordinance.



5. Any principal or accessory use or structure permitted in the Industrial Transition Zone.

**B. Industrial Transition Zone Permitted Uses and Structures**

1. Agricultural uses, but excluding sales and auction yard and concentrated animal feeding operations as defined by the South Dakota DENR.
2. Any appurtenance or supporting infrastructure to an industrial or transportation use: (i) located within usable open space; or (ii) otherwise approved by the Planning Commission as part of the detailed plans submitted in accordance with Section 501 of this Ordinance and Subsection 1305 (1) of the Zoning Ordinance as not detrimentally impacting the use and enjoyment of or viewsheds from surrounding properties.
3. Pipelines.
4. Communication and utility uses, including, without limitation, electrical distribution systems and facilities, substations, utility lines, fiber optic cables, poles, and towers.
5. Water distribution, wastewater, stormwater management and drainage, and sewer facilities and improvements of any type.

## **EXHIBIT D**

### **ACCESSORY USES AND STRUCTURES**

1. Accessory uses and structures normally appurtenant to the permitted uses and structures when established within the bulk limits of the ECPD District including, without limitation, streets, sidewalks, plazas, fencing, gates, signs, landscaping, and all related appurtenances and supporting infrastructure.
2. Retail, office, and service uses and structures for the benefit of Project workers or otherwise accessory to permitted principal uses and structures when established within the bulk limits of the ECPD District.
3. Temporary uses and structures related to Project construction, including trailers, indoor and outdoor storage, and construction staging or laydown areas.