

Model Zoning Task Force Work Group

The department arranged membership of the working group.

WORKING GROUP MEMBERS	
NAME	AFFILIATION
Doug Goehring	ND Agriculture Commissioner
Larry Syverson	ND Township Officers Association
Lee Brandvold	ND Township Officers Association
Anthony Bauer	ND Indian Affairs
Karl Rockeman	ND Dept. of Environmental Quality
Natalie Pierce	ND Planning Association
Nancy Johnson	ND Soybean Growers Association
Chris McDonald	ND Soybean Growers Association
Pete Hanebutt	ND Farm Bureau
Matt Perdue	ND Farmers Union
Brenda Elmer	ND Corn Growers Association
Drew Courtney	ND Corn Growers Association
Julie Ellingson	ND Stockmen's Association
Tamra Heins	ND Pork Council
Terry Entzminger	ND Milk Producers Association
Aaron Brist	ND Association of Counties
John Fjeldahl	ND Association of Counties

Livestock Facilities Tour – June 8, 2023

Working group was invited to attend a tour consisting of two days in locations located in North Dakota, Minnesota, and South Dakota of different varieties of larger scale animal feeding operations. These locations were: Van Bedaf Dairy (Dairy Farm near Carrington, ND), Enger Feedlot (Beef Feedlot South of Jamestown, ND), Quandt Brothers (Hog barn near Oakes, ND), Campbell Dairy (Riverview Dairy near Tintah, MN), SDSU Barns and Dairy Processing Plant Tours (Dairy Barn and Processing and Hog barn in Brookings, SD), and Dakota Layers (Egg Layer barns near Flandreau, SD).

Tour members consisted of: Shaun Quissell (NDDA), Haylee Viger (NDDA), Tom Bodine (NDDA), Nancy Johnson (ND Soybean Growers Association), Evan Montgomery (ND Soybean Growers Association), Stephannie Sinner (ND Soybean Growers Association), Lee Brandvold (NDTOA), Julie Brandvold (Cameron Township), Larry Syverson (NDTOA), Marty Haroldson (ND DEQ), Pete Hanebutt (NDFB), Mike Beltz (ND Legislature), Jason Mckenny (NDFU), Matt Perdue (NDFU), Jon Biermacher (NDSU), Brenda Elmer (ND Corn Growers Association).

Working Group Meeting – August 21, 2023

A notice and agenda for the meeting was sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through objectives for the task force which include develop a new or updated model zoning ordinance, review low density agriculture, review impact of overlay districts, and provide a final report to the 23-25 interim ag committee. Presenters were asked to speak to the group on topics of Overlay Districts, Current Model Zoning Ordinance - DEQ Laws and Rules, and South Dakota Animal Agricultural Zoning.

Natalie Pierce, planner for Morton County presented to the group on overlay districts. She provided three handouts including a close-up map of NE Morton County, outline of overlay district concepts, and a rough map of overlay district concepts in Morton County. There was discussion after presentation including:

- Non-conforming uses of agriculture and a need for outreach to those moving into rural areas.
- A need for a standard definition of recreational purposes in state law and zoning ordinances.
- Examination of current law on low-density agriculture districts being modified to allow for some use of overlay districts concepts.

Karl Rockeman, Director of the Division of Water Quality for ND Department of Environmental Quality (ND DEQ), presented to the group on current model zoning ordinance and DEQ laws and rules. Karl provided a PowerPoint presentation on DEQ laws and rules. Working group was emailed copies of previous proceedings of model zoning task force following the first meeting. Discussion of rule changes after large swine operation permit hearings.

Todd Kays with First District Association of Local Government presented to the group on South Dakota animal agricultural zoning. He and his group presented a PowerPoint on animal agriculture zoning from early the 1990's to present time. There was discussion after presentation including:

- Only making zoning changes on sound basis.
- Legal proceeding of Writ of Certiorari.
- Definitions of agreed parties regarding suits and zoning hearings.

- Right to farm easements and uses generally compatible.
- Creating definitions of conditional use and making them consistent across all of government.

After presentations there was discussion and examination of all presentations. During the conclusion of the first meeting, the working group was in agreement going forward to:

- Draft a one-page handout for townships and counties on what is current law, and what current law allows them to zone within the model zoning ordinance.
- Future presentation on manure management in ND.
- Presentation from surrounding states on their wind modeling for odor distribution.
- Hold a follow up meeting in the beginning of October 2023.

Meeting was adjourned, and the next meeting was to be determined based upon working group member schedules.

Working Group Meeting – October 2, 2023

A notice and agenda for the meeting were sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions of presenters. Presentations on overview of swine production, nutrient management plans, and livestock odor modeling were given.

Tamra Heins with ND Pork Council presented a PowerPoint presentation of swine production overview. She covered global demand for food, evolution of farming and pork, modern pork practices, ND and US pork production, animal health, environmental stewardship, and quality improvement. There was discussion after presentation including:

- ND DEQ common complaints answered by Karl Rockeman.
- Diversification opportunities bringing younger generations back to the farm.

Mary Keena with NDSU Extension provided a PowerPoint presentation on manure and nutrient management. She discussed the difference between stockpiling and composting, nutrient availability in different varieties used as fertilizer, decreasing weed seed viability, manure application tracking, and nutrient management plans. Discussion after the presentation included:

- Ammonium and right now available nitrogen uses.
- Common management practices.
- Containment pond management.

Dr. Robert Thaler with SDSU Extension presented a PowerPoint presentation on livestock odor modeling. He discussed with the working group on the topics of objection to CAFOs (Confined Animal Feeding Operations), sources of odor, olfactometer for label testing, health impacts of odors, assessing air quality, housing and manure storage types, and SD Odor Footprint Tool. Discussion after presentation included:

- Examples of different wind scenarios.
- The potential for a ND model, with the weather data that is already being collected in ND.

Following the presentations the next meeting was planned for January or February of 2024.

Working Group Meeting – March 4, 2024

A notice and agenda for the meeting were sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions, and previous presentations of the past meetings which included: overlay districts, ND DEQ rules and regulations, SD zoning, swine update, manure and nutrient management, and odor modeling in SD. Discussions and examinations that took place during working group meeting:

- ND Pork Council working on grant for odor footprint for ND with SDSU.
 - Timeline for this working group vs ND Pork Council grant applications and finished product.
- A look at ND prevailing winds vs Nebraska's at <https://hprcc.unl.edu/datasets.php?set=WindRose>.
- NDDA to put together presentation on data of setbacks of surrounding states plus Nebraska and Iowa.
- New technologies utilized in manure management.
- New technologies of facility design.
- How other states look at setbacks, and their differences in livestock species.
 - ND is the only state in surrounding area that looks at swine differently than other livestock species.
- Animal units vs animal numbers.

NDDA presented on Nebraska's matrix model for zoning. Nebraska utilizes wind information from the above site listed. "The matrix is a practical tool for county officials to use to help determine whether to approve a conditional use permit or special exception application. It produces quantifiable results based on the scoring of objective criteria according to an established value scale," – Nebraska Department of Agriculture. Discussion on matrix style zoning:

- Website and information sent out to working group for review.
- Setback distances and plume modeling examples.
 - NDDA to present on neighboring states strategies in zoning in addition to Nebraska and Iowa. Supplemental information of how some surrounding states handle road maintenance.
 - Transparency was appreciated with the matrix model, however does not draw a clear enough line between duties of county/township, state, and ND DEQ.
- NDDA and ND DEQ to present on layout of procedure, authority and enforcement of current rules and regulations to working group at next meeting.
 - Examination of keeping local control was of importance.

NDDA presented county site analysis for trial counties who participated in the Regional Livestock Development and Planning Grant.

- Presentation of Traill and Ransom counties site analysis.
- Scenarios for setback distances.
- Continuing appropriation.
- NDDA/DOT grants available.

Following the presentations the next meeting was planned for April 8, 2024.

Working Group Meeting – April 8, 2024

A notice and agenda for the meeting were sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions for the presentation on the permitting process and steps.

Karle Rockeman with ND DEQ presented on the permitting process and its steps in ND. Topics covered in their presentation included:

- Typical siting approval and permitting processes for AFOs (Animal Feeding Operations).
 - Site selection standards.
- Local zoning research from the ND DEQ website, authority in zoning, and the current model zoning ordinance.
- Project engineer selection, preliminary engineers design, producer review of design, and final engineer design.
- Submitting a zoning application.
- ND DEQ permit application process, with possible design or plan changes.
- Public notices and comment.
- Final approval from DEQ.

- Livestock facility construction and completion.

Shaun Quissell with NDDA presented on neighboring states zoning setbacks and requirements from South Dakota, Minnesota, Montana, Nebraska, and Iowa in comparison to North Dakota's current model ordinance.

Discussion and examination of Task Force options included:

- How would a matrix model specified to ND look?
 - NDDA to put together an example for next meeting.
 - Matrix and authority, with separation from DEQ.
- A look at regional planning and zoning, and why it failed in other states.
- Differences in different counties/townships zoning ordinances in ND.
- Task force would like to see higher populated states procedures for CAFO's.
- ND odor footprint tool update.
- Regional Livestock Development and Planning Grant information.

Following the presentations the next meeting was to be determined based on schedules of working group.

Working Group Meeting – June 3, 2024

A notice and agenda for the meeting were sent out to the list above as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions.

Shaun Quissell with NDDA presented a draft of a zoning matrix for ND. Discussion on matrix included:

- ND vs NE models.
- Roles of ND DEQ vs siting authority blurry.
- Voluntary vs mandatory points.
- Edits of matrix model.
- Discussion on separation distances:
 - Wind Roses information in ND (1991-2012).
 - Existing operations within setbacks.
- Discussion on wind roses vs and odor footprint model:
 - Difference between swine and other livestock.
 - NE site uses a plume model.
 - Seasonality of wind roses.
- Discussion on how the working group sees the matrix being utilized:
 - Matrix would stand alone if utilized.
 - Timeline for odor footprint model.

- How would this matrix affect existing operations.
- Who would utilize matrix?

Following the presentations the next meeting was to be determined on schedules of the working group members.

Working Group Meeting – August 12, 2024

A notice and agenda for the meeting were sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions of presenters.

Todd Kays with First District of Local Governments presented on odor footprint model use. He and his team discussed using the model as a comparative analysis for individual cases, and not as determining law. Its primary uses are in expanding operations or deferment and utilizes scientific basis. He expressed that the odor footprint is not used as law, as there are too many variances depending on location. The use of a model setback keeps everyone on the same level of expectations. He and his group then discussed the differences in laws in SD regarding AFO's including waivers, odor footprint variance, dubs laws, aggrieved persons, and conditional use permits.

The working group discussed the use of a Matrix in ND:

- Matrix could be utilized, but best as a guidance aid and not law.
- No scoring system, just yes or no answers.
- DEQ related items to be deleted. Could there be a similar document specifically made for DEQ?
- Looked at proposed setback distances. (See charts below)

The working group discussed county and township roads and decided to create a subgroup to discuss CAFO's located on township roads.

The working group examined and compared the proposed setbacks to current law (see draft below).

North Dakota Other Animal Operations

<u>Animal Unit Number</u>	<u>Setback Distance</u>
Less than 300	None
300-999	2,640 ft (1/2 mile)
1,000-1,999	2,640 ft (1/2 mile)
2000-4,999	3,960 ft (3/4 mile)
5000-7500	5,280 ft (1 mile)
7501-10,000	5,280 ft (1 mile)
10,001-17,500	5,280 ft (1 mile)
17,501-25,000	5,280 ft (1 mile)
25,001-50,000	5,280 ft (1 mile)
50,001-100,000	5,280 ft (1 mile)

North Dakota Swine

<u>Animal Unit Number</u>	
Less than 300	None
300-999	2,640 ft(1/2 mile)
1,000-1,999	3,960 ft (3/4 mile)
2000-4,999	5,280 ft (1 mile)
5000-7500	7,920 ft (1 1/2 mile)
7501-10,000	7,920 ft (1 1/2 mile)
10,001-17,500	7,920 ft (1 1/2 mile)

Proposed Setbacks

- none
 - 1,320 ft (1/4 mile)
 - 2640 ft (1/2 mile)
 - 2640 ft (1/2 mile)
 - 3,960 ft (3/4 mile)
 - 5280 ft (1 mile)
 - 6,600 ft (1 ¼ mile)
 - 7,920 ft (1 ½ mile)
 - 7,920 ft (1 ½ mile)
 - 10,560 ft (2 mile)
-
- Remove swine distances

Following the presentations the next meeting was to be determined on schedules of the working group members.

Working Group Meeting – September 4, 2024

A notice and agenda for the meeting were sent out to the list of working group members, as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions.

The working group discussed and examined the ND Matrix model and decided to rename the matrix to Recommended/Suggested Considerations for AFO's. The working group came to an agreement that the matrix model was not suitable for ND. Instead chose to try and rework the matrix to fit as a resource for producers and or political subs to utilize as a tool. The working group then discussed the following considerations for the Recommended/Suggested considerations for AFO's:

- Infrastructure challenges, such as water and electric.
- A place for explanation of plans.
- Regional Livestock Development and Planning Grant participation.
- Traffic considerations.

The working group decided it was in the best interest of the group to have a breakout group work on the new document for Recommended/Suggested Considerations for AFO's, as this was no longer one of the delegated tasks for the working group. Natalie Pierce (NDPA) and Julie Ellingson (NDSA) chose to work on this document outside of the working group and represent to the at a later date.

The working group shifted to Draft Bill Language to present to the interim ag committee. Karl Rockeman (NDDEQ) would put together some informational maps for the working group concerning current locations of CAFO's and their correlation to ND Wind Roses.

The group then examined and discussed definitions of high and low densities.

- State vs local definitions.
- Enforcement incentives.
- Adding data sets to the Regional Livestock Development and Planning Grant.
- Setback discussion for odor footprint model.
 - No more than 94%.
- Odor footprint model ownership and management.
- Bill language to be reviewed by taskforce on a 5 year basis.

Road agreement subgroup interest included NDDA, Larry Syverson (NDTOA), Lee Brandvold (NDTOA), John Fjeldahl (NDAOC), Natalie Pierce (NDPA), Julie Ellingson (NDSA), Aaron Brist (NDAOC), and Parrell Grossman (NDSGA).

Working group discussed updates to the model zoning ordinance and corresponding arrangements to be made.

Following discussion, the next meeting was to be determined on schedules of the working group members.

Road Agreements Subgroup Meeting – October 7, 2024

Subgroup for road agreements meeting met and included the following members from the taskforce: Shaun Quissell (NDDA), Larry Syverson (NDTOA), Lee Brandvold (NDTOA), John Fjeldahl (NDAOC), Natalie Pierce (NDPA), Scott Ressler (NDSA), and Parrell Grossman (NDSGA). The subgroup was informed and discussed current road agreement law. (11-33-02.1 and 58-03-11.1). The group then discussed and examined the following:

- Current situations and insights from county, township, and producer perspectives.

- Sizes of current and future operations.
- Road maintenance costs.
- Penalties.
- Downsides for current operations in compliance or working towards compliance.
- Looking at road costs across the state, funding, and sales tax.
- Infrastructure funding.

Subgroup discussed and decided that there is no one way to combat road issues. The complexity of the issue and the variation across the state regarding authority is too inconsistent to create an overall state suggestion from the working group.

Working Group Meeting – October 28, 2024

A notice and agenda for the meeting were sent out to the list above as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions.

The working group reviewed and discussed the Recommended/Suggested Considerations for AFO's guideline document. They noted changes that needed to be made, added comments for issues they would like to see on the form, and discussed ND DEQ's part in the guideline. The working group concluded that the guideline would need to be reworked before it would reach its final form.

Road agreements subgroup reported and discussed with the group about their previous meeting (see above notes). The group concluded that no further meetings would be needed at this time for the working group.

A copy of the model zoning with updates made from the working group was provided. The working group was tasked to review and come back with edits for the next meeting. Working group discussed updates to the model zoning ordinance and corresponding arrangements to be made.

Following discussion, the next meeting was to be determined on schedules of the working group members.

Working Group Meeting – December 9, 2024

A notice and agenda for the meeting were sent out to the list above as well as listed for the public. Commissioner Doug Goehring walked through agenda and introductions.

The working group discussed edits for the guideline document that replaced the matrix model. After much discussion the group decided to come back to the document, as it is not a delegated task needed for legislation.

ND DEQ presented odor model comparison presentation. This presentation showed odor readings from different locations across ND. The odor readings demonstrated that even with the newly proposed setback distances that these operations would still be within regulation. Comparisons also outlined how the proposed changes would compare ND to NE and MN regulations.

The working group then discussed finalizing the proposed model zoning document. The group held discussion and made edits to the document:

- Floodplain information.
- Removing any of DEQ's rules and responsibilities.
- Grammatical corrections.
- Variance decisions.

Following discussion, the meeting was adjourned. The final bill draft to be submitted to the interim ag committee.