

# ZONING REGULATIONS

of

## Custer County, Nebraska

Revised Draft – November 19, 2012

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## **ARTICLE 1 - GENERAL PROVISIONS**

### **SECTION 101 - TITLE**

These regulations shall be known and referred to as the Zoning Resolution of Custer County, Nebraska.

### **SECTION 102 - JURISDICTION**

The provisions of this Resolution shall apply within the boundaries of Custer County, Nebraska, excluding the land included now or in the future in the corporate limits of the incorporated municipalities within and adjoining the County and any legally established planning and zoning jurisdictional areas of these municipalities as may be defined on any Official Zoning Map of these municipalities.

### **SECTION 103 - PURPOSE**

In pursuance of and in compliance with the authority conferred to Nebraska counties by Section 23 of the Nebraska Statutes as amended, this Resolution is enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Custer County and for implementation of the duly adopted Custer County Comprehensive Plan. This Resolution is also enacted to preserve and protect the customs and culture of the people of the County and the following specific purposes:

- 1) Developing both urban and non-urban areas and lessening congestion in the streets or roads and reducing the waste of excessive amounts of roads;
- 2) Securing safety from fire and other dangers and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;
- 3) Protecting light and air and preventing excessive concentration of population and excessive scattering of population or settlement;
- 4) Promoting such distribution of population, such classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements;
- 5) Protecting the tax base and protecting property against blight and depreciation;
- 6) Securing economy in governmental expenditures;
- 7) Fostering the state's agriculture, recreation, and other industries;
- 8) Encouraging the most appropriate use of land in the County, and;
- 9) Preserving, protecting, and enhancing historic buildings, places and districts.

## **ARTICLE 2 - APPLICATION OF REGULATIONS**

### **SECTION 201 - GENERAL**

The zoning regulations set forth by this Resolution within each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided.

In addition to all other requirements set forth in these regulations, all structures, including residences and conditional use projects must comply with all existing federal, state and Custer County Floodplain Management Plans. A valid floodplain application must be completed by the applicant and approved by the County's Floodplain administrator prior to the issuance of any zoning permit.

### **SECTION 202 - ZONING AFFECTS EVERY BUILDING AND USE**

With the exception of the provisions of Article 7 of this Resolution regarding non-conforming uses and structures, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved or structurally altered except in conformity with the regulations herein specified for the zoning district in which it is located. Further, no building or structure shall hereafter be erected or altered to exceed the height or bulk, to occupy a greater percentage of lot area, to have a narrower or smaller front, side or rear setback than is herein required, or be in any other manner contrary to the provisions of this Resolution.

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**SECTION 203 - SETBACK AND LOT SIZE REDUCTION PROHIBITED**

No setback, lot or tract existing at the time of adoption of this Resolution shall be reduced in dimension or area below the minimum requirements set forth herein. Setbacks, lots or tracts created after the effective date of the Resolution shall meet or exceed the minimum requirements established by this Resolution.

**SECTION 204 - PROVISIONS DECLARED TO BE MINIMUM REQUIREMENTS**

In their interpretation and application, the provisions of this Resolution shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare.

**SECTION 205 - DISCLAIMER OF BUILDING AND OTHER CODES AND COUNTY LIABILITY**

This Resolution is a zoning regulation only and regulates only land usage. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical or other code which would regulate the design and construction of any building or structure within the jurisdiction of this Resolution.

Any permits or certificates issued in accordance with the requirements of this Resolution are solely for purpose of assuring compliance with the land usage regulations set forth in this Resolution for the purposes described in Section 103 of this Resolution. Custer County assumes no liability and shall not in any manner be held liable for any design or construction problem or defect in any building or structure for which a zoning permit, certificate of compliance or other form of land usage approval may have been issued nor shall Custer County assume any liability for any non-compliance with any Federal, State or other code, regulation or requirement.

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## **ARTICLE 3 - CONSTRUCTION AND DEFINITIONS**

### **SECTION 301- CONSTRUCTION**

The following rules of construction shall apply unless inconsistent with the plain meaning of the context of this Resolution:

- 301.01 TENSE:** Words used in the present tense include the future tense.
- 301.02 NUMBER:** Words used in the singular include the plural, and words used in the plural include the singular.
- 301.03 SHALL AND MAY:** The word “shall” is mandatory and the word “may” is permissive.
- 301.04 GENDER:** The masculine shall include the feminine and the neuter.
- 301.05 HEADINGS:** In the event that there is any conflict or inconsistency between the heading of an Article, Section, or paragraph of this Resolution and the context thereof, the said heading shall not be deemed to effect the scope, meaning or intent of such context.

### **SECTION 302 - GENERAL TERMINOLOGY**

The word “County” shall mean the County of Custer, Nebraska. The words “County Board” shall mean the Custer County Board of Supervisors. The words “Planning Commission” shall mean the Custer County Planning Commission duly appointed by the Custer County Board of Supervisors. The words “Board of Adjustment” and “Board” shall mean the Custer County Board of Adjustment duly appointed by the Custer County Board of Supervisors in accordance with this Resolution. The words “Zoning Administrator” shall mean that person duly appointed by the Custer County Board of Supervisors to administer and enforce these zoning regulations.

### **SECTION 303 - DEFINITIONS**

Words or terms not herein defined shall have their ordinary meanings in relation to the context. For the purposes of this Resolution, certain words and terms used herein are defined as follows:

- 303.01 ABUT:** Any situation where a lot borders directly on another lot or is separated from an adjoining lot by a public road right-of-way which is twenty (20) feet or less in width.
- 303.02 ACCESSORY USE OF BUILDING:** A building or use that is subordinate and incidental to that of the main or principal building or use on the same lot or tract.
- 303.03 AGRICULTURAL LAGOONS:** Are man made ponds used to hold, store, process and digest waste from intensive/confined feeding uses.
- 303.04 AGRICULTURAL USE:** Farming and ranching which is a farmstead of 20 or more acres which produces \$1,000 per year or more of farm product (§23-114.03).
- 303.05 AGRONOMIC RATES:** The application of plant nutrients, from all sources, to meet, but not exceed, the estimated annual nutrient needs of the crop being produced, based upon past or projected yields, so as to avoid build-up of nutrients including, but not limited to, nitrate, chloride, and phosphorus. Determination of the agronomic rate shall include the available nutrients in the soil, the nitrogen content of any irrigation water, and the nutrient content of any waste, sludges and commercial or other fertilizers to be applied.
- 303.06 BLANK**
- 303.07 ANIMAL UNIT:** The relationship of various animals with regard to manure production based

upon one thousand pounds of animal(s) regardless of type. For purposes of this Resolution, the following relationship with regard to manure production shall be as follows:

| <u>Type of Animal</u>                       | <u>Animal Unit(s)</u> |
|---|-----------------------|
| Beef Animal (500 - 1,200 pounds).....       | 1.00                  |
| Buffalo.....                                | 1.00                  |
| Beef or Dairy Calf (150 - 500 pounds).....  | 0.50                  |
| Young Dairy Stock (500 - 1,000 pounds)..... | 0.75                  |
| Replacement Heifers.....                    | 1.00                  |
| Dairy Cow.....                              | 1.40                  |
| Horse.....                                  | 2.00                  |
| Swine (55 pounds or heavier).....           | 0.40                  |
| Swine (less than 55 pounds).....            | 0.04                  |
| Swine (sow and litter).....                 | 0.50                  |
| Sow or Boar.....                            | 0.40                  |
| Sheep.....                                  | 0.10                  |
| Chicken.....                                | 0.01                  |
| Turkey.....                                 | 0.02                  |
| Ostrich.....                                | 0.40                  |

**303.08 ANIMAL WASTE:** Any animal excrement, animal carcass, feed waste, animal waste water, or other waste associated with the care and feeding of animals.

**303.09 BLANK**

**303.10 BASEMENT:** A building space wholly or partially underground and having more than one-half (1/2) of its height, measured from its floor to the top of its average wall height, below the average elevation of the finished grade of the soil around said space.

**303.11 BED AND BREAKFAST, BOARDING OR LODGING HOUSE:** a building, other than a hotel or motel, where for compensation and by arrangement for definite periods, meals and / or lodging are provided for customers.

**303.12 BUILDABLE AREA:** The portion of a lot or tract of land remaining after the front, side and rear setbacks, as herein defined, have been provided.

**303.13 BUILDING:** A structure having a roof or having a roof and walls used or intended to be used for sheltering of persons, animals or property. When divided or separated by other than common walls, each portion or section of a building shall be considered a separate building. (Refer to Section 303.35, Farm Building and Section 303.65, Non-Farm Building.)

**303.14 BUILDING HEIGHT:** The vertical distance, measured from the average ground level at the front of a building or structure to the highest point of the building roof, excluding chimneys, antennas or other similar appurtenances or structure.

**303.15 CAMPGROUND:** Any premises where two (2) or more camping units are parked or placed for camping purposes, or any premises used to set apart for supplying camping space for two (2) or more camping units for camping purposes to the public. Campground shall include any buildings, structures, vehicles or enclosures used or intended to be used wholly or in part for the accommodation of campers.

**303.16 CAMPING UNIT:** Any vehicle, trailer, tent or other movable shelter used for camping purposes.

**303.17 CERTIFICATE OF ZONING COMPLIANCE / CERTIFICATE OF OCCUPANCY: A**



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written certificate issued by the zoning administrator, stating that the premises has been inspected after erection, construction, reconstruction, alteration or moving of a building or structure or after a change in the use of land stating that the premises complies in all respects with the requirements of this Resolution and may be occupied for the use declared.

- 303.18 COMMERCIAL USE:** A use, other than an agricultural use, where products are built, constructed or purchased for sale or resale for profit, where services are sold for profit or otherwise provided.
- 303.19 COMPATIBLE USE:** A land use of one type that is suitable for direct association or location near a use of a different type because of its consistency with the Intent statement of the zoning district in which said uses are located, because of similar or comparable buildings and use activities, and because neither use will diminish the use, value and enjoyment of the other.
- 303.20 COMPOSTING:** The natural process of decomposing vegetative refuse, manure and other naturally degradable materials in piles with or without use of free oxygen.
- 303.21 COMMENCED WORK:** The performing of substantial work, at the site, in relationship to the total project.
- 303.22 COMPREHENSIVE PLAN:** The plan or series of plans for the future development of Custer County, Nebraska, recommended by the Planning Commission and adopted by the County Board of Supervisors.
- 303.23 CONDITIONAL USE:** A land use that would not be generally compatible with other permitted land uses in a zoning district, but which if controlled as to number, area, location, relation to surrounding uses or other attribute, could become reasonably compatible with such permitted land uses and would promote the public health, safety, convenience and general welfare.
- 303.24 CONDITIONAL USE PERMIT:** A written permit issued by the Zoning Administrator upon authorization of a conditional use under the terms of this Resolution by the County Board of Supervisors. Such permit shall give permission to the applicant to develop the specified conditional use and shall specify the conditions of approval of such use as established by the County Board of Supervisors.
- 303.25 BLANK**
- 303.26 DWELLING:** Any building or portion thereof, other than a hotel, motel, bed and breakfast, group home or other building used for short term occupancy by human beings, which is designed and / or used for living purposes on an on-going basis.
- 303.27 DWELLING, MULTI-FAMILY:** A dwelling unit having independent accommodations for more than three (3) or more families.
- 303.28 DWELLING, SINGLE-FAMILY:** A dwelling unit having independent accommodations for and occupied by one (1) family.
- 303.29 DWELLING, TWO-FAMILY (DUPLEX):** A dwelling unit having independent accommodations for and occupied by two (2) families.
- 303.30 DWELLING UNIT:** One room or combination of rooms which constitute a separate and independent housekeeping establishment containing independent cooking, sleeping and restroom facilities.
- 303.31 EASEMENT:** A right or privilege granted by the owner of a defined parcel of land for the use of such defined parcel of land for a specific purpose or purposes by the public, another person,

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corporation or other legal entity.

**303.32 BLANK**

**303.33 FAMILY:** An individual or two (2) or more persons related by blood, marriage or adoption, or a group of not more than five (5) persons, excluding servants, who may not be related, living together in a single dwelling unit.

**303.34 FARMING AND RANCHING:** Shall mean (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or (ii) the ownership, keeping and feeding of animals for the production of livestock or livestock products.

**303.35 FARM BUILDING:** Any non-residential building located on a farm or ranch which is utilized for agricultural purposes, provided that when the use or consequences of the agricultural use conducted in such building exit from the building onto, across or under the land, whether underneath the building or adjoining thereto or onto or into some other structure such use, if not an agricultural use, shall not be considered part of such building and shall be subject to the requirements and limitations of this Resolution.

**303.36 FLOOD PLAIN:** Those lands within the zoning jurisdiction of Custer County which are subject to a one percent (1%) or greater chance of flooding in any given year. Determination of flood plains shall be based on historical high water marks and interpolation of such high water marks by the Natural Resource District or other agency capable of determining such flood plains until such time as flood hazard maps are produced and provided by the Federal Flood Insurance Administration, after which such flood hazards maps shall be utilized.

**303.37 FLOOR:** A level or story in a building.

**303.38 FLOOR AREA:** The sum of the gross horizontal areas of the one or several floors of all buildings or portions thereof, on the lot or tract.

**303.39 FRONTAGE (LOT):** The length of the real property abutting one (1) side of a road right-of-way, measured along the dividing line between said real property and the road right-of-way.

**303.40 GROUP DAY CARE CENTER / NURSERY SCHOOL:** An establishment other than public, private non-religious or parochial school, which provides day care, play groups, nursery school or education for five (5) or more unrelated children.

**303.41 GROUP HOME:** A facility, licensed or approved by the State of Nebraska or other appropriate agency, in which more than two (2) persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care, for any of the following purposes: 1) adaptation to living with, or rehabilitation from disabilities; 2) adaptation to living with, or rehabilitation from, emotional or mental disorders, or mental retardation; 3) rehabilitation from the effects of drug or alcohol abuse; or 4) supervision while under a program of alternatives to imprisonment, including, but not limited to pre-release, work release and probationary programs.

**303.42 HOME BASED BUSINESS:** See Section 303.43: Home Occupation.

**303.43 HOME OCCUPATION:** An occupation or business enterprise conducted in a dwelling unit or accessory building by members of the family occupying the dwelling unit, established in accordance with standards and restrictions set forth in this Resolution.

**303.44 IMPACT EASEMENT:** An easement or deed restriction, recorded in the office of the Custer County Registrar of Deeds, which runs with the land, which is granted to the owner of an industrial use, an intensive/confined feeding uses, or other use for the period of time that

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such use shall exist, by the owners of adjoining or neighboring real property in which it is mutually agreed that the grantor shall hold the grantee harmless from odor, smoke, dust, or other legal impacts associated with such use on the grantor's property when such use is operated in accordance with the terms of such easement or deed restriction.

**303.45 INCOMPATIBLE USE:** A land use of one type that is unsuitable for direct association or location near or abutting a land use of a different type because of its inconsistency with the Intent statement of the zoning district in which such uses are located, because of major differences in building types, building mass, building height and use activities, and because such use would diminish the use, value and enjoyment of the other.

**303.46 INDUSTRIAL USE:** A land use involving the manufacture of one or more products on the premises.

**303.47 INTENSIVE/CONFINED ANIMAL FEEDING USE:** The raising, feeding or management of more than three hundred (300) animal units at any one time in partial or total earthen pens or lots which are or used for confinement of animals where manure is or may be in contact with the earth and in roofed buildings or structures which may be open sided or totally enclosed and which may have hard surfaced, slatted or other type of surfaced floor, and/or on hard surfaced, non-earthen, outdoor pens or lots used for confinement of such animals. Confinement of an unrestricted number of ruminant animals for birthing, weaning or back grounding in lots or pens which are not used in three continuous months in May, June, July, August and September shall not be considered an intensive/confined animal feeding use. For purposes of this Resolution, intensive/confined animal feeding uses shall be classified and regulated with regard to the number of animal units confined as follows:

Class A - An intensive/confined animal feeding use with a one time capacity of more than 300 animal units of swine, but less than 2,500 animal units of swine.

Class B - An intensive/confined animal feeding use with a one time capacity of more than 300 animal units of ruminant animals, but less than 5,000 animal units of ruminant animals.

Class C - An intensive/confined animal feeding use with a one time capacity of more than 5,000 animal units of ruminant animals, but less than 30,000 animal units of ruminant animals.

Class D - An intensive/confined animal feeding use with a one time capacity of more than 2,500 animal units of swine.

Class E - An intensive/confined animal feeding use with a one time capacity of more than 30,000 animal units of ruminant animals.

**303.48 JUNK YARD:** See Section 303.80: Salvage Yard.

**303.49 LANDFILL:** A waste disposal site employing an engineered method of disposing of solid wastes in a manner that minimizes environmental hazards by spreading, compacting and applying cover material over all exposed waste designed in accordance with the requirements of the Nebraska Department of Environmental Quality and licensed by said Department.

**303.50 LOT (ZONING):** A piece, parcel or plot of land under single ownership or control, not divided by any public street or road, but having frontage on a public street or road which is occupied or intended to be occupied by one principal building and its accessory buildings or structures.

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- 303.51 LOT AREA:** The total horizontal area of a lot, excluding all street or alley rights-of-way.
- 303.52 LOT, CORNER:** A lot which has frontage on two (2) or more streets or roads at the intersection of said streets or roads.
- 303.53 LOT DEPTH:** The average horizontal distance between the front and rear lot lines of any lot.
- 303.54 LOT OF RECORD:** A lot which is part of a subdivision plat or lot, plot or parcel described by metes and bounds recorded in the office of the Registrar of Deeds of Custer County, Nebraska at the time of adoption of this Resolution.
- 303.55 LOT WIDTH:** The horizontal distance between the side lot lines, measured parallel to the street/ road on which the lots has frontage, at the minimum front setback distance, as specified in this Resolution for the zoning district in which such lot is located. In the case of lots which front on a curved road or the turn-around of a cul-de-sac street, the lot width shall be the horizontal distance between the side lot lines, measured perpendicular to a radial line extending from the centerline of the street / road into the lot at the center of the lot frontage, at the minimum setback distance, as specified in this Resolution for the zoning district in which such lot is located.
- 303.56 MANUFACTURED HOME:** A factory-built structure which is to be used for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F. R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or any successor regulations thereto and which complies with the following minimum standards:
1. a minimum floor area of nine hundred (900) square feet,
  2. a minimum exterior width of eighteen (18) feet,
  3. a minimum roof pitch of two and one-half (2 ½) inches of rise per each twelve (12) inches of horizontal run,
  4. exterior material shall be of a color, material, and scale comparable with existing residential site-built, single-family construction,
  5. a non-reflective roof of material which is or simulates asphalt or wood shingles, tile or rock,
  6. all wheels, axles, transporting lights and removable towing apparatus have been removed
  7. is placed on and permanently attached to a foundation of the same construction as required for site-built homes,
  8. is permanently connected to public utilities in the same manner required for site-built homes.
- 303.57 MOBILE HOME:** A detached dwelling unit which was originally designed for long term human habitation and which was constructed and fabricated into a complete unit at a factory and capable of being transported to a location for use on its own chassis and wheels, identified by model number and serial number by its manufacturer, and designed primarily for placement on a non-permanent foundation when used for residential purposes, but not including any structure which meets the definition of Manufactured Home or Modular Home, as herein defined.
- 303.58 MOBILE HOME LOT:** A lot or parcel of land for the placement of one (1) mobile home.
- 303.59 MOBILE HOME PARK:** Any parcel of land area under single ownership and control upon which sites for parking of two (2) or more mobile homes connected to utilities and used by persons for living or sleeping purposes are provided by lease, rent or free of charge.
- 303.60 MOBILE HOME SUBDIVISION:** A parcel of land which has been or is intended to be subdivided into two (2) or more lots for sale to persons to place a mobile home on said lot.

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- 303.61 MODULAR HOME:** A manufactured housing unit, as defined in Section 71-1557 of the Nebraska Revised Statutes 1943, which bears the seal of the Nebraska Department of Health or its successor.
- 303.62 NON-CONFORMING LOT OF RECORD:** A lawfully established lot of record in existence as of the effective date of this Resolution, which does not comply with the minimum lot area, width and other lot standards established in the various zoning districts created by this Resolution.
- 303.63 NON-CONFORMING STRUCTURE:** A lawfully erected structure in existence as of the effective date of this Resolution which does not comply with the lot coverage, height, setback requirements or other standards applicable to new structures in the zoning district in which said structure is located.
- 303.64 NON-CONFORMING USE:** A lawfully established use of land in existence as of the effective date of this Resolution which does not comply with the regulations of this Resolution.
- 303.65 NON-FARM BUILDING:** Any building which contains a use that is not an agricultural use.
- 303.66 PERMANENT FOUNDATION:** The substructure of a structure to which the structure is permanently attached which provides a permanent support for said structure around its entire perimeter and at points within its perimeter where needed.
- 303.67 PARKING SPACE, OFF-STREET:** An area, open or closed, which is sufficient in size to permit the parking of one (1) or more vehicles, together with a driveway connecting said parking area to a street or road to permit ingress and egress by said vehicle.
- 303.68 PREMISES:** The land area containing a land use which is contiguous with and under the same ownership as the land use.
- 303.69 PREVAILING WINDS:** Prevailing winds in Custer County are from the north, and northwest in winter months and south in summer months. Prevailing wind directions, using magnetic north as determined through use of a common compass, are defined as:
- North - from forty-five degrees west of north to forty-five degrees east of north  
South - from forty-five degrees west of south to forty-five degrees east of south  
East - from forty-five degrees east of north to forty-five degrees east of south  
West - from forty-five degrees west of north to forty-five degrees west of south
- 303.70 PRINCIPAL BUILDING:** A building in which the principal use on the lot is situated.
- 303.71 PRIVATE AIRSTRIP:** A privately owned parcel of land used for take-off and landing of small aircraft which is duly registered with the Nebraska Department of Aeronautics.
- 303.72 PRIVATE ROADWAY:** A privately owned, open, unoccupied space other than a public road or privately owned road by use, reserved as the principal means of access to abutting property.
- 303.73 PUBLIC USE AREA:** An area of land or water, whether publicly or privately owned, which is designed for and used by ten (10) or more unrelated persons on at least a quarterly basis for recreation, education, communication, worship, meetings or other legal purpose, including public parks, public water areas, public game refuges, fish hatcheries, publicly or privately owned meeting halls, historic sites and similar areas, provided that a public use area shall not be construed to include any rights-of-way for streets, hiking trails or roadways or privately owned land used for hunting and/or fishing.
- 303.74 BLANK**
- 303.75 RECREATIONAL VEHICLE:** A temporary dwelling for travel, recreation and vacation use

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including travel trailers, camping trailers, pickup campers, motor coaches, camp cars, tent trailers, boats or any other vehicular portable structure.

- 303.76 RESIDENTIAL USE:** A dwelling unit located on a lot, parcel or tract of land
- 303.77 ROAD / ROADWAY:** A public right-of-way set aside for public travel which affords the principal means of access to abutting property.
- 303.78 ROAD CENTERLINE:** A line extending down the center of a road or street right-of-way.
- 303.79 ROADSIDE STAND:** A structure or portion thereof used for the shelter, display and sale of craft and similar items, fruit, vegetables and other agricultural crops produced on the premises.
- 303.80 SALVAGE YARD:** A place where waste, discarded or salvaged metals, building materials, paper, textiles, used plumbing fixtures, inoperable appliances, inoperable motor vehicles, machinery or parts thereof, or other used materials are bought, sold, exchanged, stored, baled or cleaned, excluding pawn shops, used appliance or furniture sales or operable used vehicle sales establishments.
- 303.81 BLANK**
- 303.82 SETBACK:** A horizontal distance, as prescribed in the various zoning districts established in this Resolution, measured from the centerline of the roadway on which the lot has frontage and the side or rear lot line of any lot in which a building may not be constructed. Setbacks are further defined as follows:
- A. **SETBACK, FRONT:** An open space extending across the entire width of a lot between the centerline of the road on which the lot has frontage and the nearest point of a building. A corner lot has two (2) front setbacks.
  - B. **SETBACK, REAR:** An open space extending across the entire width of the lot between the rear lot line and the nearest point of a building.
  - C. **SETBACK, SIDE:** An open-space extending along the side lot line from the front setback to the rear setback and lying between the side lot line and the nearest point of a building.
- 303.83 SIGN:** Any identification, description, display or illustration which is affixed to, painted, or represented directly or indirectly upon a building or other outdoor surface or parcel of land which directs attention to an object, product, place, activity, business, person, service or interest.
- 303.84 BLANK**
- 303.85 SOLID WASTE:** Any garbage, refuse, discarded material including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, residential or other use, but excluding any animal waste.
- 303.86 STORY:** That portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between the floor and the ceiling next above it. A basement shall be counted as a story if more than four (4) feet of said basement is above the average finished grade of the adjoining ground.
- 303.87 STREET:** See Section 303.77: ROAD / ROADWAY
- 303.88 STRUCTURE:** Anything constructed or erected with a fixed location on or in the ground or attached to something having a fixed location on the ground.
- 303.89 STRUCTURAL ALTERATIONS:** Any change in the supporting members of a structure, such

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as bearing walls, partitions, columns, beams or girders.

- 303.90 USE:** The purpose or activity for which land and buildings thereon is designed, arranged, or for which it is occupied or maintained.
- 303.91 VARIANCE:** A relaxation of the height, lot area, size of structure or buildings or size of yards and open space terms of this Resolution where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of actions of the owner, a literal enforcement of the requirements of this Resolution would result in unnecessary and undue hardship.
- 303.92 YARD / SETBACK:** Open space on a lot unoccupied and unobstructed by any buildings or structure or portion thereof, except for fences, retaining walls, posts and other customary yard accessories.
- 303.93 YARD, FRONT:** A yard extending across the entire width of the lot between the front lot line and the nearest point of a building. For purposes of determining yard requirements for corner and through lots, all sides of a lot abutting a street shall be considered a front yard and shall comply with the requirements thereof.
- 303.94 YARD, REAR:** A yard extending across the entire width of the lot between the rear lot line and the nearest part of a building or non-minor structure.
- 303.95 YARD, SIDE:** On single frontage lots, a yard extending along the side lot line from the front yard to the rear yard and lying between the side lot line and the nearest part of a building on non-minor structure. On through lots, a yard extending along the side lot line from front yard to front yard and lying between the side lot lines and the nearest part of the building or non-minor structure. On corner lots, a yard extending along the side lot line from the front yard to the opposite side lot line lying between the side lot line and the nearest part of a building or non-minor structure.
- 303.96 YARD, SPECIAL:** A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term “side yard” or “rear yard” clearly applies. In such cases, the Zoning Administrator shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the zoning district, determining which shall apply by the relationship of the portion of the lot on which the yard is to be located to the adjoining lot or lots with due regard to the orientation and location of buildings, structures and buildable areas thereon.
- 303.97 ZONING ADMINISTRATOR:** The person duly designated by the Custer County Board of Supervisors to administer and enforce the regulations established under this Resolution.
- 303.98 ZONING DISTRICT:** One of several sets of zoning regulations designed for a particular class of land uses which established uniform regulations governing the use, building and structure height, area, size, intensity of use and other standards of land use within unincorporated area of the County.
- 303.99 ZONING PERMIT:** An approved application with reference to Section 804 through 809.

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## **ARTICLE 4 - ESTABLISHMENT AND DESIGNATION OF DISTRICTS**

### **SECTION 401 - PLANNING COMMISSION RECOMMENDATIONS**

It shall be a purpose of the Planning Commission to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. The Planning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report to the Board of Supervisors, and the Board of Supervisors shall not hold its public hearing or take final action on such recommendations until it has received the final report of the Planning Commission.

### **SECTION 402 - DISTRICTS CREATED**

For the purposes of this Resolution, the following zoning districts for Custer County, Nebraska, as named and described in Article 5 of this Resolution, are created:

|         |                                      |
|---------|--------------------------------------|
| AG - G  | General Agricultural District        |
| AG - T  | Transitional Agricultural District   |
| AG - WP | Wellhead Protection Overlay District |

### **SECTION 403 - OFFICIAL ZONING MAP**

The County is hereby divided into zones, or districts, as shown on the Official Zoning Map, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Resolution. The Official Zoning Map shall be identified by the signature of the Chairperson of the County Board of Supervisors and attested by the County Clerk under the following words: "This is to certify that this is the Official Zoning Map of Custer County, Nebraska referred to in Section 403 of Resolution No. \_\_\_\_\_ of the County of Custer, Nebraska" together with the date of the adoption of this Resolution. The signed copy of the Official Zoning Map shall be maintained in the office of the County Clerk for the use and benefit of the public.

### **SECTION 404 - OFFICIAL ZONING MAP CHANGES**

**404.01 CHANGES ON OFFICIAL ZONING MAP:** If, in accordance with the provisions of this Resolution, changes are made in the zoning district boundaries or other explanatory matter portrayed on the Official Zoning Map, such changes shall be promptly entered on said Official Zoning Map after amendment of same has been approved by the County Board together with an entry on the Official Zoning Map as follows: "On       (date)      , by official action of the County Board of Supervisors, the following change(s) was / were made in the Official Zoning Map: (brief description of the change) ", which entry shall be signed by the Chairperson of the County Board of Supervisors and attested by the County Clerk. No changes to this Resolution, which involve matter portrayed on the Official Zoning Map, shall become effective until after such change and entry on such Official Zoning Map have been made.

**404.02 CHANGES IN CONFORMITY WITH PROCEDURES:** No change of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Resolution.

**404.03 PENALTIES FOR UNAUTHORIZED CHANGES:** Any unauthorized change of any kind by any person or persons shall be considered a violation of this Resolution and punishable in accordance with this Resolution and applicable law.

**404.04 FINAL AUTHORITY OF OFFICIAL ZONING MAP:** Regardless of the existence of purported copies of the Official Zoning map which may from time to time be made or published, the Official Zoning Map, shall be the final authority as to the current zoning status of land within Custer County, Nebraska.



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**SECTION 405 - OFFICIAL ZONING MAP REPLACEMENT**

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret, the County Board of Supervisors may, by resolution, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior map, but no such correction shall have the effect of amending the original Official Zoning Map, or any subsequent amendment thereof. Each new Official Zoning Map shall be identified by the signature of the chairperson of the County Board of Supervisors, and dated, and attested by the County Clerk under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the preceding original Official Zoning Map adopted on (date of adoption of preceding official map) as part of Resolution No. \_\_\_\_\_ of the Custer County, Nebraska Board of County Supervisors." Unless the prior Official Zoning Map has been lost or has been totally destroyed, the prior map or any significant parts thereof shall be preserved together with all available records pertaining to its adoption and amendment.

**SECTION 406 - RULES FOR INTERPRETATION / INTERPOLATION OF DISTRICT BOUNDARIES**

Where uncertainty exists as to the boundaries of zoning districts shown on the Official Zoning Map the following rules shall apply:

- 406.01** Boundaries indicated as approximately following the centerlines of roads, streets, or highways shall be construed to follow such centerlines.
- 406.02** Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines and boundaries indicated as approximately following the corporate limit boundaries of any municipality shall be construed to follow such corporate limit boundaries.
- 406.03** Boundaries indicated as following railroad lines shall be construed to follow a line midway between the tracks of the main railroad track.
- 406.04** Boundaries indicated as following shorelines of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such shore line and in the event of change in the shore line shall be construed as moving with the shore line. Boundaries indicated as following the centerline of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such centerline.
- 406.05** Boundaries indicated as parallel to or extensions of features indicated in Items 406.01 through 406.04 immediately above shall be so construed.
- 406.06** Distances not specifically set forth on the Official Zoning Map shall be determined by measurement according to the scale of the map.
- 406.07** Where a district boundary line divides a lot which was under single ownership and control at the date of adoption of this Resolution, the Board of Zoning Adjustment may, upon application, permit the extension of either zoning district for either portion of the lot into the remaining portion of the lot.
- 406.08** In circumstances not covered by Items 406.01 through 406.07 immediately above or where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the Board of Adjustment shall interpret the district boundaries to best accomplish the objectives of the Intent statements of the zoning districts involved.

**SECTION 407 - ANNEXATION RULE**

Annexation of land to any incorporated municipality within or adjoining the County shall remove such land from the jurisdiction of this Resolution and any legal extension of any zoning jurisdictional area boundary by any such municipality shall remove such land from the jurisdiction of this Resolution.

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## **ARTICLE 5 - ZONING DISTRICTS**

### **SECTION 501 AG - G GENERAL AGRICULTURAL DISTRICT**

**501.01 INTENT:** The intent of this district is to promote and facilitate agricultural crop production, livestock production, including intensive/confined feeding uses, which are in balance with the natural environment, and other and new forms of agricultural production which are compatible with existing agricultural uses and the environment.

A second intent of this district is to encourage soil and water conservation, to prevent contamination of the natural environment within the County and to preserve and protect land best suited for agricultural uses by preventing or regulating the introduction, encroachment and location of non-farm or ranch residential uses, commercial uses, industrial uses and other non-agricultural uses which would be or could become incompatible with the agricultural character.

A third intent is to regulate uses, including larger scale intensive/confined feeding uses.

**501.02 OUTRIGHT ALLOWABLE PRINCIPLES USES AND STRUCTURES:** The following uses and structures shall be allowable uses outright. Such uses and structures shall comply with the minimum lot area, setback and other requirements of this Resolution, but such uses and structures shall not require a written zoning permit or certificate of zoning compliance:

1. Agricultural uses, as defined in Section 303.04 of this Resolution, but excluding any dwelling unit(s) whether or not associated with an agricultural use and excluding class A, B, C, D and E intensive/confined feeding uses.
2. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities.
3. Forestry, tree farms and plant nurseries.
4. New or existing utility distribution systems.

**501.03 PERMITTED PRINCIPLES USES AND STRUCTURES:** The following uses and structures shall be permitted uses, but shall require the issuance of a zoning permit and / or certificate of zoning compliance:

1. Public service facilities, including public, parochial, private non-religious, road maintenance equipment sheds, fire stations, public utility substations, and similar uses.
2. Churches, cemeteries and related uses.
3. Fish hatcheries, wildlife management areas, game farms and commercial hunting and fishing. Such uses shall comply with minimum separation distances from existing intensive/confined feeding uses as set forth in Sections 501.03, Subsection 7, Paragraph A and 501.05 of this Resolution.
4. Signs, including permanent on-site and outdoor advertising signs, provided the number of such permanent on-site signs shall not exceed three (3) per premises and that permanent outdoor advertising signs shall be located no closer than one-eighth (1/8) mile to any other on-site or outdoor advertising sign. Temporary signs, including but not limited to crop seed signs, yard sale, real estate for sale or lease signs, political campaign signs, and traffic safety and road number signs installed by governmental entities shall be exempt from regulation. *(All permanent signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads).*

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5. Radio, television, microwave and other types of erected towers, under 100 ft. in height, provided such towers comply with any applicable airport hazard restrictions and provided such tower is set back from the right-of-way line of any public roadway or from any neighboring church, school, public use area or dwelling unit by a distance equal to or exceeding the height of such tower.
  6. Day care and child care uses.
  7. Class A and B intensive/confined feeding uses, provided such uses shall comply with the following minimum requirements:
    - A. Such use and associated lagoons and compost sites shall not be located closer than one-fourth (1/4) mile to any church, school, public use area or dwelling unit, not on the same premises and under the same ownership as such use, to the east, west or south, as defined in Section 303.69 of this Resolution, or located closer than one-half (1/2) mile to any such use to the north, as defined in said Section 303.69.
    - B. Such use and associated lagoons and compost sites shall not be located in any area subject to flooding on a one-hundred year basis or any wetland area.
  8. Expansion of the capacity of or land area occupied by a Class A or Class B intensive/confined feeding use in existence as of the effective date of this Resolution which is located within the minimum separation distances to any church, school, public use area or dwelling unit not of the same ownership and not on the same premises with such use for the class of intensive/confined feeding use, as specified in Section 501.03, Subsection 7, Paragraph A of this Resolution, provided that such expansion shall comply with all of the following limitations:
    - A. Such expansion will not decrease the distance from the intensive/confined feeding use and any church, school, public use area or dwelling unit not of the same ownership and not on the same premises with such use to which the animal feeding use is less than the minimum prescribed separation distances specified in Section 501.03, Subsection 7, Paragraph A of this Resolution nor shall such expansion in any other direction result in a separation distance to any other church, school, public use area or dwelling unit not of the same ownership and not on the same premises with such use being less than that specified in said Section 501.03, Subsection 7, Paragraph A of this Resolution. For purposes of this regulation, a dwelling unit not of the same ownership and on the same premises as the intensive/confined feeding use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and, if vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable.
    - B. Any physical expansion of the existing intensive/confined feeding use shall be immediately contiguous with the facilities of the existing feeding use;
    - C. Such expansion may occur in phases over time, but in no event shall such expansion(s) result in the intensive feeding of more than the maximum one-time capacity for a Class A or B intensive/confined feeding use, as defined in Section 303.46 of this Resolution. Any expansion beyond this limitation is prohibited unless a conditional use for expansion in excess of this limitation is authorized as a conditional use by the County Board of Supervisors in accordance with the procedures and requirements for conditional use authorization set forth in Article 10 of this Resolution.
    - D. Such expansion shall not occur in any area subject to flooding on a one hundred (100) year basis or in any wetland area.
    - E. If such expansion results in such use being required to obtain a new permit from the

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Nebraska Department of Environmental Quality, introduction of additional animals shall be prohibited until such permit required to be issued by the Nebraska Department of Environmental Quality or other applicable or successor agency shall have been issued and such use shall be operated at all times in a manner consistent with the requirements of any such required permit and any applicable restrictions of this Resolution.

9. Expansion of the capacity of or the land area occupied by any Class A or Class B intensive/confined feeding use in existence as of the effective date of this Resolution that is located in excess of the minimum separation distances to any church, school, public use area or dwelling unit not of the same ownership and not on the same premises with such use for the class of intensive/confined feeding uses, as specified in Section 501.03, Subsection 7, Paragraph A of this Resolution, provided that such expansion shall comply with all of the following limitations:
  - A. Such expansion will not decrease the distance from the intensive/confined feeding use and any church, school, public use area or dwelling unit not of the same ownership and on the same premises with such use to a distance less than the minimum separation distances specified in Section 501.03, Subsection 7, Paragraph A of this Resolution. For purposes of this regulation, a dwelling unit not of the same ownership and on the same premises as the intensive/confined feeding use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and, if vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable.
  - B. Any physical expansion of the existing intensive/confined feeding use shall be immediately contiguous with facilities of the existing feeding use;
  - C. Such expansion may occur in phases over time, but in no event shall such expansion(s) result in the intensive feeding of more than the maximum one-time capacity for a Class A or B intensive/confined feeding use, as defined in Section 303.47 of this Resolution. Any expansion beyond this limitation is prohibited unless a conditional use for expansion in excess of this limitation is authorized as a conditional use by the County Board of Supervisors in accordance with the procedures and requirements for conditional use authorization set forth in Article 10 of this Resolution.
  - D. Such expansion shall not occur in any area subject to flooding on a one hundred (100) year basis or in any wetland area.
  - E. If such expansion results in such use being required to obtain a new permit from the Nebraska Department of Environmental Quality, introduction of additional animals shall be prohibited until such permit required to be issued by the Nebraska Department of Environmental Quality or other applicable or successor agency shall have been issued and such use shall be operated at all times in a manner consistent with the requirements of any such required permit and any applicable restrictions of this Resolution.
10. Single-Family dwellings, including manufactured housing, modular housing and mobile homes, provided such dwellings comply with all of the following conditions.
  - A. Such dwellings, if not on the same lot with and not of the same ownership as any existing intensive/confined feeding use, as defined in Section 303.47 of this Resolution, shall be separated from such animal feeding use by the minimum distance specified in Sections 501.03, Subsection 7, Paragraph A or 501.05, of this Resolution, for the Class of such existing intensive/confined feeding use, provided that if one or more impact easement(s), as defined in Section 303.44 of this Resolution, shall have been granted to the owner of the animal feeding use, in which case any residential dwelling unit(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Such minimum

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distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, to such dwelling. Application of solid manure to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.

- B. Exceptions to the minimum distance separation requirements as set forth in Subsection A immediately above, may be permitted by conditional use where topography, prevailing winds, or other factor or combination of factors exist and it is determined by the Board of Supervisors, after consideration by the Planning Commission, that reduction in any minimum spacing requirement will not interfere with the normal operation of an existing intensive/confined feeding use.
- C. Such dwelling shall be subject to the Minimum Lot Area Requirements, as set forth in Section 501.07 of this Resolution, provided that a larger lot may be required if the standards and regulations of the Nebraska Department of Environmental Quality require otherwise.
- D. The total number of residential dwellings on any lot, parcel or plot of land under separate ownership as of the effective date of this Resolution, as defined in Section 303.50 of this Resolution, shall not exceed more than one (1) additional residential dwelling over the number of residential dwelling(s) existing on said lot, parcel or plot of land as of the effective date of this Resolution, unless a conditional use meeting the requirements of Section 501.05, Subsection 12 of this Resolution, has been duly authorized by the Board of Supervisors in accordance with the requirements and procedures of Article 10 of this Resolution.

- 11. Farm buildings as defined in Sec. 303.35 of this Resolution
- 12. Grain and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities

**501.04 PERMITTED ACCESSORY USES AND STRUCTURES:** The following uses and structures shall be permitted as accessory to the permitted principal uses and structures:

- 1. Accessory uses, buildings and structures normally and commonly appurtenant to the permitted principal uses and structures. Such uses, buildings or structures, shall require the issuance of a zoning permit and / or certificate of zoning compliance. .
- 2. Home occupations and home based businesses, in accordance with Section 608 of this Resolution. When established and operated in accordance with the requirements of said Section 608, issuance of a zoning permit or certificate of zoning compliance shall be required.
- 3. No zoning permit shall be required for roadside stands for the temporary sale of produce grown or crafts produced on the premises.

**501.05 CONDITIONAL USES:** After the provisions of this Resolution relating to conditional uses have been fulfilled, the Board of Supervisors may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in the AG - G, Agricultural District:

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1. Class C intensive/confined feeding uses, as defined and classified in Section 303.47 of this Resolution, shall be allowed provided such animal feeding uses meet or exceed the requirements set forth below for the class of the intensive/confined feeding use.
    - A. Each intensive/confined feeding uses shall submit a plan for the proper and timely disposal of dead animals. Such plan shall comply with any requirements of law or regulations of the State of Nebraska.
    - B. All waste handling facility uses, regardless of size or type, all run-off, control ponds and basins, methods of waste disposal and related waste handling facilities and operational activities shall have a permit from the Nebraska Department of Environmental Quality if a permit is so required by said Department.
    - C. Where any Federal and/or State of Nebraska permit for facilities associated with a waste handling facility use is required, such permit(s) shall be approved by the appropriate Federal or State agency and all facilities required by such Federal or State agency and all facilities and safeguards required by the County Board of Supervisors shall be in place and operable prior to the generation of waste or in the case of confined or intensive animal feeding uses, prior to the introduction of any animals to the premises.
    - D. All Class C intensive/confined feeding uses, as defined and classified in Section 303.47 of this Resolution shall comply with the following minimum requests:
      - i. Such use and associated lagoons and compost sites shall not be located closer than three quarters (3/4) mile to any church, school, public use area or dwelling unit, not on the same premises and under the same ownership as such use as defined in Section 303.68, provided that if one or more impact easements, as defined in Section 303.44 of this Resolution, shall have been granted to the owner of the animal feeding use by all churches, schools, public use areas and dwelling units within the three quarters (3/4) mile setback, then the set back request shall be considered to be complied with.
      - ii. Such use and associated lagoons and compost sites shall not (if it has a capacity for more than 25,000 animal units) be located closer than three (3) miles from the city limits of any incorporated municipality.
      - iii. Such use shall not be located in area subject to flooding on a 100 year basis or any wetland
  2. Class D and E intensive/confined feeding uses, as defined and classified in Section 303.47 of this Resolution, may be allowed as a conditional use, if such animal feeding areas meet or exceed the requirements set forth below:
    - A. Each intensive/confined feeding uses shall submit a plan for the proper and timely disposal of dead animals, such plan shall comply with any requirements of law or regulations of the State of Nebraska.
    - B. Waste handling facilities, regardless of size or type, all runoff, control ponds and basins, methods of waste disposal and related waste handling facilities and operational activities shall have a permit from the Nebraska Department of Environmental Quality if a permit is so required by said department.
    - C. Any waste handling facility use which proposes to dispose of any waste through application of said waste on crop or other land shall indicate the owners of such waste handling facility use shall have, either through ownership or lease of suitable terms, an

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adequate amount of such land to permit the application of such waste based on sound agronomic principles.

D. The proposed intensive/confined feeding uses shall submit to the appropriate governing body, as part of the application, a business plan for operation of said agricultural use and said business plan shall include:

- i. Best management practices to minimize odor, dust, flies, vermin, and other problems and hazards to avoid environmental contamination and/or negative impact on joining neighboring properties.
- ii. Provide for location that is at least three miles from the city limits of all incorporated municipalities, and adequate distances from all churches, schools, public use areas, or dwelling units not on the same premises and under the same ownership as such use, to minimize, not eliminate, dust and odor.
- iii. Such other documentation and/or specifications as may be required by the Planning Commission and/or the Board of Supervisors.

E. Upon review, the Board of Supervisors, after a public hearing, determine that the facility can be built and operated and still protect the environment from degradation and adjoining land uses from unreasonable impacts, a conditional use permit shall be issued.

3. General welding and agricultural equipment repair businesses, automobile repair and body shop businesses and other commercial business and industrial uses determined by the Board of Supervisors to be reasonably compatible with the surrounding land uses with regard to traffic generation, noise, odors, dust, vibrations and potential air, soil or water pollution or explosion or other hazards.
4. Livestock auction barns and yards.
5. Crop dusting businesses and related aircraft landing strips and airports.
6. Commercial fuel and fertilizer bulk plants, provided such uses are shown to be in compliance with all County, State and Federal regulations.
7. Solid waste landfills, recycling facilities and transfer stations when in compliance with all County, State and Federal regulations.
8. Salvage (junk) yards, provided such uses are shown to be in compliance with all County, State, Federal regulations.
9. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, game lodges, canoe outfitters, rental cabins, camp stores, shooting ranges, public or commercial river access sites and other similar uses, including bed and breakfast operations and motels.
10. Mineral extraction and sand and gravel extraction facilities and operations.
11. Public service facilities not allowable as permitted principle uses in Section 501.03 of this Resolution.
12. Residential subdivisions in excess of the one additional dwelling per lot, parcel or plot of land under separate ownership as of the effective date of this Resolution restriction set forth in Section 501.03, Subsection 10, Paragraph E of this Resolution, provided that:

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- A. Such dwellings shall be directly associated with development of a golf course, lake or other similar facility, which may either be privately or publicly owned, but which is open to the public, thus having the potential for attracting additional people into the County for recreation and tourism and creating additional economic activity within the County, or
  - B. Such development of additional dwellings will not result in increasing incompatibilities with agricultural uses, confined or intensive animal feeding uses and associated waste handling facilities, or
  - C. such development will not result in undue increases in costs to maintain County roads, bridges or other structures or undue increases in the costs of providing law enforcement, fire protection and other emergency and public services.
13. Radio, television, microwave and other types of erected towers, above 100 ft. in height, provided such towers comply with any applicable airport hazard restrictions and provided such tower is set back from the right of way line of any public roadway or from any neighboring church, school, public use area or dwelling unit by a distance equal to or exceeding the height of such tower.
  14. Other uses and structures determined by the Board of Supervisors to be comparable with the above stated conditional uses and consistent with the Intent of this zoning district.

**501.06 PROHIBITED USES AND STRUCTURES:** Other uses and structures which are not allowed in this District as permitted, accessory or conditional uses shall be prohibited.

**501.07 MINIMUM LOT AREA REQUIREMENTS:** The following shall be the minimum lot area requirements for uses located within this district:

1. The minimum lot area for a single-family dwelling unit, manufactured home or mobile home shall be five (5) acres, provided that a larger lot may be required if the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.
2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall be less than five (5) acres in area.
3. An exception to the 5 acre minimum requirement may be made in cases involving a pre existing lot, residential site or farmstead that is smaller than 5 acres, provided that all other zoning, health and safety provisions can be met.

**501.08 MINIMUM LOT WIDTH AND FRONTAGE:** The following shall be the minimum lot width and frontage requirements for uses located within this district:

1. The minimum lot width shall be two hundred (200) feet and the minimum lot frontage shall be sixty six (66) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than two hundred (200) feet and a minimum frontage less than sixty six (66) feet.



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**501.09 MINIMUM BUILDING SETBACK REQUIREMENTS:** The following shall be the minimum yard requirements for uses located within this district:

1. Front Setback - Fifty eight (58) feet from the centerline of the roadway, except for lots which front on a Federal or State Highway the front setback shall be twenty-five (25) feet from the right-of-way line of such highway. Within fifty (50) feet of an intersection the set back will be fifty (50) feet from the right-of-way.
2. Side Setback - Twenty-five (25) feet from property line.
3. Rear Setback - Twenty-five (25) feet from property line.

**501.10 MAXIMUM HEIGHT:** No limitation, except for buildings designed for human habitation which shall be a height limitation of Forty (40) feet and, except for any applicable restrictions in airport hazard areas.

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## SECTION 502 AG - T TRANSITIONAL AGRICULTURAL DISTRICT

**502.01 INTENT:** The intent of this district is to allow continuation of low impact agricultural uses while allowing residential, commercial, industrial development and other non-agricultural uses near the incorporated municipalities in the County in a compatible relationship to each other and the agricultural uses and provide protection of the municipalities from encroachment of incompatible agricultural and other land uses which could negatively impact the agricultural uses in the zoning district or the municipalities around which this zoning district is applied.

**502.02 OUTRIGHT ALLOWABLE PRINCIPLE USES AND STRUCTURES:** The following uses and structures shall be allowable uses outright. Such uses and structures shall comply with the minimum lot area, setback and other requirements of this Resolution, but such uses and structures shall not require a written zoning permit or certificate of zoning compliance:

1. Agricultural uses, as defined in Section 303.04 of this Resolution, but excluding any dwelling unit(s) whether or not associated with an agricultural use and excluding intensive/confined feeding uses as defined in Section 303.47.
2. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities, but excluding irrigation facilities used as part of a waste water handling system for intensive/confined feeding uses.
3. Forestry, tree farms and plant nurseries.
4. Child and day care uses.

**502.03 PERMITTED PRINCIPLE USES AND STRUCTURES:** The following uses and structures shall be permitted uses, but shall require the issuance of a zoning permit and / or certificate of zoning compliance:

1. Public service facilities, including public, parochial, private non-religious, road maintenance equipment sheds, fire stations, public utility substations and utility distribution systems.
2. Churches, cemeteries and related uses.
3. Fish hatcheries, game farms and commercial hunting and fishing where such hunting and fishing does not involve development of lodges or other buildings devoted solely to the support of such hunting and fishing activities, provided that if such uses qualify as a Public Use Area, as defined in Section 303.73 of this Resolution, such uses shall comply with minimum separation distances from existing intensive/confined feeding uses as set forth in Section 501.03 and 501.05 of this Resolution. Temporary housing of hunters and fisherman and temporary hunting or fishing shelters shall be permitted.
4. Signs, including permanent on-site and outdoor advertising signs, provided the number of such permanent on-site signs shall not exceed three (3) per premises and that permanent outdoor advertising signs shall be located no closer than one-eighth (1/8) mile to any other on-site or outdoor advertising sign. Temporary signs, including but not limited to crop seed signs, yard sale, real estate for sale or lease signs, political campaign signs, and traffic safety and road number or other signs installed by governmental entities shall be exempt from regulation. *(All permanent signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads).*
5. Radio, television, microwave and other types of erected towers, under 100 ft. in height, provided such towers comply with any applicable airport hazard restrictions and provided that

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any such tower is set back from the right-of-way line of any public roadway or from any neighboring church, school, public use area or dwelling unit by a distance equal to or exceeding the height of the tower.

6. Single-Family dwellings, including manufactured housing, modular homes and mobile homes, provided such dwellings comply with all of the following conditions.
  - A. Such dwellings, if not on the same lot with and not of the same ownership as any existing intensive/confined feeding uses, as defined in Section 303.47 of this Resolution, shall be separated from such animal feeding use by the minimum distance specified in Sections 501.03 and 501.05 of this Resolution, for the Class of such existing animal feeding use, provided that if one or more impact easement(s), as defined in Section 303.44 of this Resolution, shall have been granted to the owner of the animal feeding use, in which case any residence dwelling unit(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Such minimum distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, and land where liquid waste is applied to the surface of the land, to such dwelling. Application of waste which in solid form to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.
  - B. Exceptions to the minimum distance separation requirements as set forth in Subsection A immediately above, may be permitted by conditional use where topography, prevailing winds, or other factor or combination of factors exist and it is determined by the Board of Supervisors that reduction in any minimum spacing requirement will not interfere with the normal operation of an existing intensive/confined feeding uses.
  - C. Such dwelling shall be located on a lot with an area of not less than two (2) acres, as set forth in Section 502.07 of this Resolution, provided that a larger lot may be required if the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.
7. Farm buildings as defined in Section 303.35 of this Resolution.
8. Radio, television, microwave and other types of erected towers, above 100 ft. in height, provided such towers comply with any applicable airport hazard restrictions and provided such tower is set back from the right-of-way line of any public roadway or from any neighboring church, school, public use area or dwelling unit by a distance equal to or exceeding the height of such tower.
9. Grain and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities.

**502.04 PERMITTED ACCESSORY USES AND STRUCTURES:** The following uses and structures shall be permitted as accessory to the permitted principal uses and structures:

1. Accessory uses, buildings and structures normally and commonly appurtenant to the permitted principal uses and structures. Such uses, buildings or structures, shall require the issuance of a zoning permit and / or certificate of zoning compliance.

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2. Home occupations and home based businesses, in accordance with Section 608 of this Resolution. When established and operated in accordance with said Section 608, issuance of a zoning permit or certificate of zoning compliance shall not be required.
  3. Roadside stands for the temporary sale of produce grown or crafts produced on the premises. No zoning permit shall be required.

**502.05 CONDITIONAL USES:** After the provisions of this Resolution relating to conditional uses have been fulfilled, the Board of Supervisors may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in the AG – T, Transitional Agricultural District:

1. Two-family and multi-family dwellings, provided such higher density residential uses are located near municipalities where the development of higher density uses can be adequately served by roadways, water, sewer, as well as law enforcement, fire protection and other public services, as determined by the Board of Supervisors.
2. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, game lodges, canoe outfitters, rental cabins, camp stores, shooting ranges, public or commercial river access sites and other similar uses, including bed and breakfast operations and motels.
3. Public service facilities not allowable as permitted principal uses in Section 502.03 of this Resolution.
4. Mineral extraction and sand and gravel extraction facilities and operations.
5. Nursing home facilities, and group homes.
6. Commercial and industrial uses, determined by the Board of Supervisors to be compatible with adjoining land uses.
7. Municipal waste handling facility uses.
8. Other uses and structures determined by the Board of Supervisors to be comparable with the above stated conditional uses and consistent with the Intent statement of this zoning district.
9. Residential subdivisions in excess of one dwelling per lot, parcel or plot of land under separate ownership, with a minimum of four (4) parcels as of the effective date of this Resolution (April 2004) as provided for in Section 15 Subdivision Regulations.

**502.06 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not specifically allowed in this District as permitted uses and consistent with the Intent statement of this zoning district. This prohibition shall specifically include all types of intensive/confined animal feeding, as defined in Section 303.47 of this Resolution.

**502.07 MINIMUM LOT AREA REQUIREMENTS:** The following shall be the minimum lot area requirements for uses located within this district.

1. The minimum lot area for a single-family dwelling unit, manufactured home or mobile home shall be two (2) acres, provided that a larger lot may be required if the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124

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requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.

2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall be less than two (2) acres in area if on-site sewer disposal is proposed or not less than ten thousand (10,000) square feet if a semi-public or public sewer collection and treatment system is to be used or a sewage disposal system is not needed.

**502.08 MINIMUM LOT WIDTH AND FRONTAGE:** The following shall be the minimum lot width and frontage requirements for uses located within this district:

1. For lots on which on-site sewage disposal is proposed, the minimum lot width shall be one hundred fifty (150) feet and the minimum lot frontage shall be sixty six (66) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than seventy five (75) feet and a minimum frontage less than sixty six (66) feet.
2. For lots on which connection to semi-public or public sewer collection and treatment system is to be used, the minimum lot width shall be seventy five (75) feet and the minimum lot frontage shall be sixty six (66) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than seventy five (75) feet and a minimum frontage less than sixty six (66) feet.

**502.09 MINIMUM BUILDING SETBACK REQUIREMENTS:** The following shall be the minimum yard requirements for uses located within this district:

For lots larger than one (1) acre in area:

1. Front Setback - Fifty eight (58) feet from the centerline of the roadway, provided that for lots which front on a Federal or State Highway the front setback shall be twenty five (25) feet from the right-of-way line of such highway
2. Side Setback - Twenty Five (25) feet
3. Rear Setback - Twenty Five (25) feet

For lots smaller than one (1) acre in area:

1. Front Setback - Fifty eight (58) feet from the centerline of the roadway, provided that for lots which front on a Federal or State Highway the front setback shall be twenty five (25) feet from the right-of-way line of such highway
2. Side Setback - Ten (10) feet
3. Rear Setback - Thirty (30) feet

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**502.11 MAXIMUM HEIGHT:** No limitation, except that the maximum height for any building designed for human habitation shall be forty (40) feet and, except for any applicable restrictions in airport hazard areas.

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## **SECTION 503 WP WELLHEAD PROTECTION OVER LAY DISTRICT**

**503.01 INTENT:** The intent of this district is to overlay any of the primary zoning districts herein established and described in Sections 501 and 502 of this Resolution in order to assist municipalities and other public water supply systems, as defined in Title 179, Nebraska Department of Health, Chapter 2, within or adjoining Custer County, which may operate water wells in or near the County in providing protection from contamination of such wells through regulation of land uses which have the potential for contamination of the groundwater source(s) from which said wells derive water. The intent of this district is also to protect existing and future agricultural uses, which are in balance with the natural environment, which are compatible with existing agricultural uses and which will not present unacceptable potential for contamination of the public water supply system wells, from over-regulation by said municipalities or public water supply systems with regard to wellhead protection.

**503.02** Any entity which owns and operates a municipal or public water supply system, with wells or proposed wells within this County, and who wishes to establish a wellhead protection area within this County, may enter into an inter-local cooperation agreement with the County for the purpose of making application of said protection district.

Said inter-local agreement shall provide that the County administer the application process and all regulations within the County. Further, the agreement shall provide as follows:

1. The County shall apply for the wellhead protection area pursuant to Nebraska Revised Statutes Section 46-1501 through 46-1509, and shall comply with all requirements contained therein.
2. A guideline for formulation and implementation of an ongoing process to maintain public involvement and input into the process for the selection of the wellhead area.
3. The entity shall agree to pay all costs associated with the administration of the agreement including legal costs and costs associated with any challenge of the wellhead protection area.
4. The entity shall agree to hold the County harmless for any liability related to the establishment of the wellhead protection area or administration of the inter-local agreement.



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## **DEFINITIONS**

**AIRCRAFT** shall mean any device capable of flight.

**AIRPORT HAZARD** shall mean any structure or use of land which obstructs the airspace required for the flight of aircraft in landing and taking off at the airport or is otherwise hazardous to such landing or taking off of aircraft.

**AIRPORT, PUBLIC** shall mean any publicly or privately owned airport licensed by the State of Nebraska operated as a public airport or area which is used or is intended to be used for the general flying public for taking off and landing of aircraft, including helicopters, and any appurtenant areas which are used or are intended to be used for airport buildings or facilities, including open spaces, taxiways, and tie-down areas. Such public airports, including all airports in Custer County, have in place an airport approach overlay district to prevent interference of objects, structures and uses with the safe and efficient operation of the airport.

**PRIVATE AIRPORT / AIRSTRIP:** A privately owned parcel of land used for take-off and landing of small aircraft which is duly registered with the Nebraska Department of Aeronautics.

## **SECTION 504 AA, AIRPORT/AIRSTRIP APPROACH DISTRICTS**

### **SECTION 504.01 LOCATION, BOUNDARIES, ZONES AND HEIGHT RESTRICTIONS.**

Purpose: The intent of this district is that it is to be appended and to overlay any of the primary zoning districts as described in Sections 501 and 502 of this Resolution to protect the safe use of public airports in the County by limiting the location and height of structures within the operation, approach, transition and turning zones around public airports, as designated on the Official Zoning Map of Custer County, Nebraska. Such airport overlay districts shall include the airport hazard areas, which shall include the operation, transition, turning and approach zones for the Broken Bow Municipal Airport and Sargent Municipal Airport in the County. The areas located within the Airport Hazard Area as described in this Section are hereby zoned as follows:

#### **504.02 Airport Hazard Area Description.**

- A. The **Airport Hazard Area** shall consist of Operation Zones, Approach Zones, Turning Zones and Transition Zones as described in this section.

#### **504.03 Zone Descriptions.**

- A. The **Operation Zones** are longitudinally centered on each existing or proposed runway.
1. **Length.** For existing and proposed paved runways, the operation zones begin and end 200 feet beyond the end of each runway. For existing and proposed turf runways, the operation zones begin and end at the runway ends.
  2. **Width.** For existing and proposed instrument runways, the operation zones are 1,000 feet wide. For all other existing and proposed runways, the operation zones are 500 feet wide.

3. **Height.** The height limit of the operation zones is the same as the height of the nearest point on an existing or proposed runway or the surface of the ground, whichever is higher.

B. The **Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. The zones' dimensions are:

1. Instrument Runways

- a. **Length and Width.** The approach zone extends ten miles from the Operation Zone, measured along the extended runway centerline. The approach zones is one thousand (1,000) feet wide at the end nearest the runway (i.e., adjacent to the operation zone) and expands uniformly to sixteen thousand eight hundred forty (16,840) feet wide at the farthest end of the zone (i.e., ten miles (10) from the operation zone).
- b. **Height Limit.** The height limit of the approach zones begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every 50 feet horizontally (50:1), except that the height limit shall not exceed one hundred fifty (150) feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end. At three (3) miles from said operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally (50:1) and continues to the ten (10) mile limit.

4. Visual Runways

- a. **Length and Width.** The approach zones extend from the Operation Zone to the limits of the Turning Zone, measured along the extended runway centerline. The approach zones are 500 feet wide at the end nearest the runway and expand uniformly so that at a point on the extended runway centerline three (3) miles from the Operation Zone, the Approach Zone is 3,700 feet wide.
- b. **Height.** The height limit of the approach zones begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every forty (40) feet horizontally, except that the height limit shall not exceed one hundred and fifty (150) feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end.

-The height limit of the approach zones begins at the elevation of the operation zone and rises one (1) foot vertically for every 40 feet horizontally (40:1) up to a maximum of 150 feet above the nearest existing or proposed runway end.

C. The **Transition Zones** extend outward at right angles to the runway centerline and upward at a rate of one (1) foot vertically for every seven (7) feet horizontally (7:1). The height limit of these zones begins the height limit of the adjacent Operation Zones or Approach Zones. The Transition Zones end at a height of 150 feet above the nearest existing or proposed runway end.

D. The **Turning Zones** outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent areas with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway.

#### **504.04 Height Restrictions.**

No building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in above 504.03.

#### **504.05 LOCATION SKETCH AND ZONING MAP.**

The boundaries, operation zones, approach zones, transition zones, and turning zones of the airports are indicated in the official Sargent Municipal Airport Zoning Map, dated 9/04/14, and Broken Bow Municipal Airport Zoning Map, dated 10/09/14 and all other airports in Custer County, and amended from time to time. A copy of the zoning maps shall at all times be on file in the office of the Custer County Clerk, Broken Bow, Nebraska.

#### **504.06 PERMIT REQUIRED AND EXCEPTIONS.**

##### **A. Permit Required.**

It shall hereafter be unlawful to erect, construct, reconstruct, repair, or establish any building, transmission line, pole, tower, chimney, wires, or any other structure or appurtenance within the Zoned Areas per the Airport Zoning Drawing without first obtaining a DETERMINATION OF NO HAZARD TO AIR NAVIGATION through the Federal Aviation Administration's Part 77, 7460 process for Obstruction Evaluation. The Determination will require review and approval by the appropriate Airport Authority Board. After the Authority approval, applicable permits will be issued by the Custer County Zoning Office. It shall also be unlawful to plant or replant any tree or other object of natural growth without review and approvals of the locations by the Airport Authority and Custer County Zoning Board.

#### **504.07 NON-CONFORMING STRUCTURES.**

Within the Airport Hazard Area, no non-conforming building, transmission line, pole, tower, chimney wires, or other structure or appurtenance of any kind or character or object of natural growth; and no such structures or objects of natural growth that have been torn down, destroyed, deteriorated or decayed to an extent of 50% or more of their original condition, or abandoned for a period of twelve (12) months or more; shall hereafter be replaced, substantially reconstructed, repaired, altered, replanted, or allowed to grow as the case may be, to a height above the heights permitted by these regulations. Transmission lines and other communication lines shall be interpreted as poles, wires, guys and all other equipment necessary for the operation and maintenance of the same within the regulated zone.

**504.08 MARKING OF NON-CONFORMING STRUCTURES.**

Whenever the Custer County Zoning Administrator determines that a specific structure or object exceeds the height restrictions and existed prior to the enactment of these regulations, the owner(s) and the lessor(s) of the premises on which the structure or object is located shall be notified in writing by the Custer County Zoning Administrator. The owner(s) and lessor(s) shall, within a reasonable time, permit the marking and lighting of the structure or object. The Custer County Zoning Administrator shall specify the required marking and lighting, based on the recommendations of the Nebraska Department of Aeronautics. The cost of marking or lighting shall be paid for by the owner or lessor of said premise.

**504.09 ADMINISTRATIVE AGENCY.**

The Zoning Administrator of Custer County, Nebraska shall administer and enforce these regulations and shall be the administrative agency provided for in Section 3-319 R.R.S. 1943, and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act.

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## ARTICLE 6 SUPPLEMENTAL REGULATIONS

**SECTION 601 APPLICATION:** The supplemental regulations set forth in this Article qualify and supplement all zoning district regulations and are declared to be part of this Resolution and applicable to all uses and structures in all zoning districts.

**SECTION 602 SETBACK REQUIREMENTS:** Minimum building setbacks shall be required along all public roadways as set forth in the district regulations. An open space abutting a roadway shall be deemed a front setback for purposes of determining setback (yard) depth requirements. Setbacks equal to or exceeding the minimum setback requirements of each district shall be provided with the following qualifications:

**602.01** Any setback so placed or oriented that none of the specific setback definitions contained in this Resolution are applicable shall necessitate a determination by the Zoning Administrator of a suitable setback dimension which will be consistent with the intent of the setback requirements within the applicable zoning district.

**602.02** No structure shall project into a required front, side or rear setback. All parts of a structure shall be in compliance with the required setbacks including any eave, cornice, overhang, awning, balcony, or bay window, projection of belt courses, sills, lintels, chimneys and other similar ornamental or architectural features, but excluding unenclosed, uncovered steps, entrance platforms, ramps, terraces or landings which are at or below grade level.

**SECTION 603 FENCES AND WALLS:** Nothing in this Resolution shall be deemed to prohibit the erection and maintenance of any fence in connection with agricultural uses or any retaining wall in association with any use in any zoning district and any ornamental fence, wall or structural screen fence shall be permitted in any yard. Nothing in this Resolution shall be deemed to prohibit the installation of living screens consisting of trees, shrubs or other plant material.

**SECTION 604 SETBACK EXEMPTIONS:** Such appurtenant features as sidewalks, walkways, driveways, curbs, drainage and erosion control installations, mail boxes, lamp posts, bird baths, and similar installations are permitted accessory uses on any lot.

**SECTION 605 DIVISION OF LOTS:** After any portion of a lot has been developed under the provisions of this Resolution, such lot may be divided into smaller lots only if each resulting lot and any buildings thereon comply in all respects to all regulations of the zoning district in which said lot is located.

**SECTION 606 CONVERSIONS OF USE:** Any use of land, which is converted to another use, shall comply in all respects with the requirements of this Resolution.

**SECTION 607 ACCESSORY USES:** Accessory uses shall be permitted as specified in all zoning districts in accordance with the following provisions:

**607.01** Any accessory use shall be incidental to, subordinate to and commonly associated with the primary use of the lot.

**607.02** Any accessory use shall be operated and maintained under the same ownership and control and on the same lot as the primary use of the lot.

**607.03** Any accessory use shall be clearly subordinate to the primary use of the lot in height, area, bulk and extent.

**607.04** Any accessory use shall be permitted only after the erection and operation of a primary use of the lot.

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**SECTION 608 HOME OCCUPATIONS AND HOME BASED BUSINESSES:** A home occupation or home based business, conducted in compliance with the following restrictions, shall be allowed with a zoning permit or certificate of zoning compliance to accompany residential (agricultural or non agricultural) use:

**608.01** The home occupation shall be owned by the occupants of the dwelling unit or accessory building and conducted within the dwelling unit or accessory building by a member or members of the occupants of the dwelling unit and not more than three (3) additional employees who reside other than in said dwelling unit.

**608.02** The home occupation is clearly subordinate to the residential / agricultural use of the lot and does not change the residential / agricultural character of the lot nor infringe upon the right of neighboring owners to enjoy their property.

**608.03** Any business or industrial use not meeting the limitations of this Section shall be considered a commercial or industrial use and shall be subject to conditional use authorization in accordance with the requirements and procedures of this Resolution.



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## **ARTICLE 7 - NON-CONFORMING USES AND STRUCTURES**

### **SECTION 701 INTENT**

Within the zoning districts established by this Resolution or future amendments to such districts, there exists 1) lots, 2) buildings or structures, 3) uses of land and buildings or structures, and 4) characteristics of use which were lawful prior to the adoption or future amendment of this Resolution, but which would be prohibited, regulated or restricted under the terms of this Resolution or future amendment. It is the intent of this Resolution to permit these non-conformities to continue until they are removed. It is further the intent of this Resolution that, with the exception of existing residential structures, non-conformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other buildings, structures or uses prohibited in the zoning district in which such non-conformities are located, except as specifically authorized in this Resolution.

### **SECTION 702 LIMITATIONS ON EXPANSION**

Non-conforming buildings, structures and uses are declared by this Resolution to be incompatible with the intent of the zoning districts and the permitted uses in the zoning districts. A non-conforming use of a building or structure, a non-conforming use of land, or a non-conforming use of a building or structure and land in combination, except existing residential structures, shall not be extended, or enlarged as to size or capacity after adoption of this Resolution or amendment thereto, except as specifically authorized in this Resolution.

### **SECTION 703 HARDSHIP**

To avoid any undue hardship, nothing in this Resolution shall be deemed to require a change in the plans, construction or designated use of any building or structure for which actual construction has been lawfully initiated prior to the effective date of the Resolution or amendment thereto where actual construction activity has been carried on diligently. Actual construction is defined to be the placing of substantial construction materials, other than earth, in a permanent position and fastened in a permanent manner. "Carried on diligently" shall be defined to mean that construction has been on-going except through the winter months, defined as being November 1 through April 1 of the following year.

### **SECTION 704 EXCEPTIONS**

Notwithstanding other requirements of this Section, a lawfully established residential use rendered non-conforming by adoption of this Resolution or amendment thereto, may be enlarged, altered, or reconstructed, subject to the following restrictions:

**704.01** Such residential use shall comply with Section 705 of this Resolution.

**704.02** This provision shall not be construed to include more than one use on a lot.

### **SECTION 705 NON-CONFORMING LOTS OF RECORD**

In any zoning district, primary and customary accessory buildings of the type permitted in each zoning district may be erected on any single lot of record after the effective date of this Resolution or amendment thereto notwithstanding limitations imposed by this Resolution or amendment thereto subject to the following conditions:

**705.01** Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are applicable to the zoning district in which such lot is located, provided that erection of any building or structure shall comply with all setback (yard) requirements of the zoning district in which said lot is located. Variance of said minimum setback requirements shall be obtained only through action of the Board of Adjustment and only if a hardship related to the land, as set forth in the requirements for findings of a hardship in Section 907.03 of this Resolution, is determined by said Board to exist.

**705.02** If two (2) or more lots or combination of lots and portions of lots with continuous frontage in the same ownership are of record on the effective date of this Resolution or amendment thereto and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this Resolution and no

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portion of said parcel shall be used or sold in any manner which diminishes compliance with the minimum lot width and area requirements of the zoning district in which said parcel is located nor shall any division of any parcel be made which creates a lot with width or area which is less than the requirements set forth in the zoning district in which said parcel is located.

- 705.03** Where a lawfully established undeveloped lot, tract or parcel less than five (5) acres in area was in existence and under separate ownership as of the effective date of this Resolution and the entirety of such lot, tract or parcel lies within the minimum separation distances from an existing intensive/confined feeding uses, as set forth in Section 501.03, Subsection 7, Paragraph A or Section 501.05 of this Resolution, one (1) residential dwelling may be established on said lot, tract or parcel notwithstanding other requirements of this Resolution.
- 705.04** Where a lawfully established undeveloped lot, tract or parcel five (5) acres or more in area was in existence and under separate ownership as of the effective date of this Resolution and the entirety of such lot, tract or parcel lies within the minimum separation distances from an existing intensive/confined feeding uses, as set forth in Section 501.03, Subsection 7, Paragraph A or Section 501.05 of this Resolution, such lot, tract or parcel shall be considered a farm and may be farmed, but no residential dwelling may be established on said lot, tract or parcel notwithstanding other requirements of this Resolution.
- 705.05** Where a lawfully established undeveloped lot, tract or parcel five (5) acres or more in area was in existence and under separate ownership as of the effective date of this Resolution and a portion of such lot, tract or parcel lies within the minimum separation distances from an existing intensive/confined feeding uses, as set forth in Section 501.03, Subsection 7, Paragraph A or Section 501.05 of this Resolution, one (1) residential dwelling may be established on said lot, tract or parcel notwithstanding other requirements of this Resolution, provided that such residential dwelling is located on that portion of said lot, tract or parcel which is beyond the minimum separation distances set forth in said in Section 501.03, Subsection 7, Paragraph A or Section 501.05 of this Resolution.

## **SECTION 706 NON-CONFORMING USES OF LAND**

Where on the effective date of this Resolution or amendment thereto, a lawful use of land exists which would not be permitted under the requirements of this Resolution or amendment thereto and where such use involves no buildings or structures with a replacement cost exceeding two hundred fifty dollars (\$250), the use may be continued so long as it remains otherwise lawful in accordance with the following conditions.

- 706.01** If any such non-conforming use of land ceases for any reason for a period of more than twelve (12) consecutive months, any subsequent use of such land shall conform with the requirements of this Resolution or amendments thereto.
- 706.02** No additional building or structure not conforming to the use restrictions and other regulations of the Resolution or amendment thereto shall be erected in connection with such non-conforming use.
- 706.03** No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel of land on which it is located that has not been used in connection with such non-conforming use.
- 706.04** No such non-conforming use shall be enlarged or expanded to occupy a greater area of the lot or parcel of land on which it is located than was used in association with such use on the effective date of this Resolution or amendment thereto.

## **SECTION 707 NON-CONFORMING USES OF BUILDINGS / STRUCTURES AND LAND IN COMBINATION**

If a lawful use involving individual buildings or structures and land in combinations, exists at the effective date of this Resolution or amendment thereto that would not be permitted in the zoning district in which said non-

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conforming use of building or structures and land in combination is located, the lawful use, buildings and structures may be continued so long as it remains otherwise lawful, subject to the following provisions:

- 707.01** With the exceptions set forth in Section 704 of this Resolution, no existing building or structure devoted to a use not permitted in the zoning district in which it is located shall be enlarged, extended, or moved, except in changing the use permitted in the zoning district as a permitted use, an accessory use or a conditional use.
- 707.02** With the exceptions set forth in Section 704 of this Resolution, any non-conforming use may be extended throughout any parts of a building or structure which were arranged or designed for such use as of the effective date of this Resolution or amendment thereto, but no such use shall be extended to occupy any land outside such building or structure which was not in use as of the effective date of this Resolution or amendment thereto.
- 707.03** If no structural alterations are made, any non-conforming use of a building or structure and land in combination, may through authorization of a conditional use in accordance with the procedures and requirements of this Resolution, be changed to another non-conforming use provided that the County Board of Supervisors, in authorizing said conditional use, shall find that the proposed use is equally appropriate or more appropriate to the intent of the zoning district than is the existing use. In authorizing such conditional use, the Board of Supervisors may set conditions for such proposed use to assure that such use will remain appropriate for location in the zoning district.
- 707.04** Buildings and facilities which are part of a non-conforming use may be remodeled, repaired or reconstructed, and the capacity of an intensive/confined feeding use may be replenished, provided that any non-conforming use does not expand geographically or as to capacity.
- 707.05** When a non-conforming use of a building or structure or building or structure and land in combination is voluntarily discontinued or abandoned for twelve (12) consecutive months, except when governmental action impedes access to the premises, the building(s), structure(s) and land shall not thereafter be used for any use that is not in compliance with this Resolution or amendment thereto. In the event a intensive/confined feeding uses, as defined in this Resolution, is discontinued or abandoned for a period of twelve (12) consecutive months, such use may be re-established within the confines of the area in which the previous feeding operation was conducted, but such use shall be considered permanently abandoned and shall not be re-established if its use is discontinued for a period of thirty six (36) consecutive months or longer.
- 707.06** Where non-conforming use status applies to a building or structure, a building or structure and land in combination, which is involuntarily removed or destroyed, and the involuntary removal or destruction of the structure shall not eliminate the non-conforming status of the land if said building or structure is rebuilt or replaced. Such replacement shall be allowed, but no such use shall be extended to occupy any land outside such building or structure which was not in use as of the effective date of this Resolution or amendment thereto.

## **SECTION 708 REPAIRS AND MAINTENANCE**

Maintenance and ordinary repairs, replacement of walls or members, fixtures, heating and cooling equipment, wiring or plumbing within any non-conforming building or structure may be performed notwithstanding any other requirements of this Resolution or amendment thereto.

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## **ARTICLE 8 - ADMINISTRATION AND ENFORCEMENT**

### **SECTION 801 ORGANIZATION**

The administration and enforcement of this Resolution is hereby vested in the Custer County Planning Commission, the Custer County Board of Adjustment, the Custer County Board of Supervisors, the Zoning Administrator designated by the Board of Supervisors, the Custer County Attorney and such other persons as may be designated by the Board of Supervisors.

### **SECTION 802 AUTHORITIES**

#### **Planning Commission:**

With regard to the proper administration and enforcement of this Resolution, the Custer County Planning Commission shall have the following authorities:

- 802.01** Hear and recommend action by the Board of Supervisors regarding all applications for amendments to the text of this Resolution and / or changes (rezoning) to the Custer County Official Zoning Map.
- 802.02** Hear and recommend action by the Board of Supervisors regarding all applications for conditional uses, as set forth in this Resolution.
- 802.03** Prescribe uniform rules of procedure pertaining to applications, public hearings and issuance of permits.
- 802.04** Periodically review the effectiveness of this Resolution and initiate amendments or make recommendations in conjunction therewith.
- 802.05** Invoke any authorized remedy for the enforcement of this Resolution.

#### **Board of Adjustment:**

With regard to proper administration and enforcement of this Resolution, the Custer County Board of Adjustment shall have the following authorities:

- 802.06** Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator when such order, requirement, decision, or determination is appealed by the person(s) affected by such order, requirement, decision or determination.
- 802.07** Hear and authorize specific appeals at variance with the requirements of this Resolution that would not be contrary to the public interest, where owing to special conditions demonstrated and after written findings of legitimate hardship, as defined and specified in Section 907.03 of this Resolution, a literal enforcement of the provisions of this Resolution would result in a legitimate and unnecessary hardship and not merely an inconvenience.
- 802.08** Hear and decide appeals regarding interpretation of zoning district boundaries, as indicated on the Official Zoning Map, in accordance with the requirements and limitations of this Resolution.
- 802.09** Prescribe uniform rules of procedure pertaining to investigations, findings of fact, applications, appeals and public hearings.
- 802.10** Invoke any legal remedy for the enforcement of this Resolution including full power to order discontinuance of any use and stays or work (stop work orders) on any premises in violation of the requirements of this Resolution.

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**Board of Supervisors:**

With regard to proper administration and enforcement of this Resolution, the Custer County Board of Supervisors shall have the following authorities:

- 802.11** Hear and decide conditional use applications upon which it is required to act under the terms of this Resolution, after recommendation from the Planning Commission.
- 802.12** Consider and adopt amendments to the text of this Resolution and / or changes (re-zonings) to the Custer County Official Zoning Map, after review and recommendation by the Planning Commission.
- 802.13** Consider and adopt a schedule of permit and application fees for administration of this Resolution, after review and recommendation by the Planning Commission.
- 802.14** Provide for the proper and constant enforcement of this Resolution through appointment of a Zoning Administrator and sufficient budget to enable the Planning Commission, the Board of Adjustment, the Board of Supervisors, the Zoning Administrator, the County Attorney and any other persons designated by the Board of Supervisors to carry out the responsibilities assigned to them by adoption of this Resolution.

**Zoning Administrator:**

With regard to proper administration and enforcement of this Resolution, the Custer County Zoning Administrator shall have the following authorities:

- 802.15** Make available to the public application forms for amendments to this Resolution and / or Official Zoning Map, for appeals to the Board of Adjustment, and conditional use requests to the Board of Supervisors and to issue zoning permits and certificates of zoning compliance (occupancy permits) as required by the Resolution and to maintain records of all such applications and permits issued.
- 802.16** Conduct inspections of buildings, structures, premises and the uses of land to determine compliance with the terms of this Resolution. Where violations are determined to exist, the Zoning Administrator shall have the authority to issue letters of violation, stop work orders and any other legal remedy to assure compliance with the requirements of this Resolution.
- 802.17** Provide interpretation of the text of this Resolution and the Official Zoning Map when necessary and such other technical and clerical assistance as the public, the Planning Commission, Board of Adjustment and Board of Supervisors may require.
- 802.18** Maintain and provide information to the public regarding the requirements of this Resolution and provide for the timely publishing of legal notices and other notifications relative to administration of this Resolution as prescribed by law.
- 802.19** Maintain permanent and current records with regard to this Resolution, including but not limited to all maps, amendments, zoning permits, certificates of zoning compliance, variances, appeals, conditional uses and applications thereof together with all records of meetings and public hearings pertaining to this Resolution.

**SECTION 803 RESPONSIBILITIES**

The following shall be the responsibilities of the various entities involved in the proper administration and enforcement of this Resolution:

- 803.01** It is the intent of this Resolution that all questions of interpretation and enforcement regarding this Resolution shall first be presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of the Zoning Administrator and that recourse from the decisions of the Board of Adjustment shall be to the courts, as prescribed by law.

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**803.02** It is further the intent of this Resolution that the duties of the Board of Supervisors relative to this Resolution shall be limited to those specified in Section 802.11 through 802.14 of this Resolution and shall not include the hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this Resolution.

**803.03** If the Zoning Administrator shall find that any of the provisions of this Resolution are being violated, he / she shall notify the person(s) responsible for such violation in writing, indicating the nature of the violation and ordering the action or actions necessary to correct and eliminate such violation. The Zoning Administrator shall have the full authority to order discontinuance of prohibited or unauthorized uses of land, buildings or structures, removal of prohibited or unauthorized buildings or structures or prohibited or unauthorized additions thereto, discontinuance of any work being done in violation of the requirements of the Resolution, and the taking of any other legal action necessary to ensure compliance with or prevent violation of the provisions of this Resolution.

**803.04** The Zoning Administrator, operating through the County or other designated Attorney, shall have express authority to initiate and carry out any and all legal actions appropriate and necessary to enforce the provisions of this Resolution and any orders of the Board of Adjustment, without further authorization by the Board of Supervisors. Adoption of this provision by the Custer County Board of Supervisors is expressly intended to authorize the Zoning Administrator and County or other designated Attorney to initiate and carry out all legal actions appropriate and necessary to enforce the provisions of this Resolution that is or may be applicable under the laws of the State of Nebraska.

#### **SECTION 804 ZONING PERMITS REQUIRED**

No building or other structure shall be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved, or structurally altered without a zoning permit therefore, first being issued by the Zoning Administrator, provided that:

- A. A farm building housing a commercial, industrial or other non-agricultural use, as defined in Section 303.04 of this Resolution, shall not be considered a farm building and shall be subject to these zoning permit and/or certificate of zoning certificate requirements;
- B. A building housing an agricultural use, as defined in Section 303.04 of this Resolution, which is located on a lot, plot or parcel of land which does not meet the definition of a farm, as defined in Section 303.34 of this Resolution, shall be considered a non-farm building and shall be subject to these zoning permit requirements.
- C. Governmental entities shall be required to obtain building permits for buildings and other land uses, but shall not be required to obtain zoning permits for the construction, repair, and/or erection of road signs, traffic signs, bridges, culverts and other structures upon and within the public road rights-of-way or easements of record.

#### **SECTION 805 APPLICATION FOR A ZONING PERMIT**

The following requirements shall apply to all requests for a zoning permit:

**805.01** All applications for a zoning permit shall be made on forms prescribed for such application by the Board of Supervisors and shall have incorporated into said forms a place for drawing of a plot plan showing the actual dimensions and shape of the lot to be built upon, the sizes and locations of all existing and proposed parking areas, water supply and sewage disposal facility locations, and such other information as may be pertinent to said application.

**805.02** The application shall include, the name(s), address(es) and telephone number(s) of the applicant and such other information as may be lawfully required by the Zoning Administrator, including existing and proposed uses of land, buildings and structures, existing or proposed building or

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structure alterations, the number of families, housekeeping units on the premises, conditions existing on the premises, provisions for water supply, sewage disposal and erosion control, soil conditions and permeability and such other information as may be necessary to determine conformance with the requirements of the Resolution and enforcement thereof.

- 805.03** Upon receipt of a complete zoning permit application and receipt of any applicable application fee, the Zoning Administrator shall make two (2) copies of the zoning permit application and return one (1) copy to the applicant after he / she has marked the copy of the permit as approved or disapproved and attested to same by his / her dated signature. If a zoning permit application is denied, the Zoning Administrator shall state the reason(s) for such denial in writing and attach the same to the applicant's copy of the application. The Zoning Administrator shall mark the original of the zoning permit application as approved or disapproved in the same manner as the copy and shall maintain said original together with written reason(s) for denial of said application in the permanent files of the County.
- 805.04** When the Zoning Administrator approves a zoning permit for erection of any building or structure or erection of any addition to or alteration thereof, he / she shall issue one (1) copy of such approved zoning permit to the Custer County Assessor.
- 805.05** Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such plot plan and permit and no other use, arrangement or construction. If the Zoning Administrator determines that the use, arrangement or construction developed under any approved permit is not proceeding according to the approved permit and applicable regulations or conditions, the Zoning Administrator shall revoke said permit and issue a written stop work order and require that such use, arrangement or construction be brought into conformance with the approved permit.

#### **SECTION 806 LIMITATION OF ISSUANCE OF ZONING PERMIT**

Notwithstanding of provisions of this Resolution, in the event a conditional use application has been duly filed with the zoning administrator and the use and/or location of such use proposed in said conditional use application would, due to setback or other requirements of this Resolution, restrict or otherwise prohibit the issuance of a zoning permit for another use on any neighboring property, a zoning permit for any use on neighboring property which would be restricted or prohibited by the authorization of said conditional use shall not be issued by the Zoning Administrator until the application for conditional use has been decided by the County Board of Supervisors in accordance with the requirements of this Resolution. In the event such conditional use is authorized, a zoning permit for a use which would be restricted or prohibited on neighboring property shall be issued only in conformance with the resulting restriction(s) or shall not be issued if the requested use would then be prohibited.

#### **SECTION 807 EXPIRATION OF ZONING PERMIT**

If the work described in any approved zoning permit, for a permitted use, which does not require a state or federal permit, has not been commenced, as defined in 303.21, within ninety (90) calendar days of the date of approval of such permit or if work described in any approved permit has not been completed within two (2) years of the date of approval of such permit, the said permit shall expire and be canceled by the Zoning Administrator and written notice of such cancellation shall be provided to the person(s) affected together with written notice that further work, as described in the canceled permit is prohibited, unless the applicant can qualify for a new zoning permit.

If the work described in any approved zoning permit, for a permitted use, which does require a state or federal permit, has not been commenced, as defined in 303.21, within sixty (60) calendar days of the date of approval by the appropriate state or federal licensing agency, or if work described in any approved permit has not been completed within two (2) years of the date of approval of such permit, the said permit shall expire and be canceled by the zoning administrator and written notice of such cancellation shall be provided to the person(s) affected, together with written notice that further work, as described in the canceled permit, is prohibited, unless the applicant can qualify for a new zoning permit.

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Commencement and completion of work on a conditional use permit shall be governed by the requirements of Section 1010 of this regulation.

## **SECTION 808 CERTIFICATES OF ZONING COMPLIANCE FOR NEW USE OR CHANGE OF USE**

The following requirements shall apply to the issuance of all certificates of zoning compliance (occupancy permits):

- 808.01** It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises or both or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator
- 808.02** No Certificate of Zoning Compliance shall be issued by the Zoning Administrator except in conformity with all provisions of this Resolution unless the Zoning Administrator shall receive written authorization from the Board of Zoning Adjustment in the form of an administrative appeal review or approved variance or a written authorization from the Board of Supervisors in the form of an approved conditional use, as provided for in this Resolution.
- 808.03** Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such approved plot plans and permit and no other use, arrangement or construction developed under any approved permit is not according to the approved zoning permit and applicable regulations or conditions, the Zoning Administrator shall not issue a Certificate of Zoning Compliance, but shall instead inform the applicant in writing of the violations and specify the actions necessary to bring such use, arrangement or construction into compliance with the approved zoning permit.
- 808.04** A Certificate of Zoning Compliance, once issued, shall remain in effect so long as the use of the land, buildings and structures is used in accordance with said Certificate.
- 808.05** The determination of the number of animal units in any intensive/confined feeding use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality, or in the event such a permit is not required, such determination shall be by written declaration of the one-time capacity of such use to the County by the owner of such use. In the event of any dispute over the number of animal units being confined, such determination shall be by actual counting of the animal units by the Zoning Administrator or other duly appointed person at the time of such dispute.

## **SECTION 809 FAILURE TO OBTAIN ZONING PERMIT/CERTIFICATE OF ZONING COMPLIANCE**

Failure to obtain required Zoning Permits and Certificates of Zoning Compliance or failure to comply with the plans and application information under which such permits or certificates were issued shall be a violation of this Resolution and be punishable as provided in Section 1202 of this Resolution.

# **ARTICLE 9 - BOARD OF ADJUSTMENT**

## **SECTION 901 ESTABLISHMENT AND PROCEDURE**

A Board of Adjustment is hereby created and shall be known as the Custer County Board of Adjustment. The Board of Adjustment shall be appointed by the Board of Supervisors and shall consist of five (5) members, plus one (1) additional member designated as an alternate member who shall attend meetings and serve only when one of the regular members is unable to attend for any reason. One (1) member of the Board of Adjustment shall be appointed from the membership of the Custer County Planning Commission by the Board of Supervisors and the loss of



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membership on the Planning Commission shall also result in the immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commission member to the Board of Adjustment by the Board of Supervisors. No member of the Board of Supervisors shall be a member of the Board of Adjustment.

**SECTION 902 TERMS OF OFFICE**

The members appointed to the Board of Adjustment shall be appointed for a term of three (3) years and be removable for cause by the Board of Supervisors upon written charges and after public hearing to consider and decide on such charges. Vacancies shall be filled by appointment for the unexpired term of a member whose term becomes vacant.

**SECTION 903 ELECTION OF OFFICERS**

The Board of Adjustment shall annually elect one (1) of its members as Chairperson and another as Vice Chairperson, who shall act as Chairperson in the elected Chairperson's absence. Each member shall serve until a successor has been selected.

**SECTION 904 SECRETARY OF THE BOARD OF ADJUSTMENT**

The Board of Adjustment shall annually elect one (1) of its members as Secretary / Treasurer or shall appoint the Zoning Administrator to serve as Secretary / Treasurer to the Board of Adjustment.

**SECTION 905 RECORDS OF THE BOARD OF ADJUSTMENT**

The Board of Adjustment shall adopt bylaws and rules of procedure in accordance with the provisions of this Resolution necessary to conduct its affairs. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as a majority of the Board shall determine. The Chairperson, or in his / her absence the Vice Chairperson may administer oaths and compel attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep written minutes of its proceedings, indicating evidence presented, findings of fact made by the Board, decisions of the Board, the attendance of members, and the vote of each member upon each question. Records of all actions of the Board shall be kept in the office of the County Clerk and shall be open to public inspection.

**SECTION 906 QUORUM AND VOTING**

A quorum for the Board of Adjustment shall be three (3) members. Action by the Board on any question other than an appeal from the decision of the Zoning Administrator or a variance application shall require a concurring vote of three (3) members of the Board. Action by the Board on an appeal to overturn a decision of the Zoning Administrator or for approval or denial of a variance application shall require the concurring vote of four (4) members.

**SECTION 907 POWERS AND DUTIES**

The Board of Adjustment shall have the following powers and **ONLY** the following powers:

- 907.01** Administrative Review: To hear and decide appeals where it is alleged by the appellant that there is an error in order, requirement, decision or refusal made by the Zoning Administrator or official based on or made in the enforcement of this Resolution or any regulation relating to the location of structures.
  
- 907.02** Zoning Map Interpretation: To hear and decide, in accordance with the provisions of this Resolution, requests for interpretation of Official Zoning Map of the County.
  
- 907.03** Variances: To hear applications for and authorize, in specific cases, a variance from the specific terms of this Resolution which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Resolution would result in unnecessary hardship, and provided that the spirit of this Resolution shall be observed, public safety and welfare secured and substantial justice done. A variance shall not be granted by the Board of Adjustment unless and until the Board shall have made written findings that **all** of the following conditions exist or have been met:

- 1. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of

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property at the time of adoption of this Resolution, or by reason of exceptional topography conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of particular requirements of this Resolution would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship on the owner of such property, the Board of Adjustment, upon an appeal relating to such property, shall have the power to authorize a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Resolution, but no variance shall be authorized by the Board of Adjustment unless the Board finds that:

- A. The strict application of the regulations would produce undue hardship;
  - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
  - C. The authorization of such variance shall not be of substantial detriment to adjacent properties and the character of the district will not be changed by the granting of such variance;
  - D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of the owner's convenience, profit or caprice.
2. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this Resolution.

**907.04** Requirement for Written Application and Conditions: A variance from the terms of this Resolution shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted to the Zoning Administrator on an application form prescribed by the Board of Adjustment and payment of an applicable fee and such application shall demonstrate that special conditions and circumstances exist which are peculiar to the land, building or structure involved and that said special conditions and circumstances are not applicable to other lands, building, or structures in the same zoning district and vicinity, that the literal enforcement of the provisions of this Resolution would deprive the applicant and that granting of the variance requested will not confer on the applicant any special privilege that is denied by this Resolution to other lands, buildings or structures in the same zoning district and vicinity.

**907.05** Effect of Non-Conformance: Non-conformance use of lands, buildings or structures in the same zoning district and vicinity and permitted or non-conforming use of lands, buildings or structures in other zoning districts shall not be considered grounds for a determination that the applicant would be deprived of rights enjoyed by other properties and shall not be grounds for granting a variance.

**907.06** Findings of the Board of Adjustment on Variances: Prior to taking any action to authorize or deny a variance application, the Board of Adjustment shall:

1. Make a finding that the application for a variance is complete and in compliance with the requirements of this Resolution. Such finding shall be recorded in the minutes of the Board;
2. Make findings that the particular reasons set forth in the application for a variance justify the granting of the variance in accordance with the limitations for granting such variance as described in Section 907.03 of this Resolution and that the variance is the minimum variance

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that will make possible the reasonable use of the land, building or structures involved and such findings shall be recorded in the minutes of the Board;

3. Make a finding that the granting of the variance will be in harmony with the purpose and intent of the Resolution and will not be injurious to adjacent lands or otherwise detrimental to the public welfare. Such finding shall be recorded in the minutes of the Board.

**907.07** Conditions of Approval Imposed: In authorizing any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Resolution to assure continued acceptability of variance. Violations of such conditions or safeguards when made part of written terms under which the variance is authorized shall be deemed a violation of this Resolution and punishable as set forth in Section 1202 of this Resolution and any other applicable laws. In addition, the Board of Adjustment shall attach a condition to any variance authorized by the Board that such authorization shall be acted upon by the applicant within one (1) year from the date of authorization of such variance and that if such authorized variance has not been acted upon by the applicant within this time limitation such authorization shall automatically be revoked.

**907.08** Use Variances: Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible in the zoning district involved or grant a variance for any use expressly or by implication prohibited by terms of this Resolution in the zoning district involved.

## **SECTION 908 PUBLIC HEARINGS**

Prior to acting on any powers granted to it under this Resolution, the Board of Adjustment shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property effected by the petition, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

## **SECTION 909 BOARD HAS POWERS OF ADMINISTRATIVE OFFICIAL ON APPEALS**

In exercising the above mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partially, or modify the order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the administrative official from whom the appeal is taken. The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Resolution or to effect any variance under this Resolution.

## **SECTION 910 APPEALS**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board or bureau of the County, may appeal as provided by State law.

# **ARTICLE 10 - CONDITIONAL USES**

## **SECTION 1001 GENERAL POWERS**

The Custer County Board of Supervisors may grant conditional uses to property owners for the use of their property in conformance and compliance with the limitations and procedures set forth herein. Granting of a conditional use shall only allow property owners to put their property to a conditional use if such use is listed among those uses specifically identified in the zoning district in which the subject property is located as a conditional use. The power to grant conditional uses shall be the exclusive authority of the Board of Supervisors and the Board of Supervisors has formally adopted and shall comply with the following standards and procedures:

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## **SECTION 1002 APPLICATION REQUIREMENTS**

A written application and site plan for a conditional use shall be initiated by a property owner or authorized agent of such owner(s) and shall be submitted to the Zoning Administrator on forms prescribed by the Board of Supervisors. Said application shall be signed by the applicant or the applicant's authorized agent and the applicant shall pay any applicable application fee. Such application shall indicate the Section of this Resolution under which the conditional use is being sought and, at a minimum, shall indicate the following:

- 1002.01** A legal description of the property on which the proposed conditional use is requested, including the specific size and dimension of the area on which the proposed conditional use would be located if less than the total property owned by the applicant;
- 1002.02** The size and locations of all existing and proposed buildings and structures;
- 1002.03** A detailed description of the use proposed and the activities involved in such use;
- 1002.04** The location(s) of access to public roadway(s);
- 1002.05** The type and locations of easements effecting the property;
- 1002.06** A description of the provisions made for adequate water supply, sewage disposal, public utilities and erosion control;
- 1002.07** The extent and location of parking, loading and refuse disposal and collection facilities;
- 1002.08** The locations of residential dwellings and other non-agricultural land uses within two (2) miles of the property in question;
- 1002.09** An indication of surface water drainage onto, through and off of the subject property which would occur after development of the proposed conditional use;
- 1002.10** For industrial uses, intensive/confined feeding uses, a description of how the use or uses proposed will address the compatibility issues of traffic generation, noise, odor, dust, radiation or potential air, water or soil pollution or explosion hazards; (For intensive/confined feeding uses, refer to requirements in Section 501.05 of the this Resolution.)
- 1002.11** Any areas on the property subject to flooding or considered to be a wetland.

## **SECTION 1003 REFERRAL TO PLANNING COMMISSION**

Prior to consideration of a conditional use application, the Board of Supervisors shall refer a conditional use application to the Custer County Planning Commission for review, research and recommendation.

## **SECTION 1004 PLANNING COMMISSION PUBLIC NOTICE**

Prior to consideration of a conditional use application by the Planning Commission, shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property effected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

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## **SECTION 1005 PUBLIC HEARING, CONSIDERATION AND PROCEDURES**

At public hearing, the Planning Commission, shall hear the applicant's petition and all comments by the public in attendance and shall review the conditional use request in accordance with the requirements set forth in Section 1008 of this Resolution. The Planning Commission, after review and research of the application, shall act to recommend approval or disapproval of the application, provided that if the Commission recommends approval of such application it shall specify conditions and limitations which it recommends to assure compliance with the requirements set forth in Section 1008 of this Resolution. If the Commission recommends disapproval of an application, it shall state the reason(s) for such disapproval. The recommendations of the Planning Commission, together with recommended conditions of approval or recommended reasons for disapproval shall immediately be forwarded in writing by the Zoning Administrator to the County Board of Supervisors for its consideration and the Zoning Administrator shall provide the same written statement to the applicant within seven (7) calendar days of the date of action by the Planning Commission.

## **SECTION 1006 COUNTY BOARD OF SUPERVISORS PUBLIC NOTICE**

Prior to consideration of a conditional use application, the Board of Supervisors shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property effected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

## **SECTION 1007 PUBLIC HEARING, CONSIDERATION AND PROCEDURES**

At public hearing, the Board of Supervisors, shall hear the applicant's petition, shall review and consider the recommendations of the Planning Commission and all comments by the public in attendance and shall review the conditional request in accordance with the requirements set forth in Section 1008 of this Resolution. The Board of Supervisors shall act to approve or disapprove the request, provided that if the Board approves such request it shall specify conditions and limitations to assure compliance with the requirements set forth in Section 1008 of this Resolution. Upon approval of a conditional use, notice of the approval, including all conditions of approval shall be mailed to the applicant within seven (7) calendar days of the date of such approval. If the Board disapproves a request, it shall state the reason(s) for such disapproval and shall provide a written statement specifying the reason(s) for the disapproval to the applicant within seven (7) calendar days of the date of such disapproval.

## **SECTION 1008 REQUIREMENTS GOVERNING REVIEW / APPROVAL OF CONDITIONAL USES**

In reviewing any conditional use application, the Planning Commission and Board of Supervisors shall consider all aspects of the proposed use including, at a minimum, those aspects of use listed below to determine the acceptability of the proposed use and its location. At the option of the Planning Commission and/or the Board of Supervisors, the Planning Commission and/or Board of Supervisors may request technical support from any public or private agency or entity in the review of any conditional use application. Such technical support may take any form including, but not limited to technical data and advice, comments or recommendations. In authorizing any conditional use, the Board of Supervisors shall attach specific conditions, requirements or limitations regarding each aspect of use listed below to assure continued acceptability of the conditional use. Such conditions shall be made either by reference to a site plan for the proposed use or by attaching specific written statements. At a minimum, the aspects of acceptability include:

**1008.01** Both ingress and egress to the property and conditional use thereon and the existing and proposed buildings and structures thereon is appropriate with particular reference to automobile and truck safety, traffic flow, site distance, roadway and bridge capacities, convenience and access in case of fire or catastrophe;

**1008.02** Off-street parking, including spaces for handicapped persons, is adequate for the use proposed and will not create any safety hazards relative to public roadways;

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- 1008.03** Refuse disposal or manure collection and disposal facilities and operations and other service facilities and water supply, sewage disposal facilities or manure collection, storage, treatment and land application methods have been approved by the Department of Environmental Quality (DEQ);
- 1008.04** The number, location, size and use of buildings and structures is appropriate relative to the size of the site and protection of adjoining properties and scenic views.
- 1008.05** Front, side and rear setbacks meet or exceed the minimum setback requirements of the zoning district in which the conditional use is located.
- 1008.06** Provisions to avoid development within any area subject to flooding and / or to avoid modification of any wetlands.
- 1008.07** For proposed commercial and industrial uses, the types of operations to be conducted on the site will not result in inappropriate levels of traffic, noise, dust, odor, or undue potentials for air or surface or groundwater contamination or explosion hazards.
- 1008.08** For intensive/confined feeding uses, the type of use to be conducted will comply with the requirements in Section 501.05 of the this Resolution.

**SECTION 1009 CONDITIONS, SAFEGUARDS AND LIMITATIONS OF USE**

In consideration of any conditional use application, the Planning Commission may recommend and the Board of Supervisors may prescribe any additional conditions, safeguards or limitations appropriate to assure the compatibility of Class D and E intensive/confined feeding uses with adjacent lands, with the intent of the zoning district in which such use is to be located, and with the spirit of this Resolution.

**SECTION 1010 EXPIRATION OF CONDITIONAL USE AUTHORIZATIONS**

Development of any authorized conditional use shall be commenced within one (1) year of the date of approval of such conditional use by the Board of Supervisors, unless a State or Federal permit is required. If a State or Federal permit is required, commencement shall begin within (1) year of the issuance of said permits. Development of said authorized conditional use shall be completed according to a schedule outlined by the applicant in the conditional use application and approved by the Board of Supervisors.

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## **ARTICLE 11 - AMENDMENTS**

### **SECTION 1101 AUTHORITY**

The County Board of Supervisors may from time to time amend, supplement, modify the zoning district boundaries or repeal the regulations contained in this Resolution, provided no such amendment, supplement, modification, change of boundaries or repeal shall become effective until such proposed modification shall have been submitted to the Planning Commission for recommendation and report and after public notice has been provided and public hearings have been held by both the Planning Commission and Board of Supervisors. A proposal for modification or repeal may be initiated by the Planning Commission, the Board of Supervisors or upon application of any owner of property under the jurisdiction of this Resolution. A filing fee, as established by the County Board of Supervisors shall be paid for each application to modify this Resolution prior to action on such application by the Planning Commission and Board of Supervisors, provided that such fee shall be waived where the proposed modifications is initiated by the Planning Commission or the Board of Supervisors.

### **SECTION 1102 PUBLIC NOTICE AND PUBLIC HEARINGS**

Prior to consideration of amending, supplementing, changing, modifying or repealing of all or part of this Resolution, notice of public hearings by the Planning Commission and Board of Supervisors shall each be provided as follows:

**1102.01** Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property effected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

**1102.02** If such proposed modification is not a general revision of an existing provision of this Resolution and will affect only a specific property, the public notice shall include the general location and a legal description of such specific property and, in addition, notice of the public hearing(s) shall be mailed by first class mail to the applicant and the owners of record of real estate that is located adjacent to or immediately across a road from the property affected by such modification at least ten (10) calendar days prior to such public hearings.

**1102.03** The provisions of this Section regarding notification by first class mail shall not apply to:

1. A proposed modification of this Resolution where such modification will apply throughout the County or throughout an existing zoning district;
2. Additional or different types of zoning districts are proposed, whether or not such additional or different zoning districts are made applicable to areas or parts of areas already within a zoning district of the County;
3. In these instances only the publication of public notice in the newspaper, and notice to other planning commissions having jurisdiction over lands within three (3) miles of lands which will be effected by such modification and notification of local units of government, as set forth in Section 1102 above, shall be required.

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## **SECTION 1103 AMENDMENT CONSIDERATION AND ADOPTION**

**1103.01** Planning Commission: The procedure for the consideration and adoption of any proposed amendment to this Resolution shall be in like manner as that required for consideration and adoption of this Resolution. For action on amendments to the text of this Resolution or the zoning district boundaries indicated on the Official Zoning Map, a quorum of the Planning Commission must be present at the required public hearing to approve or disapprove a proposed amendment. Action on any proposed amendment shall require an affirmative vote of a majority of all members of the Commission. The Commission's action on any proposed amendment shall constitute a recommendation of approval or disapproval to the Board of Supervisors.

**1103.02** Board of Supervisors: After public notice and public hearing as described above, may act to agree or disagree with said Planning Commission recommendation and shall act to approve or disapprove said amendment. Passage of a motion to adopt a resolution approving an amendment or passage of motion to disapprove an amendment, regardless of the recommendation of the Planning Commission shall require a simple majority vote of the Board of Supervisors, except for the provisions set forth in Section 1105 of this Resolution.

## **SECTION 1104 AMENDING OFFICIAL ZONING MAP**

Should any amendment adopted by resolution of the Board of Supervisors serve to modify the location of zoning district boundaries as set forth on the Custer County Official Zoning Map, the Board of Supervisors shall cause the Official Zoning Map to immediately be modified to reflect the adopted amendment and such change shall be witnessed by the signature of the Chairperson of the Board of Supervisors. Adoption of any resolution to amend the Official Zoning Map shall become effective only after such amendment is reflected on such Official Zoning Map and such change has been witnessed by the signature of the Chairperson of the County Board of Supervisors and attested to by the County Clerk.

## **SECTION 1105 PROTESTS**

Regardless of whether or not the Planning Commission approves or disapproves a proposed amendment, if a protest against any amendment, signed by the owners of twenty percent (20%) or more of the area of lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, is filed, such amendment shall not become effective except by the favorable vote of two-thirds majority of the County Board of Supervisors.



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## **ARTICLE 12 - COMPLAINTS, VIOLATIONS, REMEDIES, PENALTIES**

### **SECTION 1201 COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this Resolution occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating the cause and basis of the complaint, shall be filed with the Zoning Administrator. The Zoning Administrator shall properly record receipt of such complaint, immediately investigate the complaint and take appropriate action thereon in accordance with the regulations and requirements of this Resolution.

### **SECTION 1202 PENALTIES FOR VIOLATION**

Violation of the provisions of this Resolution or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with approval of variance and conditional uses, shall be punished as provided by State Law.

### **SECTION 1203 REMEDIES**

In case any building or structure is erected, constructed, reconstructed, altered, repaired, moved, converted or maintained, or any building, structure or land is used in violation of this Resolution or the conditions and safeguards established in connection with approval of any variance or conditional use, the Zoning Administrator, County Attorney or other duly appointed official shall institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, movement, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

## **ARTICLE 13 - SCHEDULE OF FEES**

### **SECTION 1301 AUTHORITY**

The County Board of Supervisors shall establish a schedule of fees for Zoning Permits, Certificates of Zoning Compliance, Appeals, Rezoning Applications, Conditional Use Applications, Variance Applications and other matters pertaining to the effective administration of this Resolution. The schedule of fees shall be posted in the office of the Zoning Administrator and County Clerk at all times. Said schedule of fees may be altered or amended from time to time by action of the Board of Supervisors.

### **SECTION 1302 NON-PAYMENT OF FEES**

Until all applicable fees have been paid in full by the applicant, no action shall be taken on any application or permit.

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## **ARTICLE 14 - LEGAL STATUS PROVISIONS**

### **SECTION 1401 SEPARABILITY**

Should any Article, Section or provision of this Resolution be declared by the courts to be unconstitutional or invalid, such decision shall not effect the validity of this Resolution as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

### **SECTION 1402 PURPOSE OF CATCH HEADS**

The catch head titles appearing in connection with the Articles and Sections contained within this Resolution are inserted simply for convenience to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing and interpreting the terms and provisions of this Resolution.

### **SECTION 1403 REPEAL OF CONFLICTING RESOLUTIONS**

All resolutions and regulations in conflict with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

### **SECTION 1404 EFFECTIVE DATE**

This Resolution shall take effect and be in force from and after its passage and publication according to law.

## **ARTICLE 15 - SUBDIVISION REGULATIONS**

### **SECTION 1501 ADMINISTRATIVE SUBDIVISIONS**

Development of subdivisions in the AG-T district shall be conditional uses provided that:

1. Such development of additional dwellings will not result in increasing incompatibilities with agricultural uses, confined or intensive animal feeding uses and associated waste handling facilities.

### **SECTION 1502 APPLICATION REQUIREMENTS**

**1502.01** The applicant shall submit an application on a form established by the Zoning Administrator

**1502.02** The application shall be accompanied by a plat no larger than 22" X 18" of all lots and parcels that are affected.

The Plat shall be prepared by a licensed surveyor showing the previous and proposed boundaries.

The plat shall contain the following:

- A. Date, title, name and location of subdivision
- B. Names and locations of existing streets/roads
- C. Identification of the new lot numbers and set back lines
- D. Complete legal description of the property
- E. Locations of any existing easements
- F. Certification by surveyor or engineer as to the accuracy of the survey and plat.

- 
- G. Certification signed and acknowledged by all parties holding title or having any title interest in the land subdivided and consenting to the preparation and recording of the plat as submitted.
  - H. Certification signed and acknowledged by the governing body of the existing roadway affected, approving the proposed access to the platted site.

The application shall also be accompanied with a proposed protective covenant which complies with these regulations, particularly 1504 and a topographical map of the proposed subdivision site.

**1502.03** Following submission of application, plat and proposed protective covenants, the Zoning administrator shall review each application according to the following criteria:

- A. Compliance with the zoning and subdivision regulations and conditions set forth within, including but not limited to the provisions of section 1503, and
- B. Consistency with the Custer County Comprehensive Plan, and
- C. Shall refer and consult with the Register of Deeds, the applicable body for the existing roadway affected, the County Supervisors, the applicable school district, fire district, and law enforcement to determine the feasibility and reliability of the subdivision, and
- D. Shall, within 60 days of application receipt, schedule the application for public hearing before the Planning Commission.

**1502.04** A public hearing shall be conducted by the Planning Commission pursuant to the procedures provided for in Article 10 of the Zoning Regulation and Article 3 of the Bylaws.

**1502.05** The Board of Supervisors shall review the recommendations of the Planning Commission and shall determine by a majority vote of the Board whether to approve or reject the proposed subdivisions and protective covenants.

If the Board of Supervisors accepts and approves the subdivisions, then:

- A. The Chairman of the Board of Supervisors shall execute the plat as approved, certifying its approval, and
- B. The plat shall be recorded, at the expense of the proponent of the plat, with the Register of Deeds, and
- C. The owner of the real property shall sign and file the protective covenants.

Upon the filing of the plat and protective covenants, the subdivision shall be considered effective and lawful.

## **SECTION 1503 MINIMUM REQUIREMENTS FOR APPROVAL OF SUBDIVISION PLAT**

### **1503.01 ACCESS TO EXISTING ROADS**

Each subdivision shall have a private frontage road that is available to each lot. Access point(s) to existing county/state/township roads shall be determined by the State Fire Marshall's office and the governing road department requirements.

**1503.02** The following shall be the residential subdivision lot area requirements for uses located within the AG-T district. The minimum lot area for a single-family dwelling unit shall be one (1) acre, provided that a larger lot may be required by the Nebraska Department of Environmental Quality. Maximum Lot area is 19 acres.

### **1503.03 MINIMUM LOT WIDTH**

Minimum lot widths shall be 200 feet.

### **1503.04 MINIMUM NUMBER OF LOTS**

Minimum number of lots required to obtain subdivision status is four (4).

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**1503.05 LIVESTOCK SETBACKS & IMPACT EASEMENTS**

Any subdivision shall be separated from such animal feedings use, as defined in section 303.47, by the minimum distance specified in Sections 501.03 and 501.05 of this Resolution, for the Class of such existing animal feeding use, provided that if one or more impact easement(s), as defined in Section 303.44 of this Resolution, shall have been granted to the owner of the animal feeding use, in which case any residential dwelling unit(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Such minimum distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, and land where liquid waste is applied to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.

**1503.06** All other aspects of proposed residential subdivisions, which are not specifically addressed in this regulation, shall be considered on a case by case basis.

**SECTION 1504 MINIMUM REQUIREMENTS FOR APPROVAL OF PROPOSED PROTECTIVE CONENANTS**

**1504.01 MINIMUM HOUSING REQUIREMENTS**

All houses shall meet the minimum standards as set forth in section 303.56 of these regulations.

**1504.02 MINIMUM BUILDING SETBACK REQUIREMENTS**

The yard requirements for development shall provide the following setbacks for all structures located on the lots of the subdivision:

- A. Front Setback - One hundred (100) feet from road right-of-way
- B. Side Setback - Ten (10) feet
- C. Rear Setback - Ten (10) feet

**1501.03 LIVESTOCK**

No more than one animal unit (as defined in section 303.07) per 1 acre.

All livestock must be adequately confined.

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**APPENDIX 1 - Administrative Forms**

# **ARTICLE 16 - WIND ENERGY CONVERSION FACILITIES**

## **SECTION 1601 Wind Energy Installation**

In any zoning district, a conditional use permit or building permit may be granted to allow a wind energy conversion system, including such devices as a wind charger, or wind turbine; subject to the regulations established in this section.

## **SECTION 1602 Small Wind Energy Systems**

### **1602.1 Purpose**

It is the purpose of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity in Custer County.

### **1602.2 Definitions**

The following are defined for the specific use of this section.

1. *Small Wind Energy System* shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.
2. *Tower Height* shall mean the total height of the Wind Energy Conversion System from grade to the center of the hub.

### **1602.3 Requirements**

Small wind energy systems shall be permitted as an Accessory Use within any district. Certain requirements as set forth below shall be met:

1. Tower Height
  - A. For property sizes between ½ acre and one acre the tower height shall be limited to 80 feet.
  - B. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. Setbacks
  - A. No part of the wind system structure, including guy-wire anchors, may extend closer than the building setbacks of the appropriate zoning district to the property lines of the installation site.
3. Noise
  - A. Small wind energy systems shall not exceed 50 dBA, as measured at the closest neighboring inhabited dwelling unit.
  - B. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.

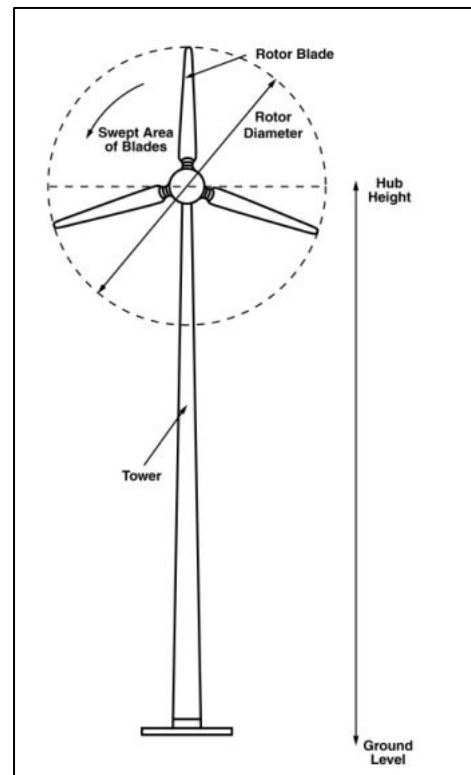


Figure 1

4. Approved Wind Turbines
  - A. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
5. Compliance with Building and Zoning Codes
  - A. Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.
  - B. An engineering analysis of the tower showing compliance with official building code of the governing body and/or the State of Nebraska certified by a professional engineer licensed and certified in Nebraska shall also be submitted. The manufacturer frequently supplies this analysis.
  - C. Wet stamps shall not be required.
6. Compliance with FAA Regulations
  - A. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
7. Compliance with National Electrical Code
  - A. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - B. The manufacturer frequently supplies this analysis,
8. Utility Notification
  - A. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator,
  - B. Off-grid systems shall be exempt from this requirement.

## **Section 1603 Commercial/Utility Grade Wind Energy Systems**

### **1603.1 Purpose**

It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy systems within Custer County.

### **1603.2 Definitions**

The following are defined for the specific use of this section.

1. *Aggregate Project* shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregate project.
2. *Commercial WECS/utility grade* shall mean a wind energy conversion system of equal to or greater than 100 kilowatts (KW) in total name plate generating capacity.
3. *Feeder Line* shall mean any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid. In the case of interconnection with the high



voltage transmission systems the point of interconnection shall be the substation serving the wind energy conversion system.

4. *Meteorological Tower* shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting or operating a Wind Energy Conversion System. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions.
5. *Public Conservation Lands* shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations. Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.
6. *Rotor Diameter or Diameter* shall mean the diameter of the circle described by the moving rotor blades as shown in Figure 1.
7. *Small Wind Energy System* shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.
8. *Substations* shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 volts (35 kV) for interconnection with high voltage transmission lines.
9. *Total Height* shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.
10. *Tower* shall mean the vertical structures that support the electrical, rotor blades, or meteorological equipment.
11. *Tower Height* shall mean the total height of the Wind Energy Conversion System from grade to the center of the hub.
12. *Transmission Line* shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.
13. *Wind Energy Conservation System* shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.
14. *Wind Turbines* shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

### **1603.3 Requirements**

Commercial/Utility Grade wind energy systems shall be permitted as a Conditional Use within any district where the use is listed and allowed. The following requirements and information shall be met and supplied:

1. The name(s) of the project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including; Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the feeder lines.
5. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Engineer's certification that the wind turbines in the project comply with the National Electrical Code.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System not owned by the applicant, within 1 mile of the proposed Wind Energy Conversion System.
10. Location of designated wetlands, designated scenic areas, and designated natural areas (including bluffs) within 1,320 feet of the proposed Wind Energy Conversion System.
11. An Acoustical Analysis that certifies that the noise requirements within this regulation can be met.
12. FAA letter of determination of no hazard to air navigation, if available.
13. Location of all known Communication Towers within five miles of the proposed Wind Energy Conversion System.
14. Decommissioning Plan consistent with Section 1603.6(10).
15. Description of potential impacts on nearby Wind Energy Conversion Systems and wind resources on adjacent properties not owned or leased by the applicant.

**1603.4 Aggregate Projects**

1. Aggregate projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
2. Permits may be issued and recorded separately.
3. Aggregate projects will be assessed fees as one project.
4. Setbacks to property lines, not road rights-of way, may be less when adjoining property owners are within the same aggregate project.

**1603.5 Setbacks**

All towers shall adhere to the setbacks as measured from the nearest point of the base established in the following table:

|  | Wind Turbine – Non Commercial                                      | WECS Wind Turbine – Commercial/Utility WECS  | Meteorological Towers                                       |
|--|--|--|---|
| Property Lines (other than right angle corners)  | Diameter plus applicable building setback                          | Diameter plus applicable building setback  | 1.0 times the total height                                  |
| Right angle corner property lines  | Diameter plus applicable building setback from both property lines | Behind a line on the property lines drawn between two points 150’ from the property line intersection. Generator blades must not exceed the building setback lines on the non-road side, and shall not encroach on the right-of-way on the road side. (See Figure 2) | 1.0 times the total height from both property lines         |
| Occupied Dwelling Units (1) (2)  | Diameter plus applicable building setback                          | ¼ mile   | 1.0 times the total height plus applicable building setback |
| Road Rights-of-Way (3)   | Diameter plus applicable building setback                          | Generator blades shall not encroach on the right-of-way.   | 1.0 times the total height plus applicable building setback |
| Other Rights-of-Way  | Diameter plus applicable building setback                          | Generator blades shall not encroach on the right-of-way.   | 1.0 times the total height plus applicable building setback |
| Public Conservation Lands including Wildlife Management Areas and State Recreation Areas | Applicable building setback  | Diameter plus applicable building setback  | 1.0 times the total height plus applicable building setback |
| Other structures not on the applicant’s project site                                     | NA   | Diameter   | 1.0 times the total height                                  |
| River Bluffs of over 15 feet   |  | Diameter   |   |

- (1) The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.
- (2) An easement between a landowner and a WECS developer reducing the setback distance between a turbine and a residence, is allowed.
- (3) The setback shall be measured from any future Rights-of-Way if planned changed or expanded right-of-way is formally being considered by the County.

**1603.6 Special Safety and Design Standards**

All towers shall adhere to the following safety and design standards:

1. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
2. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
3. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
4. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.

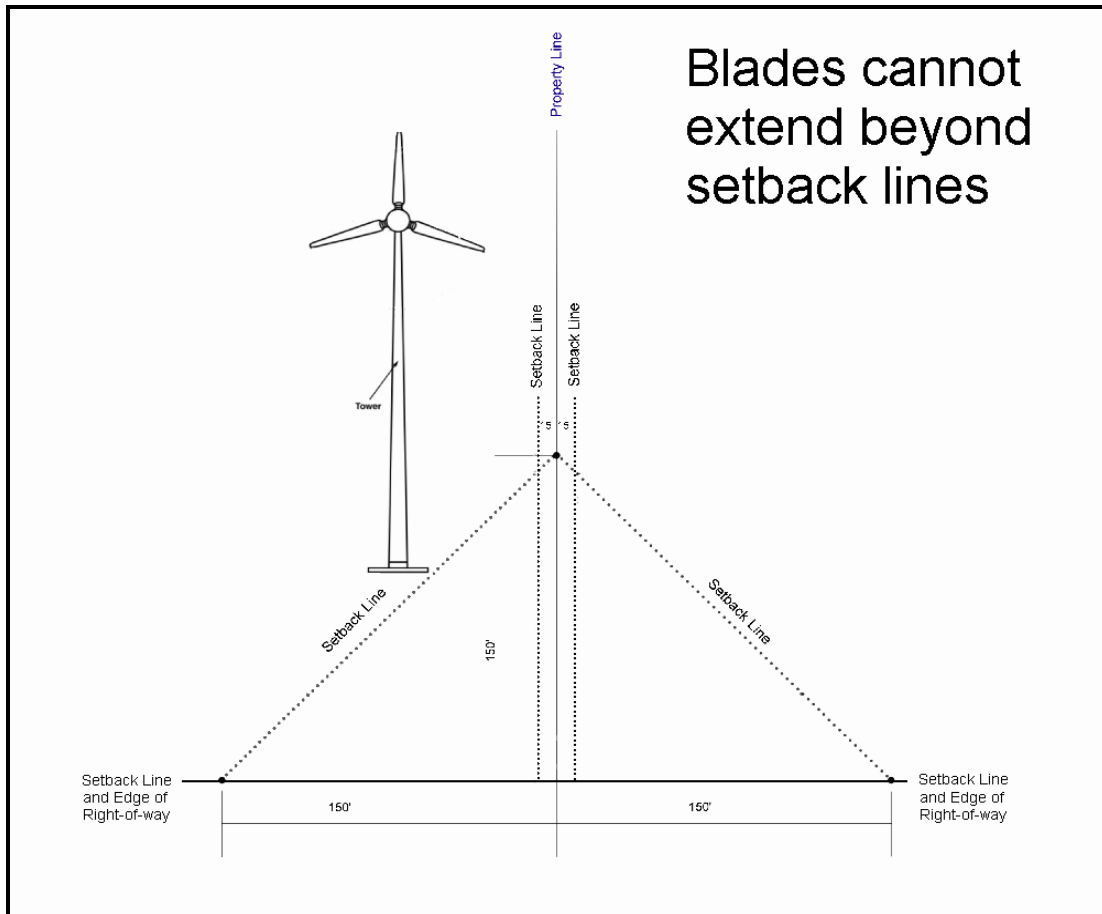


Figure 2

5. Color and finish:

All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Finishes shall be matte or non-reflective.

6. Lighting:

Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA regulations. If required by FAA red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.

7. Other signage:

All other signage shall comply with the sign regulations found in the Custer County Zoning regulations.

8. Feeder Lines:

All communications and feeder lines installed as part of a WECS shall be buried, where practicable.

9. Waste Disposal:

Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site

promptly and disposed of in accordance with all applicable local, state and federal rules and regulations.

10. Discontinuation and Decommissioning;

A WECS shall be considered discontinued after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the WECS to service or unless non-production is caused by an event of Force Majeure. All WECS and accessory facilities shall be removed to four (4) feet below ground level within 180 days of the discontinuation of use. This period may be extended by the Zoning Administrator following a written request by an agent or the owner of the WECS.

Each Commercial/Utility WECS shall have a Decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon being discontinued. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.

11. Shadow/Flicker

A flicker study needs to be submitted in order to obtain a conditional use permit. Each study will contain the following input:

- Turbine location (latitude and longitude)
- Shadow Flicker receptor (dwelling) locations (latitude and longitude)
- U.S. Geological Survey (USGS) 1:24,000 topographic scale and USGS Digital Elevation Model (DEM) (height contours)
- Turbine rotor diameter
- Turbine hub height
- Wind speed and direction frequency distribution data
- Sunshine hours (long term monthly reference data)
- Identification of the model and turbine size

Output from the model must include the following information:

- Calculated shadow-flicker time at selected receptors
- Tabulated and plotted time of day with shadow flicker at selected receptors
- Map showing turbine locations, selected shadow-flicker receptors and iso-line contours indications projected shadow-flicker time (hours per year).

12. Noise:

No Commercial/Utility WECS shall produce noise levels that exceed 50 dBA, or the ambient sound pressure level plus five (5) dBA, whichever is greater at the nearest structure occupied by humans, applying commonly accepted measurement instruments and standards. Exception: a Commercial/Utility WECS may exceed 50 dBA during periods of severe weather as defined by the US Weather Service.

13. Noise assessment study:

When a wind turbine is proposed within a distance equivalent to three times the blade-tip height from an occupied residence, a 24 hour noise assessment study conducted by a qualified professional shall be required. That noise study then needs to be submitted in order to obtain a conditional use permit. Each study shall contain the following information:

1. An estimation or survey of the existing ambient background noise levels.

2. Prediction (or measurement) of noise levels from the turbine(s) at and near the occupied residence.
3. Identification of the model and turbine size for sound propagation (sound modeling software shall include a propagation model.)
4. Comparing calculated sound pressure levels from the wind turbines with the background sound pressure levels at the locations of concern.

14. Interference:

Any Wind Energy Conversion System or component thereof, shall not interfere with any existing electromagnetic communications, such as radio, telephone, or television signals. The applicant shall notify all communication tower operators within (5) five miles of the proposed WECS location upon application to the county for permits, and shall provide the contact list to the county zoning authority.

15. Roads:

Applicants shall:

- A. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to transportation of materials and equipment.
- B. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
- C. Be responsible for restoring the road(s) and bridges to preconstruction or better conditions.

16. Drainage System:

The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

17. Enforcement:

If a complaint from a resident of a dwelling within or near a WECS project area has been filed with the Zoning Administrator, no enforcement action shall be taken until arbitration has taken place between the complainant and the WECS owner. Such arbitration shall take place within thirty (30) days of the complaint being filed. Once this step has been completed, the following shall apply:

If a commercial/utility wind energy conversion system is proven to be not in compliance with the regulations established in Article 16 of the Custer County Zoning Regulations, the commercial/utility WECS must discontinue operation of the turbine(s) in question. The turbine(s) in question will not be allowed to resume operation until compliance is met. An independent study to review the complaint will be conducted and is to be paid for by the complainant. If non-compliance is proven, Custer County shall reimburse the complainant 50% (not to exceed \$3000.00) of the cost of the study.

**1603.7 Easements**

Easements between a landowner and a WECS developer concerning setbacks, noise and shadow flicker shall be allowed.

**1603.8 Fees**

Permit Fees:

Fees for WECS shall be established by the County Board of Supervisors.