ZONING REGULATIONS

Hitchcock County, Nebraska

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ARTICLE 1 GENERAL PROVISIONS

SECTION 101 **TITLE:** These regulations shall be known, referred to, and cited as the Zoning Resolution of Hitchcock County, Nebraska.

SECTION 102 **JURISDICTION:** The provisions of this Resolution shall apply to a land within the boundaries of Hitchcock County, Nebraska, excluding the land included, now or in the future, in the corporate limits of any incorporated municipality within or adjoining the County and excluding any legally established planning and zoning jurisdictional areas of any incorporated municipality within or adjoining the County, as defined on the Official Zoning Map of any such municipality.

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 Hitchcock County, Nebraska and for the purpose of assisting in the implementation of the duly adopted Hitchcock County, Nebraska Comprehensive Plan. This Resolution is also enacted to preserve and protect the customs and culture of the people of Hitchcock County and the following specific purposes:

1. Developing both urban and non-urban areas and lessening congestion in the streets and roads and reducing the waste of excessive amounts of streets and 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 of runoff or storm or flood waters;
3. Providing adequate light and air and preventing excessive concentration of population and excessive and wasteful 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 the economy in governmental expenditures;
7. Fostering the State's agriculture, recreation and other industries;
8. Encouraging the most appropriate use of land within Hitchcock County, Nebraska, and;
9. Preserving, protecting and enhancing historic buildings, places and districts.

ARTICLE 2 APPLICATION OF REGULATIONS

SECTION 201 **GENERAL APPLICATION:** The regulations set forth in this Resolution shall be minimum requirements and, within each zoning district, shall be uniformly applied to each class or kind of structure, building or use, except as hereinafter provided.

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 by 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 specified in this Resolution. Further, no building or structure shall hereafter be erected, constructed, reconstructed, enlarged, moved or altered to exceed the height or bulk, to occupy a greater percentage of land area, to have a narrower or smaller front, side or rear setback than is herein required, or be in any manner contrary to the requirements of this Resolution, provided that:

1. Non-residential farm buildings, as defined in Section 303.34 of this Resolution, shall be subject to the requirements of this Resolution, but shall be exempt from the zoning permit requirements of this Resolution, but shall require a certificate of zoning compliance;

2. Any farm building containing a use other than an agricultural use, as defined in Section 303.04 of this Resolution, shall be considered a non-farm building and shall be subject to the zoning permit requirements of this Resolution;

3. Any farm building located on a lot, tract or parcel of land, which does not qualify as a farm, as defined in Section 303.33 of this Resolution, shall be considered a non-farm building and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements, and;

4. Any waste handling facility, as defined in Section 303.95 of this Resolution, which may be associated with a farm building shall be considered a non-farm structure and/or use and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements.

SECTION 203 **SETBACK AND LOT, TRACT, PARCEL SIZE REDUCTION PROHIBITED:** No setback, lot, tract or parcel, existing as of the effective date of this Resolution, shall be reduced in dimension or area below the minimum requirements set forth in this Resolution. Setbacks, lots, tracts or parcels created after the effective date of this Resolution shall meet or exceed the minimum requirements set forth in 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 and/or general welfare.

SECTION 205 **DISCLAIMER OF BUILDING AND OTHER CODES AND COUNTY LIABILITY:** This Resolution is a zoning regulation only and regulates only the use of land. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical, structural or other code or regulation 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 set forth in this Resolution are solely for the purpose of assuring compliance with the land usage limitations and requirements set forth in this Resolution and for the purposes described in Section 103 of this Resolution. Hitchcock County, Nebraska 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 or certificate of zoning compliance or other form of land usage approval may have been issued nor shall Hitchcock County, Nebraska assume any liability whatsoever for non-compliance with any federal, state or other code, regulation or requirement.

ARTICLE 3 CONSTRUCTION AND DEFINITIONS

SECTION 301 **CONSTRUCTION:** The following rules of construction shall apply unless inconsistent with the plain meaning of the text of this Resolution:

1. TENSE: Words used in the present tense include the future tense.

2. NUMBER: Words used in the singular include the plural and words used in the plural include the singular.

3. SHALL AND MAY: The word "shall" is mandatory and the word "may" is permissive.

4. GENDER: The masculine shall include the feminine.

5. HEADINGS: In the event that there is any conflict or inconsistency between the heading of an Article, Section, Subsection or paragraph of this Resolution and the text thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such text.

SECTION 302 **GENERAL TERMINOLOGY:** The word "County" shall mean Hitchcock County, Nebraska. The words "County Board" shall mean the Hitchcock County Board of Commissioners. The words "Planning Commission" shall mean the Hitchcock County Planning Commission duly appointed by the Board of Commissioners. The words "Board of Adjustment" and "Board" shall mean the Hitchcock County Board of Adjustment duly appointed by the Board of Commissioners. The words "Zoning Administrator" shall mean that person duly appointed by the Board of Commissioners to administer and enforce the requirements of this Resolution.

SECTION 303 **DEFINITIONS:** Words or terms not herein defined shall have their ordinary meaning in relation to the context. For purposes of this Resolution, certain words and terms used in this Resolution are defined as follows:

303.01 **ABUT:** Any situation where a lot, tract or parcel borders directly on another lot, tract or parcel or is separated from an adjoining lot, tract or parcel by a public road right-of-way, which is sixty six (66) feet or less in width.

303.02 **ACCESSORY USE OR BUILDING:** A building or use, which is subordinate and incidental to that of the main or principal building or use on the same lot, tract or parcel.

303.03 **AEROBIC DIGESTION PROCESS:** Any process for digestion of waste in which the waste is digested using free oxygen, wherein sufficient oxygen is available to satisfy at least fifty percent (50%) of the daily chemical/ biological oxygen demand inflow.

303.04 **AGRICULTURAL BUFFER:** An open space, located in a front, side or rear yard of a lot utilized for residential, commercial, industrial or other non-agricultural use, unoccupied by trees or shrubs, the purpose of which is to provide a buffer between such non-agricultural use(s) and adjoining land used for crop production or other agricultural use and avoid the overhanging of trees or shrubs onto adjoining lands used for agricultural production, thereby minimizing potential conflicts between such non-agricultural uses and agricultural production activities including, but not limited to cultivation of the land, pesticide and herbicide applications, crop irrigating and crop harvesting.

303.04 **AGRICULTURAL USE:** The business and science of cultivating the soil, producing crops and or breeding, feeding, pasturing of livestock, raising and management of poultry, fish, bees and other animals, including confined and intensive animal feeding use and associated waste handling facility, as defined in Sections 303.24, 303.44 and 303.95 of this Resolution, truck farming, forestry or orchards, the non-commercial storage and processing of agricultural products produced on the premises, and confinement of an unrestricted number of ruminant animals for birthing, weaning or back-grounding purposes for less than two hundred ten (210) days in any calendar year in lots or pens normally used for crop production or vegetation.

303.05 **ANAEROBIC DIGESTION:** Any process for digestion of waste in which the waste is digested where free oxygen is not available in sufficient quantities to maintain aerobic digestion.

303.06 ANIMAL UNIT: The relationship of various animals with regard to weight and 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 and equivalent numbers of animals shall be as follows:

Type of Animal	Animal Unit(s)	Equivalent Number of Animals
Beef Animal (500 - 1,200 pounds)	1.00	1
Beef or Dairy Calf (150 - 500 pounds)	0.50	2
Young Dairy Stock (500 - 1,000 pounds)	0.75	1.25
Dairy Cow	1.40	0.7

Type of Animal	Animal Unit(s)	Equivalent Number of Animals
Horse	1.00	1
Swine (55 pounds or heavier)	0.40	2.5
Swine (less than 55 pounds)	0.10	10
Swine (sow and litter)	0.50	2
Sheep / Goat	0.10	10
Chicken/Game Birds (except turkey)	0.01	100
Turkey	0.02	50
Ostrich	0.40	2.5

Examples:				
	2,500	Beef Animals (500 - 1,200 pounds)	= 2,500	Animal Units
	5,000	Beef or Dairy Calf (150 - 500 pounds)	= 2,500	" "
	3,125	Young Dairy Stock (500 - 1,000 pounds)	= 2,500	" "
	1,750	Dairy Cows	= 2,500	" "
	2,500	Horses	= 2,500	" "
	6,250	Swine (55 pounds or heavier)	= 2,500	" "
	25,000	Swine (less than 55 pounds)	= 2,500	" "
	5,000	Swine (Sows with litters)	= 2,500	" "
	25,000	Sheep/Goats	= 2,500	" "
	250,000	Chickens/ Game Birds (except turkeys)	= 2,500	" "
	125,000	Turkeys	= 2,500	" "
	6,250	Ostriches	= 2,500	" "

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

303.08 ANIMAL WASTEWATER: Any liquid, including rainfall, which comes into contact with any animal excrement, manure, litter, bedding, or other raw material or intermediate or final matter or product used in or resulting from the production of animals or from products directly or indirectly used in any Waste Handling Facility Use, as defined in Section 303.95 of this Resolution, or any spillage or overflow from animal watering systems, when allowed to mix with animal manure, or any liquid used in washing, cleaning, or flushing pens, barns, or manure pits, or any liquid used in washing or spraying to clean animals, or any liquid used for dust control in a confined or intensive animal feeding use.

303.09 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.

303.10 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.

303.11 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.

303.12 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 303.34, Farm Building and Section 303.63, Non-Farm Building.)*

303.13 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 the highest point of a structure.

303.14 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.

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

303.16 CERTIFICATE OF ZONING COMPLIANCE / CERTIFICATE OF OCCUPANCY: A 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.

303.17 COMMERCIAL USE: A use, other than an agricultural use, where products are grown or purchased for sale or resale for profit or where services are sold or provided for profit.

303.18 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.

303.19 COMPOSTING (AEROBIC): The natural process of decomposing vegetative refuse, manure and other naturally degradable materials using free oxygen which is sufficient in quantity to maintain aerobic digestion.

303.20 COMPOSTING (ANAEROBIC): The natural process of decomposing vegetative refuse, manure and other naturally degradable materials in large piles where free oxygen is not available in sufficient quantities to maintain aerobic digestion.

303.21 COMPREHENSIVE PLAN: The plan or series of plans for the future development of the County, recommended by the Planning Commission and adopted by the County Board of Commissioners.

303.22 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 compatible with such permitted land uses and would promote the public health, safety, convenience and general welfare.

303.23 CONDITIONAL USE PERMIT: A written zoning permit issued by the Zoning Administrator upon authorization of a conditional use under the terms of this Resolution by the County Board of Commissioners. 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 Commissioners.

303.24 CONFINED ANIMAL FEEDING USE: The raising, feeding or management of more than three hundred (300) animal units at any one time 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. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor or, in the event such a permit is not required, such determination shall be by written declaration of the owner of such use of the one-time capacity of such use to the County. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the animal unit capacity by the Zoning Administrator or other duly appointed official. Any waste handling facilities, as defined in Section 303.95 of this Resolution, associated with such confined animal feeding use shall be considered a separate waste handling facility use. For purposes of this Resolution, waste handling facilities associated with any confined animal feeding uses shall be classified and regulated with regard the number of animals served by such waste handling facility in accordance with the following classes of size, as well as the category of waste handling facility utilized, as defined in Section 303.95 of this Resolution:

Class I - A confined animal feeding use with a design capacity of more than three hundred (300) to one thousand (1,000) animal units,

Class II - A confined animal feeding use with a design capacity of one thousand one (1,001) to two thousand five hundred (2,500) animal units.

Class III - A confined animal feeding use with a design capacity of two thousand five hundred one (2,501) to five thousand (5,000) animal units.

Class IV - A confined animal feeding use with a design capacity of five thousand one (5,001) to ten thousand (10,000) animal units.

Class V - A confined animal feeding use with a design capacity of ten thousand one (10,001) or more animal units.

303.25 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.

303.26 DWELLING, MULTI-FAMILY: A dwelling unit having independent living accommodations for three (3) or more families.

303.27 DWELLING, SINGLE-FAMILY: A dwelling unit having independent living accommodations for, and occupied by, one (1) family.

303.28 DWELLING, TWO-FAMILY (DUPLEX): A dwelling unit having independent living accommodations for and occupied by two (2) families.

303.29 DWELLING UNIT: One room or combination of rooms which constitute a separate and independent housekeeping establishment containing independent cooking, sleeping and restroom facilities.

303.30 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, corporation or other legal entity.

303.31 FACULTATIVE DIGESTION (LAGOON): Any process for digestion of waste in which the waste is digested using anaerobic digestion at lower elevations in a lagoon and aerobic digestion at the upper levels and surface of the lagoon which is accomplished through limiting the amount of volatile solids to not more than four (4) pounds per day per one thousand (1,000) cubic feet of water in said lagoon and said lagoon is operated to maintain this volatile solids limitation.

303.32 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.

303.33 FARM: A crop production, livestock production or other similar enterprise containing twenty (20) acres or more of land and/or from which one thousand dollars ($1,000) or more of agricultural products are produced each year.

303.34 FARM BUILDING: Any non-residential building located on a farm, as defined in Section 303.33 of this Resolution, which is utilized for agricultural purposes.

303.35 FLOOD HAZARD AREA: Those lands within the zoning jurisdiction of Hitchcock 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.

303.36 FLOOR: A level or story in a building.

303.37 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.

303.38 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.

303.39 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.

303.40 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 probation programs.

303.41 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.

303.42 IMPACT EASEMENT (DEED RESTRICTION): An easement or deed restriction, recorded in the office of the Hitchcock County Registrar of Deeds, which runs with the land, which is granted to the owner of an industrial use, a confined or intensive animal feeding use, a waste handling facility use or other use for the period of time that such use shall exist, by the owners of adjoining or neighboring real property in which it is mutually agreed between the grantor and grantee 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.

303.43 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.

303.44 INTENSIVE ANIMAL FEEDING USE: The feeding 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. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor 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. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the animal unit capacity by the Zoning Administrator or other duly appointed official at the time of such dispute. Any waste handling facilities, as defined in Section 303.95 of this Resolution, shall be considered a separate waste handling facility use. For purposes of this Resolution, waste handling facility uses associated with any intensive animal feeding uses shall be categorized as an AN (anaerobic) facility, as defined in Section 303.95 of this Resolution, and classified with regard to the number of animal units served in accordance with the following classes of size:

Class I - An intensive animal feeding use with a design capacity of more than three hundred (300) to one thousand (1,000) animal units,

Class II - An intensive animal feeding use with a design capacity of one thousand and one (1,001) to two thousand five hundred (2,500) animal units.

Class III - An intensive animal feeding use with a design capacity of two thousand five hundred and one (2,501) to five thousand (5,000) animal units.

Class IV - An intensive animal feeding use with a design capacity of five thousand and one (5,001) to ten thousand (10,000) animal units.

Class V - An intensive animal feeding use with a design capacity of ten thousand and one (10,001) or more animal units.

303.45 JUNK YARD: See Salvage Yard (Section 303.82).

303.46 KENNEL: A facility where six (6) or more dogs more than six (6) months of age are boarded, bred, sheltered, cared for or kept on any premises or a building where six (6) or more cats and / or other similar animals more than six (6) months of age are boarded, bred, sheltered, cared for and kept in confinement.

303.47 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.

303.48 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. A lot may consist of a single lot of record, a portion of a lot of record, a combination of complete lots of record, a combination of complete lots of record and portions of lots of record, or portions of lots of record.

303.49 LOT AREA: The total horizontal area of a lot, excluding all street or alley rights-of-way.

303.50 LOT, CORNER: A lot which has frontage on two (2) or more streets or roads at the intersection of said streets or roads.

303.51 LOT DEPTH: The average horizontal distance between the front and rear lot lines of any lot.

303.52 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 Hitchcock County, Nebraska prior to the effective date of this Resolution.

303.53 LOT WIDTH: The horizontal distance between the side lot lines, measured at a right angle from one side lot line at the minimum front setback distance set forth in the various zoning districts specified in this Resolution.

303.54 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.

303.55 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.

303.56 MOBILE HOME LOT: A lot or parcel of land for the placement of one (1) mobile home.

303.57 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.

303.58 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.

303.59 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.

303.60 NON-CONFORMING 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 Hitchcock County, Nebraska 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.

303.61 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.

303.62 NON-CONFORMING USE: A lawfully established use of land in existence at the date of adoption of this Resolution, which does not comply with the regulations of this Resolution.

303.63 NON-FARM BUILDING: Any building used for residential purposes, any building containing a use which is not an agricultural use, as defined in Section 303.04 of this Resolution, any building located on a farm, as defined in Section 303.33 of this Resolution, which contains a use other than an agricultural use, as defined in Section 303.04 of this Resolution, any building located on a parcel of land which does not qualify as a farm, as defined in Section 303.33 of this Resolution.

303.64 ODOR: That characteristic of a substance which makes it offensive to the human sense of smell such that it unreasonably interferes with the use, value or enjoyment of neighboring properties if not controlled.

303.65 ODOR FOOTPRINT TOOL: A scientific and statistical analysis tool developed by the Biological Systems Engineering Department of the University of Nebraska that is used to estimate the frequency of odor annoying events around an existing or proposed livestock production facility and uses this information to determine minimum separation distances that should be maintained around such facilities and to help in siting decisions for new facilities so that odor impact conflicts can be minimized.

303.66 PARCEL: A piece of land, one section or less in area, the boundaries of which are properly described in a deed or conveyance.

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 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.

303.69 PREMISES: The land area containing a land use which is contiguous with and under the same ownership as the land use.

303.70 PREVAILING WINDS: Prevailing winds in Hitchcock 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

303.71 PRINCIPAL BUILDING: A building in which the principal use on the lot is situated.

303.72 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.

303.73 PRIVATE ROADWAY: A privately owned, open, unoccupied space other than a public road, reserved as the principal means of access to abutting property.

303.74 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 or roadways, hiking, biking or other trails, or privately owned land used for hunting and/or fishing.

303.75 PUBLIC WATER SUPPLY SYSTEM: A publicly owned water supply system regularly serving twenty five (25) or more persons or has fifteen (15) or more service connections.

303.76 QUARTER SECTION: That portion of a square section of land, as defined by the definitions and requirements of the Survey of Public Lands of the United States, which has approximately equal dimensions on all four (4) sides, has two (2) intersecting sides which coincide with two (2) intersecting section lines and contains approximately one-fourth (1/4) of the land area contained within a square section of land.

303.77 RECREATIONAL VEHICLE: A temporary dwelling for travel, recreation and vacation use including travel trailers, camping trailers, pickup campers, motor coaches, camp cars, tent trailers, boats or any other vehicular portable structure.

303.78 RESIDENTIAL USE: A dwelling unit located on a lot, parcel or tract of land.

303.79 ROAD / ROADWAY: A public right-of-way set aside for public travel which affords the principal means of access to abutting property.

303.80 ROAD CENTERLINE: A line extending down the center of a road or street right-of-way, as established by official survey.

303.81 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.

303.82 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.

303.83 SECTION OF LAND: A division or parcel of land on the government survey, comprising one (1) square mile of land encompassing six hundred forty (640) acres more or less. Each "township" (six miles square) is divided by straight lines into thirty six (36) sections, and these are again divided into half sections and quarter sections.

303.84 SETBACK (YARD): A horizontal distance, as prescribed in the various zoning districts established in this Resolution, from the centerline of the roadway or the right-of-way line of the 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 any County road or the right-of-way line of any state or federal highway 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.

D. SETBACK, TRANSITIONAL: An open space applicable when a non-residential zoning district abuts or is adjacent across a road from a residentially zoned area.

303.85 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.

303.86 SIGN, ON-PREMISE (BUSINESS): A sign which identifies or directs attention to an object, product, activity, business, person or persons, service or interest which is situated on the same premises as such sign.

303.87 SIGN, OFF-PREMISE ADVERTISING (BILLBOARD): A sign, free-standing or attached to any other structure, which directs attention to an object, product, place, activity, business, person or persons, service or interest not situated on the same premises as such off-premise sign (billboard).

303.88 SIGN, NON-PORTABLE: A sign which is permanently attached to the ground or other structure which is permanently attached to the ground which cannot be moved without complete disassembly of such sign.

303.89 SIGN FACE: The surface of the sign upon, against or through which the message of the sign is exhibited.

303.86 SOLID MANURE: Waste produced by living cattle, dairy cattle, sheep and other ruminants and horses which contains not less than twelve percent (12%) solids by weight, or waste produced by living swine, poultry or other non-ruminant animals which contains not less than twenty five percent (25%) solids by weight.

303.87 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, animal waste water or any waste from a waste handling facility, as defined in Section 303.95 of this Resolution.

303.88 STOCKPILING OF MANURE: The placement of un-composted livestock manure in piles on a parcel of land for later spreading on the land within said parcel or nearby parcels instead of immediately spreading said manure on the land within the parcel

303.89 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.

303.90 STREET: See ROAD

303.91 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.

303.92 STRUCTURAL ALTERATIONS: Any change in the supporting members of a structure, such as bearing walls, partitions, columns, beams or girders.

303.93 USE: The purpose or activity for which land and buildings thereon is designed, arranged, intended, or for which it is occupied or maintained.

303.94 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.

303.95 WASTE HANDLING FACILITY: Any and all land, structures, combination of structures, under-floor pits, holding ponds, debris basins, diversion terraces, liquid manure storage pits, lagoons, above ground pipelines, irrigation devices, ventilation devices or appurtenance thereto, apparatus, equipment, or mechanism, whether on the same or different premises than the industrial, commercial or other type of use, including any confined and intensive animal feeding use, used to hold, store, process, digest, transport, distribute, control or otherwise dispose of waste, manure or dead animals, other than solid waste as defined in Section 303.87 of this Resolution. Waste handling facilities shall be categorized with regard to the types of such facilities and the methods of operation of such facilities as they relate to the potential for odor production, environmental degradation and compatibility with abutting and neighboring land uses as follows:

Category A (aerobic): A waste handling facility use in which:

1. all waste is collected, processed or digested utilizing aerobic digestion facilities and processes, including aerobic lagoons, and/or aerobic composting and in which any effluent discharged or pumped from any lagoon or other treatment facility shall be fully digested or land application of solid manure shall be fully composted, and

2. dust, hazardous gases, odor or other air contaminants emitted from any building or facility are collected and processed through a biofilter or other means to minimize air contamination and eliminate odor, and

3. dust, hazardous gases, odor or other air contaminants emitted from any open-sided buildings or open pens are controlled in a reasonable manner in order to minimize blowing of dust and odor onto abutting and neighboring properties.

Category ANC (covered anaerobic - deep pit): A waste handling facility in which:

1. all waste is collected and digested utilizing anaerobic digestion facilities and processes including anaerobic lagoons and holding basins, pits or above ground tanks, which are covered and the gases and odors generated by the digestion of said waste are collected and treated to avoid explosion, fire hazards and the dispersion of odor, and in which there is surface application of solid manure or injection of liquid (non-solid) manure into the soil on crop or other land, and

2. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are collected and processed through a biofilter or other effective means to minimize air contamination, and

3. dust, hazardous gases, odor or other air contaminants emitted from any open-sided buildings or open pens are controlled in a reasonable manner in order to minimize blowing of dust and odor onto abutting and neighboring properties.

Category FAC (facultative): A waste handling facility in which:

1. all or part of the waste produced is collected and digested utilizing anaerobic digestion lagoon(s) and processes designed to allow an introduction of not more than four (4) pounds of volatile solids per day per one thousand (1,000) cubic feet water in a lagoon and such lagoon(s) shall be operated and maintained to insure such capacity is available at all times and operated to minimize removal of top-water to reduce odor production, and there is surface application of solid manure and /or surface application or injection of liquid manure, liquid waste or waste water onto / into the soil on crop or other land, and

2. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are collected and processed through a biofilter or other effective means to minimize air contamination, and

3. dust, hazardous gases, odor or other air contaminants emitted from any open-sided buildings or open pens are controlled in a reasonable manner and minimize blowing of dust and odor onto abutting and neighboring properties.

Category AN (anaerobic): A waste handling facility in which:

1. all or part of the waste produced is collected and digested utilizing anaerobic digestion facilities and processes, including uncovered anaerobic holding ponds or pits, anaerobic lagoons, sludge or settling basins, anaerobic stockpiling of waste as a solid and there is application of liquid (non-solid) manure waste on the surface of crop or other land, and

2. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are not collected and processed to minimize air contamination, but simply exhausted into the air, and

3. dust, hazardous gases, odor or other air contaminants emitted from any open-sided buildings or open pens are not controlled in a reasonable manner and do not minimize blowing of dust and odor onto abutting and neighboring properties.

303.96 ZONING ADMINISTRATOR: The person duly designated by the Hitchcock County Board of Commissioners to administer and enforce the regulations established under this Resolution.

303.97 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.

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 zoning districts and appropriate regulations to be enforced therein which are consistent with the Comprehensive Plan for Hitchcock County, Nebraska. The Planning Commission shall make a preliminary report and hold one or more public hearing(s) thereon before submitting its final report and recommendation to the County Board of Commissioners. The Board of County Commissioners shall not hold its public hearing or take final action on any zoning regulations until it has received the final report and recommendation of the Planning Commission.

SECTION 402 **DISTRICT CREATED:** For purposes of this Resolution and to assist in the implementation of the Hitchcock County Comprehensive Plan, the following zoning districts are created, herein named and described in Article 5 of this Resolution:

AG - G..... General Agricultural District
RCI .....Rural Commercial / Industrial District
WPO ..... Wellhead Protection Overlay District
AHO.....Airport Hazard 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 Commissioners and attested by the County Clerk under the following words: *"This is to certify that this is the Official Zoning Map of Hitchcock County, Nebraska referred to in Section 403 of Resolution No.____ of the Hitchcock County, 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 Zoning Administrator and/or County Clerk for the use and benefit of the public.

SECTION 404 **OFFICIAL ZONING MAP AMENDMENT:**

1. **CHANGES ON THE 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 Commissioners, 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 Commissioners 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 entries on such Official Zoning Map have been made.

2. **CHANGES SHALL BE IN ACCORDANCE WITH REQUIRED 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 Article 11 of this Resolution.

3. **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.

4. **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, which shall be located in the office of the Zoning Administrator and/or County Clerk, shall be the final authority as to the current zoning status of zoning of land within Hitchcock County, Nebraska.

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 Commissioners 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 Commissioners and attested by the County Clerk under the following words: *This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted on (date of adoption of original map) as part of Resolution No. (number of original adoption resolution) of the Hitchcock County, Nebraska Board of County Commissioners."* 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 OF ZONING DISTRICT BOUNDARIES:** Where uncertainty exists as to the boundaries of zoning districts indicated on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of roads, streets, or highways shall be construed to follow such centerlines.

2. Boundaries indicated as approximately following platted lot, tract or parcel lines shall be construed as following such lines and boundaries indicated as approximately following the corporate limit boundaries of any municipality shall be construed to follow such corporate limit boundaries.

3. Boundaries indicated as approximately following the boundaries of an extra-territorial zoning jurisdiction area adopted by and depicted on the official zoning map of an incorporated municipality shall be construed to follow such extra-territorial jurisdictional area boundaries.

4. Boundaries indicated as following railroad lines shall be construed to follow a line midway between the tracks of the main railroad track.

5. Boundaries indicated as following shore lines 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.

6. Boundaries indicated as parallel to or extensions of features indicated in Paragraphs 1, 2 and 4 immediately above shall be so construed.

7. Distances of boundaries not specified on the Official Zoning Map shall be determined by measurement according the scale of the Official Zoning Map.

8. Where a district boundary line divides a lot, tract or parcel, which was under single ownership and control as of the effective date 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.

9. In circumstances not covered by Paragraphs 1 through 8 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 within Hitchcock County, Nebraska 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 extra-territorial zoning jurisdictional area, resulting from such annexation, by any such incorporated municipality shall, upon amendment of and depiction of the revised extra-territorial jurisdictional area on the official zoning map of such incorporated municipality, remove such land from the jurisdiction of this Resolution.

ARTICLE 5 ZONING DISTRICTS

SECTION 501 AG - G GENERAL AGRICULTURAL DISTRICT

501.01 INTENT:

The intent of this district is to, protect, promote and facilitate agricultural crop production and livestock production as part of an on-going County economic development effort and to foster additional and new forms of agricultural production and livestock production, which are compatible with existing agricultural uses.

Further, the intent of this district is also to formulate and establish county standards for siting agricultural production operations, including confined and intensive livestock production uses, which recognize that agricultural crop and livestock production is a major and critical component of the County economy and which recognize that agricultural operations occasionally produce dust, noise, odor and other impacts on neighboring properties, but which also recognize that such impacts must be reasonable in terms of intensity and duration in order that the use, value and ability to enjoy property within this district is not unreasonably affected.

501.02 COUNTY AGRICULTURAL USE IMPACT STANDARDS

It is recognized in this Resolution that, although agricultural crop and livestock production is critical to the economy of Hitchcock County and the State of Nebraska and should be fostered by the County and the State and that although protection of such production is in the public interest and for the public benefit, agricultural crop and production uses should not be maintained or operated in a manner which results in unreasonable negative impacts on the use and enjoyment of neighboring properties or adversely affects the market value of such properties.

It is also recognized in this Resolution that agricultural crop and livestock production activities do, on occasion, result in negative impacts on neighboring properties, that some such impacts are unavoidable and that it is not possible to eliminate all such impacts. However, one intent of this General Agricultural zoning district is to establish agricultural use standards in Hitchcock County, Nebraska for uses established after the effective date of this Resolution, which will result in limiting negative impacts to insure that such impacts do not adversely affect the market value of neighboring properties and do not unreasonably impact the ability of the owners of neighboring properties to use and enjoy their property.

The determination of what constitutes unreasonable versus reasonable impacts and the Hitchcock County, Nebraska agricultural impact standards needed to insure that agricultural use impacts on neighboring properties are reasonable has been accomplished through a series of public meetings and public hearings conducted by the Hitchcock County Planning Commission and the Hitchcock County Board of Commissioners where impact issues were identified, where the latest available data, research and technologies regarding methods of minimizing such impact issues were evaluated and discussed and where standards for limiting such impacts, including the use of the Odor Footprint Tool being developed by the Biological Systems Engineering Department of the University of Nebraska where formulated, reviewed and modified so that all public points of view would be reflected in such standards.

The Hitchcock County, Nebraska agricultural use standards set forth in this Resolution are standards that the majority of citizens participating in the standards formulation process agree will, in all probability, result in impacts on neighboring properties less than six percent (6%) of the time and that, although a nuisance at the time of occurrence, would be reasonable in terms of intensity and duration with regard to the use and enjoyment of neighboring properties, would not reduce the market value of neighboring properties and should be acceptable to persons residing in and owning property in this General Agricultural zoning district now and in the future. The six

percent (6%) impact standard shall not apply to confined or intensive livestock feeding uses existing as of the effective date of this Section.

The agricultural impact standards for limiting agricultural use impacts on neighboring properties so formulated and agreed upon have been integrated in the regulations and requirements of this zoning district.

501.03 OUTRIGHT ALLOWABLE PRINCIPAL USES AND STRUCTURES

The following uses and structures shall be allowable uses outright without requiring a zoning permit or certificate of zoning compliance provided such uses and structures shall comply with the minimum lot area, setback, separation distance and other applicable requirements of this Resolution: *(Refer to Section 202 of this Resolution)*

1. Agricultural uses, as defined in Section 303.04 of this Resolution, including any farm buildings, as defined in Section 303.34 of this Resolution, but excluding any residential dwelling unit(s), whether or not associated with an agricultural use, excluding confined and intensive animal feeding uses, as defined in Sections 303.24 and 303.44 of this Resolution and excluding any associated waste handling facilities.

2. Non-commercial grain, hay and produce storage facilities including non-commercial storage warehouses and plant seed sales and storage facilities.

3. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures and flood and erosion control structures, subject to the limitations and requirements of Section 611 of this Resolution. (Sites where there is surface application of liquid animal waste shall comply with the limitations set forth in Subsection 10, Paragraph D immediately below)

4. Forestry, tree farming and plant nurseries, and vineyards with or without facilities for wine making or tasting.

5. Signs, including permanent on-site business signs and outdoor advertising signs (billboards) not oriented to any State or Federal highway.

6. Day care and child care uses.

7. Road maintenance equipment storage sheds, fire stations, public utility substations and utility distribution systems and similar structures and uses.

8. Churches, synagogues and other houses of worship.

9. Cemeteries.

10. Land application of:

    A. fully composted animal waste, as defined in Section 303.07 of this Resolution, to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

    B. solid manure, as defined in Section 303.86 of this Resolution, to the surface of the land at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,

C. liquid or slurry animal waste injected into the soil at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.

D. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or south or one-eighth (1/8) mile to the east or west, as defined in the definition of "Prevailing Winds" in Section 303.70 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

12. Stockpiling of animal waste or manure or municipal sewage or other sludge on any parcel of land where such waste is to be applied to the land contained within such parcel, provided such stockpiling shall meet all of the following conditions:

A. The amount of solid manure stockpiled on any parcel shall not exceed the amount of waste which can be applied on such parcel at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality for a calendar year.

B. Any manure or sludge stockpile shall be located at least one-fourth (1/4) mile from the nearest wall of any church, school or residential dwelling unit not of the same ownership as the parcel on which the stockpile is to be placed or to the nearest boundary of any public use area unless the owner of such church, school or residential dwelling shall grant permission in writing for a stockpile to be located at a closer distance.

501.04 PERMITTED PRINCIPAL USES AND STRUCTURES

The following uses and structures shall be permitted uses and structures, but shall require the issuance of a zoning permit and/or certificate of zoning compliance:

1. Public schools, private schools and schools affiliated with a church or religion.

2. Game farms and commercial hunting and fishing where such hunting and fishing does not involve the 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 303.74 of this Resolution, such uses shall comply with the minimum separation distances from any existing confined or intensive animal feeding use as set forth in Subsection 8, Paragraph A immediately below.

3. Fish hatcheries, wild life management areas, wildlife conservation areas, and other semi-public or public use areas, provided that if such uses qualify as a Public Use Area, as defined in Section 303.74 of this Resolution, such uses shall comply with the minimum separation distances from any existing confined or intensive animal feeding use as set forth in Section 501.06, Subsection 1, Paragraph A of this Resolution.

4. Radio, television, microwave and other types of erected towers, including wind energy towers, which are one hundred fifty (150) feet or less in height, provided such towers shall comply with any applicable requirement of airport hazard limitations, provided that such towers comply with the requirements for small wind energy systems, as defined and set forth in Sections 613.02 and 613.03 of this Resolution, and further provided any such tower is setback from the right-of-way line of any public roadway, from the nearest property line of any undeveloped lot of record less than twenty (20) acres in area or any public use area and from the nearest wall of any neighboring church, school or residential dwelling by a distance equal to or exceeding the total system height, as defined in Section 613.05 of this Resolution.

5. Single-family dwellings, including manufactured housing and mobile homes, provided such dwellings comply with all of the following conditions:

   A. Such dwellings, if not on the same premises with and of the same ownership as any kennel, as defined in Section 303.46 of this Resolution, or confined or intensive animal feeding use, as defined in Sections 303.24 and 303.44 of this Resolution or any associated waste handling facility, as defined in Section 303.95 of this Resolution, shall be separated from any kennel by a minimum distance of one-half (1/2) mile, from any existing confined or intensive animal feeding use and associated waste handling facility by the minimum distance set forth in Table 501.04 of this Resolution for the class of confined or intensive animal feeding use and type of associated waste handling facility which such existing confined or intensive feeding use qualifies, from any site where liquid animal waste is applied to the surface of the land more than three hundred sixty (360) hours in a calendar year, and from any erected tower with a height of more than forty (40) feet by a distance equal to the height of such tower unless the developer of such dwelling shall grant an impact easement, as defined in Section 303.42 of this Resolution, to the owner of the existing kennel, confined or intensive animal feeding use or tower, in which case such dwelling may be located closer than the minimum distances herein set forth. *(See exceptions to the minimum separation requirement as set forth in Section 705, Paragraphs 3 and 4 of this Resolution.)*

   B. Such minimum separation distance shall be measured from the nearest point of any land actively used or approved under this Resolution as a confined or intensive animal feeding use or associated waste handling facility, from the nearest point of any land actively used for kennels or runs or the base of any tower to the nearest wall of such dwelling unit. Minimum separation distances shall not apply to any site where:

      1) fully composted animal waste, as defined in Section 303.07 of this Resolution, is applied to the surface of the land ,

      2) solid manure, as defined in Section 303.86 of this Resolution, is applied to the surface of the land, or

      3) liquid or slurry animal waste is injected into the soil.

   C. Such dwelling shall be located on a parcel of land with an area not less than that specified in Section 501.08 of this Resolution and such parcel shall have a lot (parcel) width and frontage not less than that specified in Section 501.09 of this Resolution, provided that a larger area may be required if the regulations and standards of Title 124 of the Nebraska Department of Environmental Quality, with regard to soil percolation, slope, depth to groundwater or other requirement of said Title 124 shall require a larger parcel, the requirements of said Title 124 shall govern and further provided that the total number of residential dwellings per quarter section of land shall not exceed four (4) unless a conditional use for a residential subdivision is authorized by the County Board

of Commissioners in accordance with requirements of Section 501.06, Subsection 9 of this Resolution.

D. The parcel on which such dwelling is located shall front on and have vehicular access to an existing public roadway other than a roadway designated by the Hitchcock County Board of Commissioners as a minimum maintenance road or other unimproved roadway, provided that if such dwelling is located on a minimum maintenance roadway, the owner of such parcel shall be responsible for the cost of improving such roadway to County standards before the County shall agree to accept maintenance by the County of such roadway and further provided that if such parcel is located on any other unimproved roadway, the owner of such parcel shall be responsible for the costs of improving such roadway to County standards and shall be responsible for the maintenance of such roadway unless the Hitchcock County Board of Commissioners shall agree to accept such roadway for County maintenance. Hitchcock County shall not, however, be committed to accepting such roadway even if such roadway is improved to County road standards by the owner(s) of such roadway.

E. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use or associated waste handling facility, as defined in Sections 303.24, 303.44 and 303.95 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership with such confined or intensive animal feeding use or associated waste handling facility and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use and associated waste handling facility has been discontinued or an impact easement, as defined in Section 303.42 of this Resolution is executed, in which case such dwelling shall not be included in the minimum distance measurement. Nothing in this subsection shall prohibit the relocation of any such dwelling unit to a location beyond the minimum spacing distance requirements from such confined or intensive animal feeding use or associated waste handling facility as set forth in Paragraph A immediately above and the subsequent sale thereof.

5. Airports, aircraft landing strips and heliports,

6. Grain elevators, commercial grain storage or processing facilities, bulk fertilizer and fuel plants, livestock auction barns and buying stations, veterinary clinics, agricultural equipment repair shops, aerial crop dusting uses, and other agricultural service establishments engaged in providing horticultural, husbandry products or services to area agricultural product producers, provided that uses such as bulk fuel and fertilizer plants, grain distilling facilities and other similar uses which produce noticeable odors and / or have explosion or release of hazardous chemical potential shall not be located closer than one-half (1/2) mile to any residential dwelling or one (1) mile to any church or school.

7. Golf courses, driving ranges, water parks, shooting ranges and similar recreation uses,

8. Kennels, as defined in Section 303.46 of this Resolution, subject to the following limitations and requirements:

A. Any kennel shall be located at least one-half (1/2) mile from any undeveloped lot of record less than twenty (20) acres in area, school, church, public use area or dwelling unit not of the same ownership and on the same premises as the kennel unless an impact easement, as defined in Section 303.42 is negotiated with the owner(s) of any such lot of record, school, church, dwelling unit or public use area, , in which case such kennel may be located closer than one-half (1/2) mile to any such lot of record, school, church, public use area or dwelling unit from which the impact easement is granted. Measurement of

this distance shall be from the point of the kennel or kennel runs nearest such school, church, public use area or dwelling unit to the nearest wall of a school, church, or dwelling unit or the nearest boundary of a lot or record less than twenty (20) acres in area or public use area. Exceptions to the minimum separation distance may be authorized by conditional use where the type of animals kenneled will present no or very limited noise or other impacts on adjoining properties.

B. Disposal of dead animals, animal waste, bedding and other kennel waste material shall be in accordance with the requirements of the Nebraska Department of Agriculture and applicable requirements of Title 124 of the Nebraska Department of Environmental Quality.

C. The owner of any kennel shall have a license / permit for a kennel as required by the Nebraska Department of Agriculture.

D. Any signage identifying a kennel shall be set back from the right-of-way line of any roadway be a distance not less than ten (10) feet and surface area of such sign shall not exceed forty (40) square feet per side.

9. Temporary placement of one (1) mobile home on the same lot with an existing dwelling unit for the purpose providing care for a member or members of the father, mother, or immediate family member of the owner-occupant of the existing dwelling unit when such family members are disabled, elderly and in need of care or otherwise in demonstrable need of care by said owner-occupant, subject to the following conditions and restrictions:

A. Placement of the mobile home shall be temporary and shall be limited to the time that the mobile home is needed to provide such care for the family member or members. When such care is no longer needed or said mobile home is no longer occupied by such family member or members, said mobile home shall be removed from the premises within ninety (90) days of the date of non-occupancy unless said mobile home shall have been so located on the property that subdivision of the property to create a separate lot for said mobile home will result in said lot complying in all respects with the minimum lot area, lot width and lot frontage, and yard requirements of this district and such subdivision will not result in more than four residential dwellings per quarter section of land.

B. Such mobile home shall be separated from the existing dwelling unit or any existing building on the premises by a distance of not less than twenty (20) feet.

C. Such mobile home shall be provided with adequate water supply and sewage disposal systems.

Such mobile home shall not be leased or otherwise rented or occupied by any person or persons who is/are not the father, mother or member of the immediate family of the owner-occupant of the existing dwelling unit unless the premises on which the mobile home is located shall be been properly subdivided into a separate lot in accordance with the requirements of Paragraph A immediately above.

10. Any confined or intensive animal feeding use and any waste handling facility associated with any confined or intensive animal feeding use in existence as of the effective date of this Resolution, may be expanded in the number of animal units served and / or land area occupied by such use, provided that such expansion shall comply with all of the following limitations:

A. Regardless of the requirements of Paragraphs C and D immediately below, any expansion of waste handling facilities associated with confined or intensive animal feeding uses

existing as of the effective date of this Resolution or amendment thereto which is mandated and required by the Nebraska Department of Environmental Quality or other State or Federal agency where there is not an increase in the animal unit capacity of the confined or intensive animal feeding use shall not be considered an expansion of said use and any such expansion shall be permitted, provided any such waste handling facilities shall comply with the minimum separation distances from neighboring uses as set forth in Table 501.04 of this Resolution. In the event any such mandated expansion would result in separation distances from neighboring uses which are less than set forth in said Table 501.04 and flood hazard areas, topography or property lines do not allow such waste handling facility to be located in an area which would comply with the separation distances set forth in said Table 501.04 such use shall be considered a conditional use, which upon a finding by the County Board of Commissioners that there is no alternative location for such waste handling facility, shall be approved by the County Board of Commissioners in accordance with the requirements of Section 17 of Legislative Bill 975 of the 99th Legislature, 2nd Session, 2006, known as the Livestock Waste Management Act.

B. Regardless of the requirements of Paragraphs C and D immediately below, any expansion of waste handling facilities associated with confined or intensive animal feeding uses existing as of the effective date of this Resolution or amendment thereto which is mandated and required by the Nebraska Department of Environmental Quality or other State or Federal agency where the existing animal unit capacity is five thousand (5,000) or fewer beef cattle, three thousand (3,000) or fewer dairy cattle shall not be considered an expansion of said use and any such expansion shall be permitted, provided any such waste handling facilities shall comply with the minimum separation distances from neighboring uses as set forth in Table 501.04 of this Resolution. In the event any such mandated expansion would result in separation distances from neighboring uses which are less than set forth in said Table 501.04 and flood hazard areas, topography or property lines do not allow such waste handling facility to be located in an area which would comply with the separation distances set forth in said Table 501.04 such use shall be considered a conditional use, which upon a finding by the County Board of Commissioners that there is no alternative location for such waste handling facility, shall be approved by the County Board of Commissioners in accordance with the requirements of Section 17 of Legislative Bill 975, known as the Livestock Waste Management Act. Also in accordance with said Livestock Waste Management Act, where expansion of the waste handling facility is permitted or authorized by conditional use under this Subsection B, such animal feeding use shall be permitted to expand in its animal unit capacity in accordance with Subsection C or D immediately below or in accordance with the following limitations, whichever is greater, provided that expansion under subparagraphs 1) through 4) immediately below shall comply with the minimum separation distances from neighboring uses as set forth in Table 501.04 of this Resolution:

1) Five hundred (500) additional beef cattle if the confined or intensive animal feeding use has an existing animal capacity of three thousand (3,000) or fewer head of cattle,

2) Three hundred (300) additional beef cattle if the confined or intensive animal feeding use has an existing animal capacity of more than three thousand (3,000), but no more than five thousand (5,000) head of cattle,

3) Three hundred fifty (350) additional dairy cattle if the confined or intensive animal feeding use has an existing animal capacity of two thousand (2,000) or fewer head of dairy cattle,

4) Two hundred ten (210) additional dairy cattle if the confined or intensive animal feeding use has an existing capacity of more than two thousand (2,000), but no more than three thousand five hundred (3,500) head of dairy cattle.

TABLE 501.04
MINIMUM SEPARATION DISTANCES BETWEEN CONFINED AND INTENSIVE ANIMAL FEEDING USES AND WASTE HANDLING FACILITIES AND ABUTTING AND NEIGHBORING USES

CONFINED AND INTENSIVE FEEDING USES AND WASTE HANDLING FACILITIES by Category and by Class of Use Served:	MINIMUM DISTANCE FROM WASTE HANDLING FACILTIY TO A NEIGHBORING LOT OF RECORD, DWELLING UNIT, CHURCH, SCHOOL, OR PUBLIC USE AREA*	
	North / South **	East / West**
Category A (Aerobic) waste handling facility serving a:		
Class I confined animal feeding use (300 - 1,000 animal units)	0.25 mile	0.125 mile
Class II confined animal feeding use (1,001 - 2,500 animal units)	0.375 mile	0.25 mile
Class III confined animal feeding use (2,501 - 5,000 animal units)	0.5 mile	0.375 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units)	0.625 mile	0.5 mile
Class V confined animal feeding use (10,001 or more animal units)	0.75 mile	0.5 mile
Category ANC (Covered Anaerobic) waste handling facility serving a:		
Class I confined animal feeding use (300 - 1,000 animal units)	0.25 mile	0.125 mile
Class II confined animal feeding use (1,001 - 2,500 animal units)	0.375 mile	0.25 mile
Class III confined animal feeding use (2,501 - 5,000 animal units)	0.5 mile	0.375 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units)	0.625 mile	0.5 mile
Class V confined animal feeding use (10,001 or more animal units)	0.75 mile	0.5 mile
Category FAC (Facultative) waste handling facility serving a:		
Class I confined animal feeding use (300 - 1,000 animal units)	0.375 mile	0.25 mile
Class II confined animal feeding use (1,001 - 2,500 animal units)	0.5 mile	0.375 mile
Class III confined animal feeding use (2,501 - 5,000 animal units)	0.625 mile	0.5 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units)	0.75 mile	0.625 mile
Class V confined animal feeding use (10,001 or more animal units)	1.0 mile	0.75 mile
Category AN (Anaerobic) waste handling facility serving a:		
Class I confined animal feeding use (300 - 1,000 animal units)	0.5 mile	0.375 mile
Class II confined animal feeding use (1,001 - 2,500 animal units)	0.75 mile	0.5 mile
Class III confined animal feeding use (2,501 - 5,000 animal units)	1.0 mile	0.625 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units)	1.25 mile	0.75 mile
Class V confined animal feeding use (10,001 or more animal units)	1.5 miles	1.0 mile
Category AN (Anaerobic) waste handling facility * serving a:**		
Class I intensive animal feeding use (300 - 1,000 animal units)	0.5 mile	0.25 mile
Class II intensive animal feeding use (1,001 - 2,500 animal units)	0.75 mile	0.375 mile
Class III intensive animal feeding use (2,501 - 5,000 animal units)	1.0 mile	0.5 mile
Class IV intensive animal feeding use (5,001 - 10,000 animal units)	1.25 miles	0.625 mile
Class V intensive animal feeding use (10,001 or more animal units)	1.375 miles	0.75 mile
Category A (Aerobic) serving a:		
Municipal or other waste handling facility	0.125 mile	0.125 mile

Footnotes:

* Measurement of this distance shall be from the point of the confined or intensive animal feeding use or waste handling facility associated including any site where raw or partially digested liquid or slurry waste is applied to the surface of the land in excess of three hundred sixty (360) hours per calendar year per site, nearest to a lot of record less than twenty (20) acres in area, church, school, public use area or dwelling not on the same premises and not of the same ownership as the waste handling facility, to the nearest wall of such dwelling, church, school, or nearest boundary of a public use area, provided that if one or more impact easement(s), as defined in Section 303.42 of this Resolution, shall have been granted to the owner of the waste handling facility use, in which case any lot of record, church, school, dwelling unit or public use area associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. A dwelling unit not of the same ownership and on the same premises as the waste handling facility 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 the present assessed valuation of the dwelling structure (excluding the valuation of the land) to make such dwelling habitable.

** Separation distances are based upon compass directions of prevailing winds and shall be applied as defined in Section 303.70 of this Resolution.

*** By definition in this Resolution, all waste handling facilities serving intensive animal feeding uses, shall be categorized as AN (Anaerobic) unless a conditional use exception is authorized in accordance with the requirements and procedures of this Resolution where it is clearly demonstrated that a different category of waste handling facility is appropriate.

C. If an animal feeding use and / or waste handling facility, associated with a confined or intensive animal feeding use complies with the minimum separation distances from neighboring uses, as set forth in Table 501.04 of this Resolution, such use may be expanded, provided such expansion shall comply with the separation distances from any lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use for the class of animal feeding use and category of waste handling facility which the animal feeding use would qualify after expansion and further provided such animal feeding use and associated waste handling facility shall also comply with the limitations and requirements set forth in Paragraph D, Subparagraphs 1) through 6) immediately below.

D. If the confined or intensive animal feeding use or associated waste handling facility is located closer than the minimum separation distances from neighboring uses, as set forth Table 501.04 of this Resolution for the class of animal feeding use and category of waste handling facility for which the existing use qualifies, such use may be expanded up to fifty percent (50%) of the one-time animal unit capacity existing as of the effective date of this Resolution, provided such use is not expanded closer to the neighboring use(s) to which the animal feeding use is already less than set forth in said Table 501.04 and further provided that such use shall comply with the separation distances set forth in said Table 501.04 from any other lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use for the class of animal feeding use and category of waste handling facility which the animal feeding use would qualify after expansion. An existing confined or intensive animal feeding use shall not expand into any flood hazard area without specific authorization of the Nebraska Department of Environmental Quality. Such expansion shall also comply with the following limitations and requirements:

1) The type of waste handling facility used to handle the waste of the expanded feeding use shall be the same type that is used by the existing feeding use or such waste handling facility may be changed to a facility that will generate less odor. The ranking of the types of waste handling facility with regard to odor production shall be in the order set forth in the definition of Waste Handling Facility in Section 303.94 of this Resolution with aerobic facilities producing the least amount of odor and anaerobic facilities producing the greatest amount of odor.

2) Any physical expansion of the animal feeding use or associated waste handling facility shall be immediately contiguous with (abut) the existing feeding use or associated waste handling facilities.

3) Any such expansion shall not extend into any legally established wellhead protection area of any public water supply system, as defined in Section 303.75 of this Resolution, which is based on the twenty year time travel of groundwater, as determined by the Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 503.03 of this Resolution.

4). Expansion of any animal feeding use or associated waste handling facility that is located in a flood hazard area, as defined in Section 303.35 of this Resolution, shall also be required to have the approval of the Nebraska Department of Environmental Quality, prior to such expansion.

5) Minimum separation distances shall not apply to any site where;

a. fully composted animal waste, as defined in Section 303.07 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

b. solid manure, as defined in Section 303.86 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,

c. liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.

d. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling ~~unit~~ not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or south or one-eighth (1/8) mile to the east or west, as defined in the definition of "Prevailing Winds" in Section 303.70 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

6) Additional animals shall not be added to the use until any new permit required by the Nebraska Department of Environmental Quality or its successor agency shall have been issued and such use shall be operated in a manner consistent with the requirements of any such permit and the requirements of this Resolution.

7) Exceptions to the minimum separation distance specified in Paragraphs C and D immediately above may be granted by conditional use where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies or a combination thereof for mitigation of odor, dust or flies is proposed and it is determined by the County Board of Commissioners, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.

E. For purposes of this regulation, a dwelling unit not of the same ownership and not on the same premises as the animal feeding use or associated waste handling facility shall be interpreted to mean that such dwelling is an occupied or habitable residential dwelling and, if vacant and not habitable, would not require more cost than the present assessed valuation of the dwelling structure (excluding the assessed valuation of the land) to make such dwelling habitable.

11. Development of new Class I and Class II confined and intensive animal feeding uses, as defined in Section 303.24 and 303.44 of this Resolution and associated waste handling facilities, provided all such uses shall comply with all of the following requirements:

A. Such feeding use or any associated waste handling facility shall be separated from Any undeveloped lot or record less than twenty (20) acres in area, church, school, public use area or dwelling unit not on the same premises and not of the same ownership as the animal feeding use by at least the minimum distances specified in Table 501.04 of this Resolution, provided that:

1) if the Odor Footprint Tool has been validated and is available for application to the proposed use, the minimum separation distances in all directions shall the greater of the distance as determined by application of the Tool using a 94% annoyance free standard or the distance set forth in Table 501.04 of this Resolution. Any cost for the application of the Odor Footprint Tool shall be the responsibility of the applicant for such use, and

2) if the owner of any neighboring undeveloped lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.42 of this Resolution, such use may be closer to any such lot or record, church, school, public use area or dwelling unit from which an impact easement is granted. *(Minimum separation distances shall be measured in accordance with Footnote * of Table 501.04 of this Resolution)*

3) Minimum separation distances shall not apply to any site where;

a) fully composted animal waste, as defined in Section 303.07 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

b) solid manure, as defined in Section 303.86 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,

c) liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.

d) animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling ~~unit~~ not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or south or one-eighth (1/8) mile to the east or west, as defined in the definition of "Prevailing Winds" in Section 303.70 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is

estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

B. Any confined or intensive animal feeding use and associated waste handling facility use which proposes to dispose of any waste through application of said waste on crop or other land shall indicate that the owners of such animal feeding use and associated waste handling facility use shall have, either through ownership or lease of suitable terms, an adequate amount of such land to permit application of such waste based on agronomic rates as set forth in a Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality and the owner of such waste handling facility shall certify that such waste shall be applied to such land at such agronomic rates. The County Board of Commissioners, in the event of a written complaint, may request copies of soil test to verify compliance with the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality. In the event of loss of the availability of any land for application of said waste as is set forth in a Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality, the owners of said animal feeding use and associated waste handling facility shall agree to procure an equivalent amount of additional land. If such additional land is not procured, the owner / operator shall agree to reduce the number of animal units to the level that will allow the animal waste to be applied to the remaining land at agronomic rates.

C. Each confined or intensive animal feeding use shall indicate how the use shall provide for the proper and timely disposal of dead animals. Such plan shall provide for disposal of dead animals within thirty six (36) hours of knowledge of death. Such plan shall comply with all requirements of laws and regulations of the State of Nebraska.

D. Any confined or intensive animal feeding use or associated waste handling facility shall not be located in areas of the County which are subject to flooding on a one hundred (100) year basis or in areas which are designated as wetlands.

E. Confined or intensive animal feeding uses and any associated waste handling facilities shall not be located closer than one thousand (1,000) feet to any publicly owned water supply well and not closer than one-hundred (100) feet to any residential domestic well nor shall any confined or intensive animal feeding use or waste handling facility use be located in any legally established wellhead protection area for any publicly owned water supply system, as defined in Section 303.75 of this Resolution, which is based on the twenty year time travel of groundwater, as determined by the Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 503.03 of this Resolution.

F. Animal waste lagoons and catch basins shall be located at least sixty three (63) feet from the centerline of any county roadway and at least thirty (30) feet from the right-of-way line of any state or federal highway.

G. The determination of a need for groundwater monitoring wells shall be made by the Nebraska Department of Environmental Quality. Any groundwater monitoring wells required by the Nebraska Department of Environmental Quality shall be installed and maintained by the owner of such wells and all testing of such groundwater shall be in accordance with the requirements of the Nebraska Environmental Quality. In the event of a complaint, the County Board of Commissioners shall reserve the right to require copies of all groundwater testing results. In the event that testing identifies contaminants in the groundwater, the County Board of Commissioners shall be notified of such contamination and said Board shall seek remediation of such contamination in accordance with the procedures of the Nebraska Department of Environmental Quality.

H. The owner / operator of any confined or intensive animal feeding use and associated waste handling facility use shall agree to permit access to the use to allow inspection of the premises by the Zoning Administrator or other person(s) designated by the County Board of Commissioners to assure compliance with all conditions of this Resolution in accordance with Section 501.06, Subsection 1, Paragraph H of this Resolution.

I. Such use shall not be established until any permit required by the Nebraska Department of Environmental Quality or its successor agency shall have been issued and such use shall be operated in a manner consistent with the requirements of any such permit and the requirements of this Resolution. Any such Federal or State permit shall not need to have been issued prior to issuance of a zoning permit, but shall be a condition of such zoning permit.

J. Exceptions to the minimum separation distance specified in Paragraph A immediately above may be granted by conditional use where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies or a combination thereof for the mitigation of odor, dust and flies is proposed and it is determined by the County Board of Commissioners, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.

K. For purposes of this regulation, a dwelling unit not of the same ownership and not on the same premises as the animal feeding use or associated waste handling facility shall be interpreted to mean that such dwelling is an occupied or habitable residential dwelling and, if vacant and not habitable, would not require more cost than the present assessed valuation of the dwelling structure (excluding the valuation of the land) to make such dwelling habitable.

501.05 **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, if not a farm building shall require the issuance of a zoning permit. Farm buildings shall require only a certificate of zoning compliance.

2. Home occupations, in accordance with Section 608 of this Resolution. When established in accordance with Section 608 of this Resolution, 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 or certificate of zoning compliance shall be required.

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

1. Expansion of Class I, II, III, IV and V confined and intensive animal feeding uses and associated waste handling facilities existing as of the effective date of this Resolution beyond the limits set forth in Section 501.04, Subsection 10 of this Resolution and development of new Class III, IV and V confined and intensive animal feeding uses, as defined in Sections 303.24 and 303.44 of this Resolution and associated waste handling facilities, as defined in

Section 303.95 of this Resolution, provided that such uses shall meet or exceed all of the following requirements:

A. Such feeding use or any associated waste handling facility shall be separated from Any undeveloped lot or record less than twenty (20) acres in area, church, school, public use area or dwelling unit not on the same premises and not of the same ownership as the animal feeding use by at least the minimum distances specified in Table 501.04 of this Resolution, provided that:

1) if the Odor Footprint Tool has been validated and is available for application to the proposed use, the minimum separation distances in all directions shall the greater of the distance as determined by application of the Tool using a 94% annoyance free standard or the distance set forth in Table 501.04 of this Resolution. Any cost for the application of the Odor Footprint Tool shall be the responsibility of the applicant for such use, and

2) if the owner of any neighboring undeveloped lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.42 of this Resolution, such use may be closer to any such lot or record, church, school, public use area or dwelling unit from which an impact easement is granted. *(Minimum separation distances shall be measured in accordance with Footnote * of Table 501.04 of this Resolution)*

Minimum separation distances shall not apply to any site where;

1) fully composted animal waste, as defined in Section 303.07 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

2) solid manure, as defined in Section 303.86 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,

3) liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.

4) liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or south or one-eighth (1/8) mile to the east or west, as defined in the definition of "Prevailing Winds" in Section 303.70 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

B. For all classes of confined and intensive animal feeding 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 be engineered and developed to minimize air and ground and surface water pollution and shall be constructed and operated in accordance with the requirements established by the Nebraska Department of Environmental Quality. In authorizing any such conditional use, the County Board of Commissioners shall reserve the right to verify compliance with the engineering and operating requirements of the Nebraska Department of Environmental Quality and the right to enforce upon any non-compliance with the engineering and operation of the animal feeding use with the requirements established by the Nebraska Department of Environmental Quality.

C. Any confined or intensive animal feeding use or associated waste handling facility shall not be located in areas of the County which are subject to flooding on a one hundred (100) year basis or in areas which are designated as wetlands.

D. Confined or intensive animal feeding uses and any associated waste handling facilities shall not be located closer than one thousand (1,000) feet to any publicly owned water supply well and not closer than one-hundred (100) feet to any residential domestic well nor shall any confined or intensive animal feeding use or waste handling facility use be located in any legally established wellhead protection area for any publicly owned water supply system, as defined in Section 303.75 of this Resolution, which is based on the twenty year time travel of groundwater, as determined by the Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 503.03 of this Resolution.

E. Animal waste lagoons and catch basins shall located at least sixty three (63) feet from the centerline of any county roadway and at least thirty (30) feet from the right-of-way line of any state or federal highway.

F. Any confined or intensive animal feeding use and associated waste handling facility use which proposes to dispose of any waste through application of said waste on crop or other land shall indicate that the owners of such animal feeding use and associated waste handling facility use shall have, either through ownership or lease of suitable terms, an adequate amount of such land to permit application of such waste based on agronomic rates as set forth in a Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality and the owner of such waste handling facility shall certify that such waste shall be applied to such land at such agronomic rates. The County Board of Commissioners, in the event of a written complaint, may request copies of soil test to verify compliance with the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality. In the event of loss of the availability of any land for application of said waste as is set forth in a Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality, the owners of said animal feeding use and associated waste handling facility shall agree to procure an equivalent amount of additional land. If such additional land is not procured, the owner / operator shall agree to reduce the number of animal units to the level that will allow the animal waste to be applied to the remaining land at agronomic rates.

G. Each confined or intensive animal feeding use shall indicate how the use shall provide for the proper and timely disposal of dead animals. Such plan shall provide for disposal of dead animals within thirty six (36) hours of knowledge of death. Such plan shall comply with all requirements of laws and the regulations of the State of Nebraska.

H. The owner / operator of any confined or intensive animal feeding use and associated waste handling facility use authorized by the County Board of Commissioners shall agree to permit access to the animal feeding use and waste handling facilities to allow inspection of the premises by the Zoning Administrator or other person(s) designated by the County Board of Commissioners to assure compliance with all conditions established by the County Board of Commissioners in authorizing such use. Such inspections shall be conducted on a written complaint basis or as a result of information gathered through his / her own investigation and shall first be investigated by the Zoning Administrator who shall document compliance or lack of compliance with all conditions of use established by the County Board of Commissioners in authorizing such use. The Zoning Administrator shall contact the owner / operator of the confined or intensive feeding use and associated waste handling facility to be inspected prior to such inspection and the owner / operator shall agree to allow such inspection within twenty four (24) hours of such request. The Zoning Administrator shall follow all standard bio-hazard procedures applicable to the site being inspected when conducting such inspections. Such inspections shall be considered a general function of the Zoning Administrator and the cost of such inspection of such complaints shall be considered an administrative expense of the County and shall not be assessed against the owner(s) of a waste handling facility use.

Upon a finding by the Zoning Administrator that a confined or intensive animal feeding use or associated waste handling facility use is not in compliance with the approved conditions of use, he/she shall report same to the County Board of Commissioners and shall notify the owner / operator of the confined or intensive animal feeding use and associated waste handling facility use involved, in writing, that the use is in violation of the approved conditions of use and shall state the specific violation(s). The owner / operator of such uses shall have thirty (30) calendar days to correct such violation. If the violation is not corrected within such time period, as verified through additional inspection(s) by the Zoning Administrator, the Zoning Administrator shall initiate all actions authorized under this Resolution to require compliance with the conditions of use approved by the County Board of Commissioners, including the possible requirements of reducing the waste produced by reduction in the activities generating such waste or in the case of confined or intensive animal feeding uses, reducing the number of animal units on the premises or removal of all animals until such violation(s) have been corrected.
A condition of authorization of any confined or intensive animal feeding use and associated waste handling facility use shall be that the owner(s) / operator of each such use authorized under this Resolution shall agree to comply with any written order of the County Board of Commissioners, up to and including reduction in the activities generating such waste or in the case of confined or intensive animal feeding uses, reduction in the number of animals being feed at the location, to correct any lack of compliance with any conditions of the original or subsequent conditional use authorization detected in any on-site inspection within thirty (30) calendar days of the date of the written order for compliance issued by the Zoning Administrator. In the event the owner / operator of a waste handling facility use involved in the inspection can present reasonable cause to the County Board of Commissioners that additional time to comply with any order of the Zoning Administrator is needed, the County Board of Commissioners may authorize an extension of time up to, but not exceeding one hundred twenty (120) days. Failure to comply with the order for compliance within the time specified shall result in a further order to cease all activities which result in the generation of waste or in the case of confined or intensive animal feeding uses, the removal of all animals from the premises until such time as compliance with these regulations can be achieved.

The provisions for inspections of confined and intensive animal feeding uses and associated waste handling facilities shall apply to confined and intensive animal feeding uses and associated waste handling facility uses which were in existence as of the effective date of this Resolution to the extent of determining compliance with the limitations on unauthorized expansion of such facilities, but the provisions for inspections and compliance shall fully apply to any confined or intensive animal feeding use and associated waste handling facility uses which were in existence as of the effective date of this Resolution, if any such use has been lawfully expanded in its capacity beyond that which existed as of the effective date of this Resolution.

I. Each confined or intensive animal feeding use and associated waste handling facility shall be sited, engineered and constructed using best available options and technologies with regard to minimizing odor impacts on neighboring properties and minimizing the potential for surface and groundwater contamination. Compliance with this requirement shall be measured in terms of the site meeting or exceeding the separation distances from neighboring uses as set forth in Paragraph A immediately above, in terms of the category of waste handling facility proposed, in terms of the method of animal waste disposal proposed, in terms of use of technologies and facilities to minimize odor and dust impacts on neighboring uses and in terms of agreement by the owner / operator to comply with all requirements of any permit issued by the Nebraska Department of Environmental Quality.

J. Each confined or intensive animal feeding use and associated waste handling facility shall be operated and maintained utilizing best management practices to minimize production of odor, dust, flies and vermin. Compliance with this requirement shall be measured in terms of the proposed operating, management, equipment inspection and maintenance practices, described in the conditional use application, which will minimize production of odor, dust, fly and vermin production.

K. In authorizing any waste handling facility use, the County Board of Commissioners shall include a condition that such use shall be engineered, constructed and operated in accordance with any permit required and approved by the Nebraska Department of Environmental Quality. The County Board of Commissioners may attach any additional requirement or condition of design or operation of such use which will minimize odor impacts on adjoining and neighboring properties, provided such requirement or condition is based upon scientific fact or best available data, which may include recommendations by the biological engineers, civil engineers and any other entities with applicable odor abatement expertise and not based upon rumor, statements not based upon fact or best available data, unfounded public remonstrance or other reason not based on reasonable finding or fact.

L. The determination of a need for groundwater monitoring wells shall be made by the Nebraska Department of Environmental Quality. Any groundwater monitoring wells required by the Nebraska Department of Environmental Quality shall be installed and maintained by the owner of such wells and all testing of such groundwater shall be in accordance with the requirements of the Nebraska Department of Environmental Quality. In the event of a complaint, the County Board of Commissioners shall reserve the right to require copies of all groundwater testing results. In the event that testing identifies contaminants in the groundwater, the County Board of Commissioners shall be notified of such contamination and such Board shall seek remediation of such contamination in accordance with the procedures of the Nebraska Department of Environmental Quality.

M. Any confined or intensive animal feeding use or associated waste handling facility use shall generally be located only in areas of the County where the impact(s) on the roads and bridges which provide access to and from such use from the nearest hard surfaced roadway will not result in an undue cost burden to the taxpayers of the County in providing and maintaining such roads and bridges. In making a determination regarding the appropriateness of the site, if the County Board of Commissioners determine that the anticipated impacts will result in additional maintenance cost for such roads and bridges that would be more than three (3) times the average per mile roadway and bridge maintenance costs in the County, the Board may require financial participation by the owner of the animal feeding use in the improvement and/or maintenance of said roadway(s) and bridges. Further, the parcel on which such confined or intensive animal feeding use is located shall front on and have vehicular access to an existing public roadway other than a roadway designated by the County Board of Commissioners as a minimum maintenance road or other unimproved roadway, provided that if such use is located on a minimum maintenance roadway, the owner of such use shall be responsible for the cost of improving such roadway to County standards before the County shall agree to accept maintenance by the County of such roadway.

N. 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 any additional facilities and safeguards required by the County Board of Commissioners 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. Any such Federal or State permit shall not need to have been issued prior to issuance of a zoning permit or authorization of a conditional use, but shall be a condition of such issuance or authorization.

O. Exceptions to the minimum separation distance specified in Paragraph A immediately above may be granted as a part of any conditional use authorization where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies for mitigation of odor, dust or flies or a combination thereof is proposed and it is determined by the County Board of Commissioners, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.

P. Any conditional use application for a confined or intensive animal feeding use and associated waste handling facility use which is determined by the County Board of Commissioners to meet the standards and requirements of Paragraphs A through J and L through N immediately above and for which there is agreement by the owner of such use to comply with any additional requirement established by the Board of Commissioners, in accordance with Paragraph K immediately above, SHALL be authorized by the County Board of Commissioners.

2. Application of liquid (non-solid) animal waste from confined or intensive animal feeding uses or associated waste handling facility uses located outside the boundaries of Hitchcock County, Nebraska, to the surface of land within Hitchcock County, subject to the following limitations:

A. Where surface application of liquid waste shall exceed the 360 hours per calendar year per site application time limitation set forth in Section 501.03, Subsection 11, Paragraph D of this Resolution, the site(s) for such application shall be separated from any

undeveloped lot of record less than twenty (20) acres in area, residential dwelling, church, school or public use area in Hitchcock County or any adjoining county which is located to the north of such site by the minimum distance of one-fourth (1/4) mile and to the south of such site by a minimum distance of one-eighth (1/8) mile, unless the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.42 of this Resolution, in which case such use may be closer to any such lot or record, church, school, public use area or dwelling unit from which an impact easement is granted. *(Minimum separation distances shall be measured in accordance with Footnote * of Table 501.04 of this Resolution)*

B. Any animal waste applied shall be applied at agronomic rates set forth in a Comprehensive Nutrient Management Plan as approved by the Nebraska Department of Environmental Quality. The County Board of Commissioners, in the event of a written complaint, may request copies of soil test to verify compliance with the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality.

3. Radio, television, microwave and other types of erected towers, except wind energy towers in excess of one hundred fifty (150) feet in height, provided such towers comply with any applicable airport hazard height limitations and further provided that any such tower(s) is / are set back from the right-of-way of any public roadway, from the nearest property line of any undeveloped lot of record less than twenty (20) acres in area or any public use area and from the nearest wall of any neighboring church, school, or residential dwelling unit by a distance equal to or exceeding the height of such tower(s).

4. Small Wind Energy towers, as defined in Section 613.02 or this Resolution which are in excess of one hundred fifty feet (150') in height and Commercial Wind Energy Systems and installations, as defined in Section 613.05 of this Resolution, both in accordance with the requirements of Section 613 of this Resolution.

5. Public service facilities not allowable as permitted principal uses in Section 501.04 of this Resolution.

6. Sewage treatment plants and facilities, sanitary landfills and solid waste recycling or waste composting centers.

7. Salvage (junk) yards, provided such uses are separated from any existing dwelling unit, church, school or cemetery by a distance of not less than one (1) mile and that all outdoor storage of salvage material shall be screened from view from all adjoining public roadways and neighboring residential dwelling units by evergreen trees, fences or a combination thereof.

8. Rock, sand, gravel or other mineral extraction or processing site, provided any application for such use shall include an acceptable reclamation and / or closure plan providing for a phased reclamation and / or closure of each portion of the extraction area when extraction is completed and a written indication by the owners of such use that failure to completely implement such plan shall be deemed a violation of this Resolution and shall be subject to the penalties set forth herein.

9. Residential subdivisions in excess of the limitations set forth in Section 501.04, Subsection 5, Paragraph C of this Resolution, provided that:

A. Such residential subdivisions shall be surveyed and engineered and a plat prepared for consideration and approval in accordance with the Hitchcock County, Nebraska Subdivision Regulations as part of the conditional use authorization. Such plat shall conform with the requirements and standards of said Subdivision Regulations.

B. Any new roadways and drainage structures created as part of such subdivision shall be dedicated to the owners of lots within such subdivision and shall be privately maintained through the creation of a homeowner's association with assessment capabilities. Any such new roads shall not be dedicated to the public or the County nor shall any such roadway be accepted for maintenance by the County. Further, any such new roadways shall not be subject to flooding on a one hundred (100) year basis.

C. Any such residential subdivision shall be located only in areas of the County where the impact(s) on the roads and bridges which provide access to and from such subdivision from the nearest hard surfaced roadway will not result in an undue cost burden to the taxpayers of the County in providing and maintaining such roads and bridges. In making a determination regarding the appropriateness of the subdivision, if the County Board of Commissioners determine that the anticipated impacts will result in additional maintenance cost for such roads and bridges that would be more than three (3) times the average per mile roadway and bridge maintenance costs in the County, the Board may require financial participation by the developer of said subdivision in the improvement and/or maintenance of said roadway(s) and bridges. Further, the parcel on which such subdivision is located shall front on and have vehicular access to an existing public roadway other than a roadway designated by the County Board of Commissioners as a minimum maintenance road or other unimproved roadway, provided that if such use is located on a minimum maintenance roadway, the developer of such subdivision shall be responsible for the cost of improving such roadway to County standards before the County shall agree to accept maintenance by the County of such roadway.

10. Other uses, determined by the County Board of Commissioners, to be comparable with the other uses permitted as conditional uses in this district, compatible with the uses permitted in the district and consistent with the intent of this district.

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

501.08 **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 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. Any lot on which there is to be a public or semi-public sewer utilized to collect, transfer and treat sewage shall not be less than ten thousand (10,000) square feet.

3. The minimum lot area for uses identified as conditional uses in this District shall be the lot area appropriate for such uses, as determined by the Board of Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that:

A. Any lot on which there is to be an on-site sewage disposal system shall not be less than two (2) acres in area, 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.

B. Any lot on which there is to be a public or semi-public sewer utilized to collect, transfer and treat sewage shall not be less than ten thousand (10,000) square feet, and

C. Any lot on which sewage disposal facilities are not needed shall not be less than one (1) acre.

501.09 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 utilizing on-site sewage disposal systems
The minimum lot width shall be one hundred fifty (150) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred fifty (150) feet and a minimum frontage less than fifty (50) feet.

2. For lots utilizing a public or semi-public sewage collection, transport and treatment system
The minimum lot width shall be seventy five (75) feet, provided that the lot width to lot depth ration shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners 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 fifty (50) feet.

3. For lots on which sewage disposal facilities are not needed
The minimum lot width shall be one hundred (100) feet, provided that the lot width to lot depth ration shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners in granting of any such use, provided that no lot shall have a width less than one hundred (100) feet and a minimum frontage less than fifty (50) feet.

501.10 MINIMUM BUILDING SETBACK REQUIREMENTS: The following shall be the minimum yard Requirements for uses located within this district:

1. Trees and Shrubs - Twenty (20) feet from all side and rear property lines and all road right-of-way lines .

2. Buildings:

A. Front Setback - Fifty eight (58) feet, measured from the centerline of a County Road, 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.

For a grain bin or building used for grain storage which requires filling by use of a portable auger, elevator or conveyor or requires overhead probing of stored grain, the minimum setback from any existing primary voltage electric power distribution line owned and maintained by a public utility shall be equal to the height of the highest filling or probing opening on such bin or building plus eighteen (18) feet or the distance prescribed in Section 234 of the latest published edition of the National Electrical Safety Code, whichever is greater.

B. Side Setback - Ten (10) feet

C. Rear Setback - Ten (10) feet

501.11 MAXIMUM HEIGHT OF STRUCTURES: No limitation, except for buildings designed for human habitation which shall be limited to a height of forty-five (45) feet.

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SECTION 502 RCI RURAL COMMERCIAL / INDUSTRIAL DISTRICT

502.01 **INTENT:** The intent of this district is to allow for the development of commercial and industrial uses in rural areas of Hitchcock County when such uses are specifically agri-business uses serving the agricultural producers in Hitchcock County, to allow development of non-agricultural related business and industrial uses along the major highways in Hitchcock County, on a case by case basis, in order to minimize potential conflicts with agricultural production activities and housing which may exist along such major highways and to allow the development of off-premise advertising signs (billboards) along such major highways in appropriate areas in which this district is applied.

502.02 **OUTRIGHT ALLOWABLE PRINCIPAL USES AND STRUCTURES:** The following uses and structures shall be allowable uses outright and shall not require a written zoning permit or certificate of zoning compliance:

1. Agricultural uses, as defined in Section 303.04 of this Resolution, including any farm buildings, as defined in Section 303.34 of this Resolution, but excluding any dwelling unit(s) whether or not associated with an agricultural use and excluding confined and intensive animal feeding uses, as defined in Sections 303.24 and 303.44 of this Resolution and any associated waste handling facilities, as defined in Section 303.95 of this Resolution.

2. Grain, hay and produce storage including non-commercial storage warehouses, plant seed sales and similar storage facilities.

3. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities, subject to the limitations and requirements of Section 611 of this Resolution. (Sites where there is surface application of liquid animal waste shall comply with the limitations set forth in Section 501.03, Subsection 11, Paragraph D of this Resolution.)

4. Forestry, tree farms and plant nurseries and vineyards with or without wine making or tasting facilities.

5. Day care and child care uses.

6. Signs, including permanent on-site business signs and outdoor advertising signs (billboards) not oriented to any State or Federal highway.

7. Road maintenance equipment storage sheds, fire stations, public utility substations and utility distribution systems and similar structures and uses.

8. Churches, synagogues and other houses of worship.

9. Cemeteries.

10. Land application of:

    A. fully composted animal waste, as defined in Section 303.07 of this Resolution, to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

B. solid manure, as defined in Section 303.86 of this Resolution, to the surface of the land at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,

C. liquid or slurry animal waste injected into the soil at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.

D. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or south or one-eighth (1/8) mile to the east or west, as defined in the definition of "Prevailing Winds" in Section 303.70 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

11. Stockpiling of animal waste or manure or municipal sewage or other sludge on any parcel of land where such waste is to be applied to the land contained within such parcel, provided such stockpiling shall meet all of the following conditions:

A. The amount of solid manure stockpiled on any parcel shall not exceed the amount of waste which can be applied on such parcel at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality for a calendar year.

B. Any manure or sludge stockpile shall be located at least one-fourth (1/4) mile from the nearest wall of any church, school or residential dwelling unit not of the same ownership as the parcel on which the stockpile is to be placed or to the nearest boundary of any public use area unless the owner of such church, school or residential dwelling shall grant permission in writing for a stockpile to be located at a closer distance.

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

1. 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 premises with and of the same ownership as any kennel, as defined in Section 303.46 of this Resolution, or confined or intensive animal feeding use, as defined in Sections 303.24 and 303.44 of this Resolution or any associated waste handling facility, as defined in Section 303.95 of this Resolution, shall be separated from any kennel by a minimum distance of one-half

(1/2) mile, from any existing confined or intensive animal feeding use and associated waste handling facility by the minimum distance set forth in Section 501.04, Subsection 7, Paragraph A of this Resolution for the class of confined or intensive animal feeding use and type of associated waste handling facility which such existing confined or intensive feeding use qualifies, and from any erected tower by a distance equal to the height of such tower unless the developer of such dwelling shall grant an impact easement, as defined in Section 303.42 of this Resolution, to the owner of the existing kennel, confined or intensive animal feeding use or tower, in which case such dwelling shall not be included in the minimum distance measurement. *(See exceptions to the minimum separation requirement as set forth in Section 705, Paragraphs 3 and 4 of this Resolution.)*

B. Such minimum separation distance shall be measured from the nearest point of any land actively used or approved under this Resolution as a confined or intensive animal feeding use or associated waste handling facility, including any site where liquid (non-solid) animal waste is applied to the surface of the land, from the nearest point of any land actively used for kennels or runs or the base of any tower over one hundred fifty (150) feet in height to the nearest wall of such dwelling unit.

C. Such dwelling shall be located on a parcel of land with an area not less than that specified in Section 502.08 of this Resolution and such parcel shall have a lot (parcel) width and frontage not less than that specified in Section 502.09 of this Resolution, provided that a larger area may be required if the regulations and standards of Title 124 of the Nebraska Department of Environmental Quality, with regard to soil percolation, slope, depth to groundwater or other requirement of said Title 124 shall require a larger parcel, the requirements of said Title 124 shall govern and further provided that the total number of residential dwellings per quarter section of land shall not exceed four (4) unless a conditional use for a residential subdivision is authorized by the County Board of Commissioners in accordance with requirements of Section 502.03, Subsection 2 of this Resolution.

D. The parcel on which such dwelling is located shall front on and have vehicular access to an existing public roadway other than a roadway designated by the Hitchcock County Board of Commissioners as a minimum maintenance road or other unimproved roadway, provided that if such dwelling is located on a minimum maintenance roadway, the developer of such parcel shall be responsible for the cost of improving such roadway to County standards before the County shall agree to accept maintenance by the County of such roadway and further provided that if such parcel is located on any other unimproved roadway, the developer of such parcel shall be responsible for the costs of improving such roadway to County Standards and shall be responsible for the maintenance of such roadway unless the Hitchcock County Board of Commissioners shall agree to accept such roadway for County maintenance. Hitchcock County shall not, however, be committed to accepting such roadway even if such roadway is improved to County road standards by the owner(s) of such roadway.

E. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use or associated waste handling facility, as defined in Sections 303.24, 303.44 and 303.95 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership with such confined or intensive animal feeding use or associated waste handling facility and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use and associated waste handling facility has been discontinued or an impact easement, as defined in Section 303.42 of this Resolution is executed, in

which case such dwelling shall not be included in the minimum distance measurement. Nothing in this subsection shall prohibit the relocation of any such dwelling unit to a location beyond the minimum spacing distance requirements from such confined or intensive animal feeding use or associated waste handling facility as set forth in Section 501.04, Subsection 5, Paragraph A of this Resolution and the subsequent sale thereof.

2. Residential subdivisions in excess of the limitations set forth in Section 502.03, Subsection 1, Paragraph C above, provided that:

   A. Such residential subdivisions shall be surveyed and engineered and a plat prepared for consideration and approval in accordance with the Hitchcock County Subdivision Regulations. Such plat shall conform with the requirements and standards of said Subdivision Regulations and the following requirements:

   B. Any new roadways and drainage structures shall be graded and constructed in accordance with the requirements and standards set forth in the Hitchcock County Subdivision Regulations. The subdivider shall be responsible for all required grading and construction of roadways and drainage structures unless the County Board of Commissioners shall determine that financial participation by Hitchcock County is appropriate in accordance with the necessary findings to determine the appropriateness of such participation as set forth in the Hitchcock County Subdivision Regulations.

   C. Any new roadways and drainage structures created as part of such subdivision shall be dedicated to the owners of lots within such subdivision and shall be privately maintained through the creation of a homeowner's association with assessment capabilities. Any such new roads shall not be dedicated to the public or the County nor shall any such roadway be accepted for maintenance by the County. Further, any such new roadways shall not be subject to flooding on a one hundred (100) year basis.

3. Grain elevators, commercial grain storage or processing facilities, bulk fertilizer and fuel plants, livestock auction barns and buying stations, veterinary clinics, agricultural equipment repair shops, aerial crop dusting uses and landing strips, and other agricultural service establishments engaged in providing horticultural, husbandry products or services to area agricultural product producers, provided such uses shall be separated from any residential use by at least three hundred (300) feet and further provided that uses such as bulk fuel and fertilizer plants, grain distilling facilities and other similar uses which produce noticeable odors and/or have explosion or release of hazardous chemical potential shall not be located closer than one-fourth (1/4) mile to any residential dwelling or one-half (1/2) mile to any church or school.

4. Radio, television, microwave and other types of erected towers, excluding wind energy towers, which are one hundred fifty (150) feet or less in height, provided any such tower is set back from the right-of-way line of any public roadway, from the nearest property line of any undeveloped lot of record less than twenty (20) acres in area or any public use area and from the nearest wall of any neighboring church, school or residential dwelling by the distance equal to the height of the tower. Any guy wire anchors shall be located at least ten (10) feet from any property line.

5. Development of new Class I and Class II confined and intensive animal feeding uses, as defined in Section 303.24 and 303.44 of this Resolution and associated waste handling facilities, provided all such uses shall comply with the requirements and limitations set forth in Section 501.04, Subsections 10 and 11 of this Resolution.

6. Farm machinery and equipment sales and service uses and other sales and service businesses which support general agricultural production in the County provided such uses shall be separated from any residential use by at least three hundred (300) feet.

7. Parks, playgrounds, campgrounds and similar recreational uses.

8. Signs, including permanent (non-portable) business identification signs and off-premise advertising signs (billboards) in accordance with the following restrictions, provided that signs installed by any governmental entity shall be exempt from these regulations:

   A. Non-portable business-signs:

      1) The total number of permanent business signs, excluding off-premise advertising signs (billboards), shall not exceed three (3) per premises,

      2) The minimum setback from the front lot line and the right-of-way line of any State or Federal Highway for any free-standing sign shall be twenty (20) feet, the maximum height shall not exceed twenty (20) feet and the maximum sign face area shall not exceed one hundred (100) square feet, provided that for each additional foot that such sign is set back from the front lot line, the sign height may be increased by one (1) foot and the maximum sign face area may be increased by three (3) square feet and further provided that the maximum height shall be fifty (50) feet and the maximum sign face area shall be three hundred (300) square feet.

      3) The total sign face area of all signs on the premises, including free-standing, wall-mounted or wall-projection signs, excluding off-premise advertising signs (billboards), shall not exceed five hundred (500) square feet.

      4) No sign shall be located closer than three hundred (300) feet to any residential dwelling not on the same premises as the sign.

   B. Off-premise advertising signs (billboards):

      1) The minimum setback from the front lot line and the right-of-way line of any State or Federal Highway shall be twenty (20) feet, the maximum height shall not exceed thirty five (35) feet and the maximum sign face area for each sign face shall not exceed three hundred (300) square feet,

      2) Regardless of the location of a commercial or industrial premises, any off-premise advertising sign (billboard) shall be located a minimum distance of one-fourth (1/4) mile from any other off-premise advertising sign (billboard) on either side of the roadway to which such sign is oriented, measured from the nearest point of one such sign to the nearest point of another such sign. Further any off-premise advertising sign (billboard) shall be located a minimum distance of three hundred (300) feet from the nearest wall of any neighboring residential dwelling, church, school or the nearest boundary of any public use area.

      3) Double-deck off-premise advertising signs (billboards) shall be prohibited.

4) Lighting of any such off-premise advertising sign (billboard) shall be so directed and / or shielded to prevent any direct lighting of adjoining property or any roadway right-of-way.

5) No off-premise advertising sign (billboard) shall be constructed on any premises in this District until the commercial or industrial use permitted on or approved for such premises shall have first been constructed and be in operation.

6) All on and off-premise advertising signs (billboards) oriented to any State or Federal Highway shall also be subject to the requirements and limitations imposed by the Nebraska Department of Roads and where any such requirements or limitations impose a greater restriction, requirement or limitation, such shall apply.

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, if not a farm building shall require the issuance of a zoning permit and / or certificate of zoning compliance.

2. Home occupations, in accordance with Section 608 of this Resolution. When established in accordance with Section 608 of this Resolution, 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 Commissioners may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in the RCI - Rural Commercial - Industrial District:

1. Non-agricultural related commercial and industrial uses, determined by the Board of Commissioners to be compatible with adjoining land uses and consistent with the intent statement of this District.

2. Bed and breakfast operations, motels and similar uses.

3. Radio, television, microwave and other types of erected towers, except wind energy towers in excess of one hundred fifty (150) feet in height, provided such towers comply with any applicable airport hazard height limitations and further provided that any such tower(s) is / are set back from the right-of-way of any public roadway, from the nearest property line of any undeveloped lot of record less than twenty (20) acres in area or any public use area and from the nearest wall of any neighboring church, school, or residential dwelling unit by a distance equal to or exceeding the height of such tower(s).

4. Small Wind Energy towers, as defined in Section 613.02 or this Resolution which are in excess of one hundred fifty feet (150') in height and Commercial Wind Energy Systems and installations, as defined in Section 613.05 of this Resolution, both in accordance with the requirements of Section 613 of this Resolution.

5. Expansion of Class I, II, III, IV and V confined and intensive animal feeding uses and associated waste handling facilities existing as of the effective date of this Resolution beyond the limits set forth in Section 501.04, Subsection 10 of this Resolution and development of new Class III, IV and V confined and intensive animal feeding uses, as defined in Sections 303.24 and 303.44 of this Resolution and associated waste handling facilities, as defined in Section 303.95 of this Resolution, provided that such uses shall meet or exceed all of the requirements of Section 501.06, Subsection 1 of this Resolution.

6. Other uses and structures, determined by the Board of Commissioners to be comparable with the above listed conditional uses, compatible with surrounding land uses and consistent with the Intent statement of this District.

502.06 PROHIBITED USE AND STRUCTURES: All other uses and structures which are not permitted in this District either as a permitted use, accessory use or conditional use is prohibited. This prohibition shall specifically include all classes of confined or intensive animal feeding uses, as defined in Sections 303.24 and 303.44 of the Resolution and any associated waste handling facility uses, as defined in Section 303.95 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 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 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. Any lot on which there is to be a public or semi-public sewer utilized to collect, transfer and treat sewage shall not be less than ten thousand (10,000) square feet.

3. The minimum lot area for uses identified as conditional uses in this District shall be the lot area appropriate for such uses, as determined by the Board of Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that:

   A. Any lot on which there is to be an on-site sewage disposal system shall not be less than two (2) acres in area, 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.

   B. Any lot on which there is to be a public or semi-public sewer utilized to collect, transfer and treat sewage shall not be less than ten thousand (10,000) square feet, and

   C. Any lot on which sewage disposal facilities are not needed shall not be less than one (1) acre.

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 utilizing on-site sewage disposal systems
   The minimum lot width shall be one hundred fifty (150) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred fifty (150) feet and a minimum frontage less than fifty (50) feet.

2. For lots utilizing a public or semi-public sewage collection, transport and treatment system
   The minimum lot width shall be seventy five (75) feet, provided that the lot width to lot depth ration shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners 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 fifty (50) feet.

3. For lots on which sewage disposal facilities are not needed
   The minimum lot width shall be one hundred (100) feet, provided that the lot width to lot depth ration shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement, shall be fifty (50) 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 Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred (100) feet and a minimum frontage less than fifty (50) feet.

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

1. Trees and Shrubs - Twenty (20) feet from all side and rear property lines and all road right-of-way lines.

2. Buildings:

   A. Front Setback - Fifty eight (58) feet, measured from the centerline of a County Road, 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.

   B. Side Setback - Ten (10) feet

   C. Rear Setback - Ten (10) feet

503.10 HEIGHT LIMITATION: No limitation, except that the maximum height for any building designed for human habitation shall be forty five (45) feet.

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SECTION 503 I INDUSTRIAL DISTRICT

503.01 **INTENT:** The intent of this district is to provide acceptable sites for development of a range of industrial and certain commercial uses which are able to comply with certain performance standards listed in this district to protect nearby non-industrial and non-commercial land uses from land use conflicts or undesirable environmental impacts and to protect such industrial sites from intrusion of non-industrial, non-commercial uses which would conflict with such uses.

503.02 **PERMITTED PRINCIPAL USES AND STRUCTURES:** The following uses and structures shall be permitted on land where this district is applied:

1. Contractor's and construction equipment storage yards,

2. Grain elevators, feed mills, alfalfa mills and similar agricultural processing mills, including ethanol production plants and related storage facilities,

3. Any manufacturing or other industrial use which can comply with the performance standards set forth in Section 503.06 of this Resolution and which is not listed as a conditional use or prohibited use in Sections 503.04 and 503.05 of this Resolution.

503.03 **PERMITTED ACCESSORY USES:** The following uses and structures shall be permitted as accessory to the permitted principal uses and structures and conditional uses, when such conditional uses have been duly authorized:

1. General office and sales rooms, medical and recreational facilities and watchman quarters associated with permitted uses and authorized conditional uses,

2. On-site signs related to the permitted uses and authorized conditional uses,

3. Accessory uses and structures subordinate to and customarily associated with a permitted use or authorized conditional use.

503.04 **CONDITIONAL USES AND STRUCTURES:** After the provisions of this Resolution relating to conditional uses have been fulfilled, the Board of Commissioners may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in the I, Industrial District:

1. Any use, not listed as a permitted use involving the storage, use or manufacture of hazardous materials, as identified by the United States Environmental Protection Agency, or the storage, use or manufacture of explosive materials,

2. Animal rendering and animal slaughtering facilities, including curing and hide tanning plants,

3. Production of asphalt products and concrete production facilities,

4. Tar, tar paper and tar product manufacturing facilities,

5. Storage, processing or salvaging of automobiles, trucks, agricultural equipment or other similar items and junk, including junk / salvage yards,

6. Livestock auction barns and associated livestock holding pens,

7. Bulk fuel and fertilizer storage facilities,

8. Sanitary landfills, waste incinerators, solid waste recycling centers and similar facilities,

9. Other industrial and commercial uses, determined by the Board of Commissioners to be comparable with the above stated conditional uses and consistent with the intent statement of this District.

503.05 PROHIBITED USES AND STRUCTURES: All other uses and structures, which are not specifically allowed in this District as permitted uses, accessory uses or conditional uses and those uses which are not consistent with the intent statement of this District or cannot comply with the performance standards set forth in Section 503.06 of this Resolution shall be prohibited.

503.06 PERFORMANCE STANDARDS: All uses allowed in this District shall at all times comply with all of the following performance standards:

1. Emission of noise, glare, heat or vibration detectable beyond the property line of the lot or parcel on which such use may be located shall not be of such quantity or concentration so as to cause injury, detriment, nuisance or annoyance to the public in general,

2. Emission of gases, odor, dust or smoke beyond the property line of the lot or parcel on which such uses may be located shall not be of such quantity or concentrations so as to cause injury, detriment, nuisance or annoyance to the public in general,

3. All waste material produced on the premises shall be stored in covered containers,

4. Any new on-site sewage disposal system shall comply with the requirements of Title 124 of the Nebraska Department of Environmental Quality.

503.07 MINIMUM LOT AREA: The following shall be the minimum lot area for uses in this District:

1. The minimum lot area for uses in this District which utilize on-site sewage disposal systems shall be three (3) acres.

2. The minimum lot area for uses in this District which utilize public or semi-public sewage disposal collection and treatment systems shall be one-fourth (1/4) acre.

503.08 MINIMUM LOT WIDTH AND FRONTAGE:

1. The minimum lot width for three (3) acre or larger lots shall be four hundred (400) feet and the minimum lot frontage shall be one hundred fifty (150) feet.

2. The minimum lot width and frontage for lots smaller than three (3) acres shall be seventy five (75) feet.

503.09 MINIMUM SETBACK REQUIREMENTS: The following shall be the minimum setback requirements for uses located within this District:

1. Front setback: Fifty eight (58) feet

2. Side setback: Ten (10) feet

3. Rear setback: Ten (10) feet

503.10 MAXIMUM HEIGHT: No limitation, except for buildings designed for human habitation, which shall be limited to thirty five (35) feet.

SECTION 504 WPO WELLHEAD PROTECTION OVERLAY DISTRICT

504.01 **INTENT:** The intent of this district is to overlay any of the primary zoning districts herein established and described in Sections 501 through 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 Hitchcock 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.

504.02 **PREREQUISITE REQUIREMENTS FOR APPLICATION OF THIS OVERLAY DISTRICT:** Prior to the application of this overlay district to any lands in Hitchcock County, the municipality or public water supply system, which maintains and operates water supply wells within or adjoining the County for which the wellhead protection areas include lands within Hitchcock County, shall make application to the Hitchcock County Planning Commission and Hitchcock County Board of Commissioners seeking application of this district to specified lands within the County. Prior to making such application and prior to approval of any application of this overlay district to any lands within the County, the municipality or other public water supply system making such application shall have first complied with all other requirements of the Wellhead Protection Area Act (Neb. Rev. Stat. 46-1501 through 45-1509 and the additional requirements listed as follows:

1. Delineation of the wellhead protection area(s) based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality.

2. Approval of such wellhead protection area(s) by the Nebraska Department of Environmental Quality. *(Refer to limitation in Section 504.03 herein.).*

3. Completion and mapping of an inventory of potential contamination sources within the wellhead protection area(s), including identification of abandoned wells.

4. Formulation, adoption and enforcement of land use control regulations for those portions of the wellhead area within the corporate limits and zoning jurisdiction area of the municipality which are appropriated to minimize the potential for contamination to the water supply of the municipality.

5. Formulation of emergency / contingency / long-range plans in the event of disruption of the supply of water from wells in the wellhead protection area(s).

6. Formulation and implementation of an on-going public involvement / education program to permit public comment in the establishment of a wellhead protection program and a plan to provide public information regarding the program and voluntary cooperation with the same.

7. Development of a program to install and maintain Wellhead Protection Area signs on roadways around the wellhead protection area(s).

8. The municipality or other public water supply system shall execute an interlocal agreement with Hitchcock County for the administration of the regulations within the land areas to be included in this Wellhead Protection Overlay District. In such agreement, the municipality or other public water supply system shall agree to accept the wellhead protection regulations set

forth in this overlay district, agree to pay to the County any fees negotiated between such entity and the County for the administration of these regulations in those land areas under the County's zoning jurisdiction, agree to pay all legal costs associated with any legal challenge to the requirements of this overlay district, and agree to hold the County harmless from any liability related to the requirements of this district, except for proper administration and enforcement of the requirements of this district by the County, together with other terms and conditions which are acceptable to the parties involved in any such interlocal agreement.

504.03 LIMITATION ON APPLICATION OF THIS OVERLAY DISTRICT: This district may only be applied to lands within wellhead protection areas based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality. In the event the boundaries of any such wellhead protection area(s) do not follow easily identifiable boundaries such as roads, rivers, creeks, section, quarter section or quarter-quarter section lines, the boundaries of such areas shall be expanded to, but not beyond, the nearest such lines to avoid confusion and added administrative costs associated with in-the-field determination of such boundaries.

504.04 AMENDMENT OF OFFICIAL COUNTY ZONING MAP: Whenever the requirements of Section 504.02 of this Resolution have been complied with, and the County Planning Commission and County Board of Commissioners have conducted public hearings regarding application of this overlay zoning district in accordance with Article 11 of this Resolution and the County Board of Commissioners has acted to approve the application of a wellhead protection overlay district, the boundaries of such wellhead protection area (overlay zoning district), defined in accordance with Section 503.03 above, shall be indicated on the Hitchcock County, Nebraska Official Zoning Map and such map shall be signed in accordance with the requirements of Section 1104 of this Resolution.

504.05 ALLOWABLE, PERMITTED AND ACCESSORY USES AND STRUCTURES: Any use or structure indicated as an allowable use, permitted use or accessory use in the primary zoning district(s) on which this wellhead protection overlay district is overlain, shall be allowed or permitted in accordance with the zoning permit requirements set forth in such primary zoning district(s), except when specifically prohibited in Section 504.07 of this Resolution and except when an otherwise allowable, permitted or accessory use is listed as a conditional use in Section 504.06 of this Resolution. All such allowable, permitted and accessory uses shall comply with the additional wellhead protection restrictions set forth in Section 504.08 of this Resolution.

504.06 CONDITIONAL USES: Any use listed as a conditional use in the primary zoning district(s) on which this wellhead protection overlay district is overlain, except the uses specifically prohibited in Section 504.07 of this Resolution, may be authorized as a conditional use in accordance with the requirements and procedures specified in Article 10 of this Resolution, provided the authorization of any conditional use

504.07 PROHIBITED USES AND STRUCTURES: Uses and structures, which are prohibited in the primary zoning district(s) on which this district is overlain, shall be prohibited and, regardless of whether prohibited in the primary zoning district(s), the following uses and structures shall be specifically prohibited on any land area on which this wellhead protection overlay district is applied:

1. Confined or intensive animal feeding uses and associated waste handling facility uses,

2. Landfills and refuse recycling centers.

504.08 WELLHEAD AREA PROTECTION REQUIREMENTS: The following restrictions shall apply to all uses within any land areas on which this Wellhead Protection Overlay District is applied:

1. Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or in association with another land use, shall comply with the rules and regulations of Titles 126 and 159, administered by the Nebraska Department of Environmental Quality or other responsible agency or department. Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or other land area, in excess of one thousand one hundred (1,100) gallons shall be prohibited, except when a conditional uses for a commercial or industrial uses is authorized. In any such authorization, a condition of approval shall be compliance with the rules and regulations of such Titles 126 and 129.

2. Fuel storage associated with any irrigation well engine shall be equipped with a containment area in accordance with the National Fire Protection Association Code 30 and with Title 126, administered by the Nebraska Department of Environmental Quality, in the event of a fuel release.

3. Fuel storage, except when associated with a commercial or industrial use authorized as a conditional use (Item 1 above) and except for any fuel storage associated with any irrigation well engines (Item 2 above) shall not be permitted within one thousand (1,000) feet of any well protected under this wellhead protection overlay district.

4. Storage of fertilizers, herbicides, pesticides and other materials, determined by the United States Environmental Protection Agency to be hazardous materials, for longer than thirty (30) consecutive days shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118, 121, 126, 128, 159 and 198, administered by the Nebraska Department of Environmental Quality and other agencies.

5. No septic tank, tile field or other on-site sewage disposal system, associated with any residential, commercial, industrial or other type of land use, shall be located within one thousand (1,000) feet of any well protected under this wellhead protection overlay district, provided that if a lot of record, as defined in Section 303.53 of this Resolution, exists as of the effective date of application of this wellhead protection overlay district, and the entirety of said lot of record lies within the land area on which this wellhead protection overlay district is applied, one septic tank and tile field or other on-site sewage disposal system may be established, provided such tank, tile field or other system complies with the requirements of Title 124 of the Nebraska Department of Environmental Quality.

6. Domestic, irrigation and any other water wells shall not be located closer than one thousand (1,000) feet of any well protected under this wellhead protection overlay district, provided that if a lot of record, as defined in Section 303.52 of this Resolution, exists as of the effective date of application of this wellhead protection overlay district, and the entirety of said lot of record lies within the land area on which this wellhead protection overlay district is applied, one (1) well may be established, provided such well shall be constructed in accordance with the rules and requirements of Title 178.

7. Any application of fertilizers, pesticides, or herbicides to the land or crops through an irrigation system (chemigation) shall comply with the rules and requirements of Title 195.

8. If any land area contained within a wellhead protection overlay zoning district is also part of a special protection area or ground water management area, established under the Groundwater Management Protection Act, all uses within such areas, including agricultural

uses, shall comply with the action plan and best management practices established for such areas by the local Natural Resource District(s).

504.09 **MINIMUM LOT AREA REQUIREMENTS:** The minimum lot area for any lot in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

504.10 **MINIMUM LOT AREA AND FRONTAGE REQUIREMENTS:** The minimum lot width and frontage for any lot in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain.

504.11 **MINIMUM BUILDING SETBACK REQUIREMENTS:** The minimum setback for all regulated structures and buildings in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain, provided that the minimum setback requirements from protected wells, as set forth in Section 504.08 of this Resolution, shall also be complied with.

504.12 **MAXIMUM HEIGHT:** The maximum height of any building or structure shall be as set forth in the primary zoning district on which this district is overlain.

SECTION 505 AHO AIRPORT HAZARD OVERLAY DISTRICT

505.01 Intent: This district is established as an overlay district for application over any primary zoning district within three (3) statute miles in all directions from the adjacent boundaries of the Trenton Municipal Airport which are within the planning and zoning jurisdiction of the Hitchcock County, Nebraska and is intended to prevent airport hazards and protect the public investment and utility of the airport.

505.02 Airport Hazard Area Description: The airport hazard area consists of Operation Zones, Approach Zones, Turning Zones and Transition Zones described as follows:

1. The Operation Zones are longitudinally centered on each existing or proposed runway as follows:

   A. Length: For existing and proposed paved runways, the operation zones begin and end two hundred (200) feet beyond the end of each runway. For existing and proposed turf runways, the operation zones begin and end at the runway ends.

   B. Width: For existing and proposed instrument runways, the operation zones are one thousand (1,000) feet wide. For all other existing and proposed runways, the operation zones are five hundred (500) feet.

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

2. The Approach Zones extend from the end of each operation zone and are centered along the extended runway centerlines. The Approach Zones dimensions are as follows:

   A. For Instrument Runways:

      1) 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 one thousand (1,000) 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 five thousand two hundred eighty (5,280) feet wide.

      2) Height Limit: The height limit of the approach zones begins at the elevation of the operation zones and rises one (1) foot vertically for fifty (50) horizontally (50:1) up to a maximum of one hundred fifty (150) feet above the nearest existing or proposed runway end.

   B. For Visual Runways:

      1) 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 five hundred (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 three thousand seven hundred (3,700) feet wide.

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

D. The Turning Zones extend three (3) miles from the existing or planned airport property lines, excluding the operation zones, approach zones or transition zones. The height limit of the turning zones is one hundred fifty (150) feet above the nearest existing or proposed runway end.

505.03 Height Restriction: No building, transmission line, pole, tower, chimney, wires or other structure or appurtenance of any kind or character shall hereafter be erected, constructed or established, nor shall any tree be allowed to grow above the heights described in Subsection 504.02 above.

505.04 Airport Zoning Map and Location: The boundaries, operation zones, approach zones, transition zones and turning zones of the airport are indicated on the airport zoning map, identified as Zoning Map Drawing No. ZN-TR-79 which is attached hereto and made a part of this Resolution by reference. A copy of the Airport Zoning Map shall at all times be on file in the office of the Hitchcock County Clerk.

505.05 Permit Requirements: Erection, construction or reconstruction of any building, transmission line, pole, tower, chimney, wires or any other structure or appurtenance or planting of any tree within the Hazard Area shall require issuance of a zoning permit and, if Neb. Rev. Stat §3.403 is applicable, a permit from the Nebraska Department of Aeronautics.

505.06 Non-Conforming Structures: Within the hazard area, no non-conforming building, transmission line, pole, tower, chimney, wires or other structure or appurtenance of any kind or character or tree shall hereafter be replaced, substantially reconstructed, altered, replanted or allowed to grow to a height above the heights permitted in this Section. If such structures or tree have been torn down, destroyed, have deteriorated or decayed to an extent of eighty (80) percent or more of their original condition, or abandoned for a period of twelve (12) consecutive months or more, such shall not be reconstructed, repaired, altered, replanted or allowed to grow except in compliance with the requirements of this Resolution.

505.07 Marking of Non-Conforming Structures: In granting any permit or variance under this Section, the Zoning Administrator or board of adjustment may, if he/she/ it deems such action advisable to effectuate the purposes of this Section and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its option and at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

505.08 Conflicts: In the event of any conflict between these airport hazard regulations and any other regulations established by this or other regulations, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent or restrictive limitation shall govern and prevail.

ARTICLE 6 SUPPLEMENTAL DISTRICT 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 depth requirements. Setbacks equal to or exceeding the minimum setback requirements of each district shall be provided with the following qualifications:

1. 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.

2. 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 **SETBACK EXCEPTIONS:** 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 604 **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 605 **DIVISION OF LOTS AND PARCELS:** 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:

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

2. 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.

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

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

SECTION 608 **HOME OCCUPATIONS AND HOME BASED BUSINESSES:** A home occupation, in compliance with the following restrictions, shall be permitted to accompany residential (agricultural or non-agricultural) use by the granting of a certificate of zoning compliance:

1. 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.

2. 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.

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

SECTION 609 **WASTE LAGOONS, RECOVERY AND RE-USE PITS, WELLS AND FUEL TANKS:** Waste lagoons, recovery and re-use pits, wells and associated fuel tanks and similar uses shall be located not less than sixty three (63) feet from the centerline of any county roadway or less than thirty (30) feet from the right-of-way line of any state or federal highway.

SECTION 610 **IRRIGATION WELLS, PIVOT IRRIGATION SYSTEMS AND ASSOCIATED FACILITIES:** Irrigation wells, center pivots pads, well houses, fuel tanks and other irrigation facilities and structures shall comply with the following conditions and restrictions:

1. The closest point of any irrigation well, well house, fuel tank or pivot pad shall be located at least ten (10) feet to any road right-of-way line, except:

   A. At the intersection of any public roadways, the closest points of any such irrigation wells and related well houses, fuel tanks and pivot pads shall not be located in the triangular area formed by the intersection of the roadway rights-of-way lines nearest the property in question and a line connecting points forty two and one-half (42.5) feet from the intersection of said right-of-way lines, or

   B. Within one hundred (100) feet of any bridge, culvert or other drainage structure under a public roadway, measured from the outermost points of such bridge, culvert of other drainage structure parallel to such roadway, the nearest points of any such irrigation wells and related well houses, fuel tanks and pivot pads shall not be located closer than thirty (30) feet from the right-of-way line of such roadway.

   C. All pivots which could pivot onto any public roadway shall be equipped with a constructed pivot stop located so that the wheels of any pivot come no closer than one (1) foot to the right-way line of any public roadway.

SECTION 611 **FLOOD HAZARD RESTRICTIONS:** Any building development in any area of Hitchcock County, Nebraska which is in a flood hazard area, as defined in Section 303.35 of this Resolution, shall be subject to the limitations, restrictions and conditions set forth in Resolutions #08-5 and #08.6 of the Hitchcock County, Nebraska Board of Commissioners.

SECTION 612 **WIND ENERGY INSTALLATIONS:** In all applicable zoning districts, a conditional use may be granted to allow wind energy systems, including such devices as wind charger, windmill or wind turbine, subject to the regulations set forth in this Section.

612.01 **SMALL WIND ENERGY SYSTEMS – INTENT OF REGULATIONS:** It is the intent 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.

612.02 **DEFINITIONS:** The following are defined for specific application of this Section.

1. **SMALL WIND ENERGY SYSTEM:** 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 one hundred (100) kW and which is intended to primarily reduce on-site consumption of utility supplied power.

2. **TOWER HEIGHT:** The height above grade of the tower, excluding the rotor blades.

612.03 **REQUIREMENTS:** Small wind energy systems shall be a permitted use within the applicable zoning districts, subject to the requirements set forth below:

4. **Tower Height:** For property sizes less than one (1) acre the maximum tower height shall be eighty (80) feet. For property sizes greater than one (1) acre the maximum tower height shall be unrestricted, except as imposed by Federal Aviation Administration regulations.

5. **Setbacks:** No small wind energy tower shall be located closer to a residential dwelling, church or school not on the same premises than a distance equal to the tower height. No part of any small wind energy system structure, including guy-wire anchors shall extend closer than ten (10) feet to any property line.

6. **Noise:** Small wind energy systems shall not exceed sixty (60) dBA, as measured at the closest inhabited residential dwelling not on the same premises as the small wind energy system. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.

7. **Compliance with Codes:** All applications for small wind energy systems shall include standard drawings of the wind turbine structure, including the tower base and footings, as well as an engineering analysis of the tower showing compliance with official building codes of the local governing body having jurisdiction and/or the State of Nebraska, certified by a professional engineer licensed and certified in the State of Nebraska. Such certification of code compliance may be supplied by the manufacturer.

8. **Compliance with Federal Aviation Administration (FAA) Regulations:** Small wind energy systems shall comply with all applicable FAA regulations, including any necessary approvals for installations near any airport.

9. **Utility Notification:** No permit for a small wind energy system shall be issued until written evidence has been provided that the electrical utility company serving the installation site has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

612.04 **COMMERCIAL / UTILITY GRADE WIND ENERGY SYSTEMS:** It is the intent of this regulation to promote the safe, effective and efficient use of commercial / utility grade wind energy systems with Hitchcock County, Nebraska.

612.05 **DEFINITIONS:** The following are defined for the specific application in this Section:

7. **AGGREGATE PROJECT:** A project or projects that is / are developed and operated in a coordinated fashion, but which have multiple entities separately owning one (1) or more of the individual wind energy conversion system (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.

8. **COMMERCIAL WIND ENERGY CONVERSION SYSTEM:** A wind energy conversion system of equal to or greater than one-hundred (100) kW in total name plate generating capacity.

9. **FALL ZONE:** The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of structural failure. This area is less than the total height of the tower.

10. **FEEDER LINE:** Any power line that carries electrical power from one (1) or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the project distribution system, 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.

11. **METEOROLOGICIAL TOWER:** A tower which is erected primarily to measure wind speed and direction plus other data relevant to siting 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.

12. **PUBLIC CONSERVATION LANDS:** Land owned in fee title by State or Federal Government agencies and managed specifically for conservation purposes, including but not limited to wildlife management areas, parks, 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 and private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

13. **ROTOR DIAMETER:** The diameter of the circle described by the moving rotor blades.

14. **SUBSTATION:** Any electrical facility to convert electricity produced by wind turbines to a voltage greater than thirty-five thousand volts (35kV) for interconnection with high voltage transmission lines.

15. **TOTAL SYSTEM HEIGHT:** The highest point, above ground level, reached by a rotor tip or any other part of the wind energy conversion system.

16. **TOWER:** The vertical structures that support the electrical, rotor blades or meteorological equipment.

17. **TOWER HEIGHT:** The total height of the wind energy conservation system exclusive of the rotor blades.

18. **TRANSMISSION LINE:** The electrical power lines that carry voltages of at least sixty-nine thousand volts (69kV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supply electrical energy to retail customers.

19. **WIND ENERGY CONSERVATION SYSTEM:** 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.

20. **WIND TURBINE:** 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.

612.05 **COMMERCIAL / UTILITY GRADE WIND ENERGY CONVERSION SYSTEMS - CONDITIONAL USE APPLICATION REQUIREMENTS:** Aggregate projects may jointly submit a single application and be reviewed under a single application fee and joint proceedings including notices, public hearings, reviews and appropriate approvals. All applications for commercial / utility grade wind energy conversion systems shall include all of the following information:

10. The name(s) , address(es) and telephone number(s) of the project applicant(s)

11. The name, address and telephone number of the project owner

12. The legal description and address of the project

13. A description of the project, including the 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.

14. Site layout including the location of property lines, wind turbines, electrical grid and all related accessory structures drawn to scale and indicating distances.

15. Certification by an Engineer competent in disciplines of wind energy conversion systems

16. Documentation of land ownership or legal control of the property included in the application

17. The latitude and longitude of individual wind turbines and an area or zone in close proximity indicating compliance with setback requirements.

18. A United States Geological Survey (USGS) topographical map or map with similar data, of the property and surrounding area, including any wind energy conversion system not owned by the applicant within ten (10) rotor distances of the proposed wind energy conversion system.

19. A scaled map indicating the locations of any wetlands, scenic and natural areas (including bluffs) within one thousand three hundred twenty feet (1,320') of the boundaries of the proposed wind energy conversion system.

20. An acoustical analysis that certifies that the noise limitations of the regulations will be complied with.

21. Written evidence that there will be no interference with any commercial and / or public communication towers or systems.

22. A written decommissioning plan meeting the requirements of this regulation.

612.06 **PROJECT STANDARDS, REQUIREMENTS AND LIMITATIONS:** The following standards, requirements and limitations shall apply to all commercial / utility grade wind energy conversion systems:

1. **SETBACKS:** All towers shall comply to the following setback requirements:

NEIGHBORING USES	WECS WIND TURBINE	METEROLOGICAL TOWER
	Commercial / Utility WECS	
Property Lines	1/2 rotor diameter	1.1 times total height
Neighboring Dwelling	1,000 feet	1.1 times total height
Road Rights-of-Way*	1/2 rotor diameter	1.1 times total height
Other Rights-of-Way	1/2 rotor diameter	1.1 times total height
Public Conservation Lands	1.1 times rotor blade	600 feet length plus 100 feet
Wetlands, USFW types III, IV and V	600 feet	600 feet
Other structures not on applicant's site	1.1 times total height	1.1 times total height
River or other Bluffs over 15 feet	1,320 feet	NA

* The setback shall be measured from any future rights-of-way, if planned change or expanded right-of-way is known.

2. **SAFETY AND DESIGN STANDARDS:** All towers shall comply with the following safety and design standards:

   A. Clearance of rotor blades or airfoils must maintain a minimum of twelve (12) feet of clearance between the lowest point and the ground.

   B. All commercial / utility grade WECS shall have a sign or signs posted on each tower, transformer and substation warning of high voltage. Other signs shall be posted on the premises with emergency contact information.

   C. All wind turbines which are part of a commercial / utility WECS shall be installed with a tubular, monopole type tower.

   D. All wind turbines and towers that are part of a commercial / utility WECS shall be white, grey or another non-obtrusive color. Rotor blades or airfoils may be black to facilitate deicing. All finishes shall be matte or non-reflective.

   E. Lighting, including intensity and frequency of strobe, shall adhere to, but not exceed requirements established by the FAA permits and regulations. Red lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds.

   F. All communications and feeder lines associated with a commercial / utility WECS shall be buried. Where obstacles to buried lines create a need to go above ground, such lines shall be placed above ground only to avoid the obstacle. All distribution and / or transmission lines outside of the project distribution system may be above ground.

G. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as oil and lubricants, shall be removed from the project site and disposed of in accordance with all applicable local, state and federal regulations.

H. A WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Hitchcock County Board of Commissioners outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four (4) feet below ground level within one hundred eighty (180) days of discontinuation of use, provided that the County Board of Commissioners may grant an extension of time if proof of weather related delays is presented and accepted.

I. Each commercial / utility WECS shall prepare a decommissioning plan outlining the anticipated means and costs of removing the WECS at the end of their serviceable life or upon being a discontinued use. The cost estimates shall be made by a professional engineer or contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning such uses. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.

J. No commercial / utility WECS shall exceed fifty (50) dBA at the nearest structure or use occupied by human beings.

K. The WECS shall minimize or mitigate interference with electromagnetic communications such as radio, telephone, microwaves or television signals caused by an WECS. The project owner shall notify all communication tower owners / operators within five (5) miles of the proposed WECS location upon application for a conditional use.

L. The applicant shall, in coordination with representatives from Hitchcock County and other appropriate jurisdictions, conduct a pre-construction survey of road and bridge conditions which shall include photographs and written agreement documenting the condition of the public roads, to determine all county, township or municipal roads or streets to be used for the purposes of transporting WECS, substation parts, concrete and /or equipment for construction, operation and maintenance of the WECS and to determine all applicable weight and size permits from the impacted jurisdictions prior to construction. The owner of the WECS shall be responsible for restoring the roads, streets and bridges to pre-construction conditions.

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

N. The applicant shall submit evidence that any applicable permit application has been filed with the Federal Aviation Administration and the Federal Communications Commission where applicable.

SECTION 613 **NEW RAILROAD CROSSING SITE DISTANCE RESTRICTIONS:** For any new public highway - rail grade crossings the minimum site distances shall be determined according to the following Table. The site triangle must be clear of all permanent obstructions such as buildings, structures or topography.

Required Design Site Distance for Combinations of Highway and Train Vehicle Speeds

Train Speed	Highway Speed (mph)							
	0	10	20	30	40	50	60	70
	Distance Along Railroad From Crossing "A" (measured in feet)							
10	162	126	94	94	99	107	118	129
20	323	252	188	188	197	214	235	258
30	484	378	281	281	295	321	352	387
40	645	504	376	376	394	428	470	516
50	807	630	470	470	492	534	586	644
60	967	756	562	562	590	642	704	774
70	1129	882	656	656	684	750	822	904
80	1290	1008	752	752	788	856	940	1032
90	1450	1134	844	844	884	964	1056	1160
	Distance Along Highway From Crossing B (measured in feet)							
	20	65	125	215	330	470	640	840

ARTICLE 7 NON-CONFORMING USES

SECTION 701 **INTENT:** Within the zoning districts established by this Resolution or future amendments to such districts, there exist 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 discontinued, but not to encourage their survival. 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 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 in good faith 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:

1. Such residential use shall comply with Section 705 of this Resolution, except that any parcel containing two (2) or more residential dwellings which is part of farm where such residential dwellings existed prior to May 16, 2000 may be divided, allowing for separate ownership of each existing residential dwelling without compliance with the minimum lot area and lot width and frontage requirements of the zoning district in which such residential dwellings are located, provided that compliance with the front, side and rear building setback requirements of the applicable zoning district shall be required as much as possible and if such setback requirements are not complied with, the setbacks established by the existing residential dwellings shall be allowed but shall not be reduced.

2. This provision shall not be construed to include more than one use on a lot and shall be applicable so land as such use remains otherwise lawful.

3. Enlargement or reconstruction of a lawfully established residential use rendered non-conforming by adoption of this Resolution may occur, provided that if such residential use is non-conforming by reason of non-compliance with any setback requirement, any enlargement shall not further reduce any non-conforming setback and further provided that reconstruction of any non-conforming residential use shall occur on the existing foundation or any other location which reduces or eliminates any non-conformity.

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:

1. 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.

2. 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 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.

3. Where a lawfully established lot, tract or parcel, less than twenty (20) 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 set forth in this Resolution for any confined or intensive animal feeding use or associated waste handling facility, a residential use may be established on said lot, tract or parcel.

4. Where a lawfully established lot, tract or parcel, less than twenty (20) acres 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 set forth in this Resolution for any confined or intensive animal feeding use or associated waste handling facility, a residential use may be established on said lot, tract or parcel, provided such residential use is located on that portion of said lot, tract or parcel which is beyond the minimum separation distances specified in this Resolution from any such confined or intensive animal feeding use or associated waste handling facility.

SECTION 706 **NON-CONFORMING USE 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.

1. 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.

2. 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.

3. 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.

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

1. With the exceptions set forth in Section 704 of this Resolution and Paragraph 7 below, no existing building or structure devoted to a use not permitted in the zoning district in which it is located shall be enlarged, extended, constructed, moved or structurally altered, except in changing the use to a use permitted in the zoning district as an allowable use, a permitted use, an accessory use or a conditional use.

2. 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.

3. 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 Commissioners, 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 Commissioners may set conditions for such proposed use to assure that such use will remain appropriate for location in the zoning district.

4. Any building or structure or building or structure and land in combination in or on which a non-conforming use is superseded by a permitted use shall thereafter conform to the requirements of this Resolution and the non-conforming use shall not thereafter be resumed.

5. Lawfully existing confined or intensive animal feeding uses and associated waste handling facility uses rendered non-conforming by these regulations may be expanded, but only in accordance with all restrictions set forth in Sections 501.03, Subsection 8 of this Resolution.

6. 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 confined or intensive animal feeding use and associated waste handling facility use, 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.

7. Where non-conforming use status applies to a building(s) or structure(s), such building(s) or structure(s) and land in combination, if all or part of any such building(s) or structure(s) are involuntarily removed or destroyed through fire, tornado, earthquake or other event, such building(s) or structure(s) and the may be reconstructed and the use which existed in such building(s) or structure(s) at the time of such involuntary removal or destruction may be re-established, even though such building(s) or structure(s) or the use thereof is non-conforming with the requirements of this Resolution, provided that such re-establishment shall not involve any expansion of such building(s) or structure(s) or expansion of change of use, except to a use that would be in compliance with the requirements of this Resolution. Zoning permits shall be required for reconstruction of any non-farm building, as defined in Section 303.64 of this Resolution.

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. Such repairs and maintenance shall not require any zoning permit.

SECTION 709 **USES UNDER CONDITIONAL USE AUTHORIZATION:** A use authorized as a conditional use under the terms of this Resolution shall not be deemed a non-conforming use, except where such use is not in compliance with any conditions of use established in the granting of such conditional use by the Board of Commissioners, provided however, that a change of one non-conforming use to another non-conforming use, authorized by conditional use, shall remain a non-conforming use.

ARTICLE 8 ADMINISTRATION AND ENFORCEMENT

SECTION 801 **ORGANIZATION:** The administration and enforcement of this Resolution is hereby vested in the Hitchcock County Planning Commission, the Hitchcock County Board of Adjustment, the Hitchcock County Board of Commissioners, the Zoning Administrator designated by the Board of Commissioners, the Hitchcock County Attorney and such other persons as may be designated by the Board of Commissioners.

SECTION 802 **AUTHORITIES:**

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

1. Hear and recommend action to the Board of Commissioners regarding all applications for amendments to the text of this Resolution and / or changes (rezoning) to the Hitchcock County Official Zoning Map.

2. Hear and recommend action to the Board of Commissioners regarding all applications for conditional uses, as set forth in this Resolution.

3. Prescribe uniform rules of procedure pertaining to applications, public hearings and issuance of permits.

4. Periodically review the effectiveness of this Resolution and initiate amendments or make recommendations in conjunction therewith.

5. Invoke any authorized remedy for the enforcement of this Resolution.

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

1. 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.

2. Hear and authorize specific appeals at variance with the requirements of this Resolution that would not be contrary to the public interest, where owning to special conditions demonstrated and after written findings of legitimate hardship, as defined and specified in Section 907, Paragraph 3, Subparagraph A 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.

3. 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.

4. Prescribe uniform rules of procedure pertaining to investigations, findings of fact, applications, appeals and public hearings.

5. Invoke any legal remedy for the enforcement of this Resolution including full power to order discontinuance of any use and stays of work (stop work orders) on any premises in violation of the requirements of this Resolution.

802.03 Board of Commissioners:

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

1. 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.

2. Consider and adopt amendments to the text of this Resolution and / or changes (rezonings) to the Hitchcock County Official Zoning Map, after review and recommendation by the Planning Commission.

3. Consider and adopt a schedule of permit and application fees for administration of this Resolution after , public hearing, review and recommendation by the Planning Commission and public hearing by the County Board of Commissioners.

4. 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 Commissioners, the Zoning Administrator, the County Attorney and any other persons designated by the Board of Commissioners to carry out the responsibilities assigned to then by adoption of this Resolution.

802.04 Zoning Administrator:

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

1. 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 Commissioners 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.

2. 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.

3. 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 Commissioners may require.

4. 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.

5. 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.

6. Review all zoning permit, conditional use, variance and other application forms to insure all applications are complete and all information required by such application form is complete prior to processing of any application and/or advertising notice of public hearing.

SECTION 803 **RESPONSIBILITIES:** The following shall be the responsibilities of the various entities involved in the proper administration and enforcement of this Resolution:

1. 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.

2. It is further the intent of this Resolution that the duties of the Board of Commissioners relative to this Resolution shall be limited to those specified in Section 802.03 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.

3. 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.

4. 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 Commissioners. Adoption of this provision by the Hitchcock County Board of Commissioners 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, 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 without a zoning permit / certificate of zoning compliance first being issued by the Zoning Administrator, provided:

1. Non-residential farm buildings, as defined in Section 303.34 of this Resolution, shall be subject to the requirements of this Resolution, but shall be exempt from the zoning permit requirements of this Resolution;

2. Any farm building containing a use other than an agricultural use, as defined in Section 303.04 of this Resolution, shall be considered a non-farm building and shall be subject to the zoning permit requirements of this Resolution;

3. Any farm building located on a lot, tract or parcel of land, which does not qualify as a farm, as defined in Section 303.33 of this Resolution, shall be considered a non-farm building and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements, and;

4. Any waste handling facility, as defined in Section 303.94 of this Resolution, which may be associated with a farm building shall be considered a non-farm structure use and shall be subject to all applicable requirements of this Resolution, including requiring a zoning permit.

5. Public entities and political subdivisions shall not be required to obtain zoning permits for the construction, repair, and/or erection of road signs, bridges, culverts and any other structures upon and within public rights-of-way or easements of record.

6. No zoning permit or 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 Adjustment in the form of an administrative appeal, or receive written authorization from the Board of Adjustment in the form of an approved variance or a written authorization from the Board of Commissioners in the form of an approved conditional use, as provided for in this Resolution.

SECTION 805 **APPLICATION FOR A ZONING PERMIT:** The following requirements shall apply to all requests for a zoning permit:

1. All applications for a zoning permit shall be made on forms prescribed for such application by the Zoning Administrator.. Such forms may be modified from time to time by the Zoning Administrator without amendment of this Resolution. Such forms shall have incorporated 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.

2. 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 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.

3. 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.

4. 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 Hitchcock County Assessor.

5. 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 **LIMITATIONS ON ISSUANCE OF ZONING PERMITS:** The following limitations shall apply to the issuance of all applicable zoning permits:

1. Regardless of any other 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 Commissioners 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.

2. Pursuant to Section 39.1311 Neb. Rev. Stat., issuance of any zoning permit for development of structures and land uses in any proposed state highway corridor which has been officially designated by the Nebraska Department of Roads, shall be subject to review of said Department of Roads in accordance with said Section 39.1311 Neb. Rev. Stat. Upon receipt of any building / zoning permit application for development of structures or land uses in any such designated corridor, the Zoning Administrator shall forward notice of such application building / zoning permit to the Department of Roads. The Department of Roads shall have sixty (60) days from the date of mailing of said notice to said Department to review any such application, unless the Department waives the time period in writing to the Zoning Administrator. Within the sixty (60) day period, the Department may, if it wishes, file with the Zoning Administrator a statement of intent to negotiate with the owner of the land on which any such building / zoning permit application. Upon filing of such statement of intent, the Department shall have a six (6) month period for negotiations with such owner. At the end of such six (6) month period, if the owner has not withdrawn the application for a building / zoning permit, the Zoning Administrator shall issue said permit, if said permit complies in all other respects with the Resolution.

SECTION 807 **EXPIRATION OF ZONING PERMITS:** If the work described in any approved zoning permit has not been initiated within one (1) year 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.

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):

1. 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

2. 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 Commissioners in the form of an approved conditional use, as provided for in this Resolution.

3. 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.

4. 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.

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 if 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 Hitchcock County Board of Adjustment. The Board of Adjustment shall be appointed by the Board of Commissioners 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 in unable to attend for any reason. One (1) member of the Board of Adjustment shall be appointed from the membership of the Hitchcock County Planning Commission by the Board of Commissioners and the loss of 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 Commissioners. No member of the Board of Commissioners 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 Commissioners upon written charges and after public hearing to consider and decide on such charges. Vacancies shall be filled by appointment for the unexpired terms of 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/or Zoning Administrator 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:

1. 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.

2. 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.

3. 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:

   A. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of 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:

      1) The strict application of the regulations would produce undue hardship;

      2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

      3) 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;

      4) 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.

   B. 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.

   C. 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.

D. 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.

E. 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, Subsection 3, Paragraph A of this Resolution and that the variance is the minimum variance 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.

F. 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.

G. 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 HEARING REQUIRED:** 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 or 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 909 **BOARD HAS POWERS OF ADMINISTRATIVE OFFICIAL ON APPEAL:** 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 OF BOARD OF ADJUSTMENT DECISIONS:** 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 present to the district court for the County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen (15) days after the filing of the decision in the office of the Board of Adjustment. Upon the filing of such a petition a summons shall be issued and be served upon the Board of Adjustment together with a copy of the petition, and return of service shall be made within four (4) days after the issuance of the summons. Within ten (10) days after the return day of the summons, the County Board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the Board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the State regulating appeals in actions at law.

ARTICLE 10 CONDITIONAL USES

SECTION 1001 **GENERAL POWERS:** The Hitchcock County Board of Commissioners 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 Commissioners and the Board of Commissioners has formally adopted and shall comply with the following standards and procedures:

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 Commissioners. 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: *(For conditional use applications for wind energy towers and systems, refer to application requirements listed in Section 613 of this Resolution.)*

1. 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;

2. The size and locations of all existing and proposed buildings and structures;

3. A detailed description of the use proposed and the activities involved in such use;

4. The location(s) of access to public roadway(s);

5. The type and locations of easements effecting the property;

6. A description of the provisions made for adequate water supply, sewage disposal, public utilities and erosion control;

7. The extent and location of parking, loading and refuse disposal and collection facilities;

8. The locations of residential dwellings and other non-agricultural land uses within two (2) miles of the property in question;

9. An indication of surface water drainage onto, through and off of the subject property which would occur after development of the proposed conditional use;

10. For industrial uses, confined or intensive animal feeding uses, and waste handling facilities, 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 confined and intensive animal feeding uses and waste handling facilities, refer to requirements in Section 501.05 of the this Resolution.)*

11. Any areas on the property subject to flooding or considered to be a wetland.

SECTION 1003 **REFERRAL TO THE PLANNING COMMISSION REQUIRED:** Prior to consideration of a conditional use application, the Board of Commissioners shall refer a conditional use application to the Hitchcock County Planning Commission for review, research and recommendation.

SECTION 1004 **PLANNING COMMISSION PUBLIC HEARING NOTICE:** Prior to consideration of a conditional use application by the Planning Commission, the Zoning Administrator 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 affected 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 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 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 Commissioners for 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 COMMISSIONERS PUBLIC HEARING NOTICE:** Prior to consideration of a conditional use application by the Board of Commissioners, the Zoning Administrator or County Clerk 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 affected 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 Commissioners, 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 Commissioners 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) that such use does not comply with one (1) or more of the requirements of this Resolution 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 AND AUTHORIZATION OF CONDITIONAL USES:** In reviewing any conditional use application, the Planning Commission and Board of Commissioners 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 Commissioners, the Planning Commission and/or Board of Commissioners 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 Commissioners 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:

1. 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;

2. 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;

3. Refuse disposal or manure collection and disposal facilities and operations and other service facilities are appropriate relative to location, capacity and safety;

4. Water supply, sewage disposal facilities or manure collection, storage, treatment and land application methods are appropriate relative to size, capacity, topography, soil conditions, water table, flood hazard, location, surface water drainage and, where applicable, are located at least an acceptable distance from the ordinary high water mark of any river, stream or water course to avoid any potential surface water contamination;

5. The number, location, size and use of buildings and structures proposed is appropriate relative to the size of the site and protection of adjoining properties and scenic views.

6. Front, side and rear setbacks meet or exceed the minimum setback requirements of the zoning district in which the conditional use is located.

7. Provisions to avoid development within any area subject to flooding and / or to avoid modification of any wetlands.

8. 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.

9. For confined and intensive animal feeding uses and waste handling facilities, the use proposed shall comply with each requirement of Section 501.06, Subsection 1 of this Resolution.

ARTICLE 11 AMENDMENTS

SECTION 1101 **AUTHORITY TO AMEND:** The County Board of Commissioners 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 hearing have been held by both the Planning Commission and Board of Commissioners. A proposal for modification or repeal may be initiated by the Planning Commission, the Board of Commissioners or upon application of any owner of property under the jurisdiction of this Resolution. A filing fee, as established by the County Board of Commissioners shall be paid for each application to modify this Resolution prior to action on such application by the Planning Commission and Board of Commissioners, provided that such fee shall be waived where the proposed modifications is initiated by the Planning Commission or the Board of Commissioners.

SECTION 1102 **PUBLIC NOTICE AND PUBLIC HEARINGS REQUIRED:** 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 Commissioners shall each be provided by the Zoning Administrator or County Clerk as follows:

1. 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 affected 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.

2. 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.

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

   A. A proposed modification of this Resolution where such modification will apply throughout the County or throughout an existing zoning district;

   B. 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;

   C. 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 affected by such modification and notification of local units of government, as set forth in Section 1102, Subsection 2 immediately above, shall be required.

SECTION 1103 AMENDMENT CONSIDERATION AND ADOPTION OF AMENDMENTS:

1. 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 Commissioners.

2. Board of Commissioners: 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 Commissioners, except for the provisions set forth in Section 1105 of this Resolution.

SECTION 1104 AMENDING HITCHCOCK COUNTY OFFICIAL ZONING MAP: Should any amendment adopted by resolution of the Board of Commissioners serve to modify the location of zoning district boundaries as set forth on the Hitchcock County Official Zoning Map, the Board of Commissioners 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 Commissioners. 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 Commissioners and attested to by the County Clerk.

SECTION 1105 PROTESTS REGARDING AMENDMENTS: 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 Commissioners.

ARTICLE 12 COMPLAINTS, VIOLATIONS, REMEDIES AND 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 OF THIS RESOLUTION:** 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 constitute a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating this Resolution or fails to comply with any of its requirements or conditions and safeguards established in connection with approvals of variances and conditional uses shall be guilty of Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the County Board or other proper local authority of the County, as well as any owner(s) of property within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, business or use in or about the premises. Any taxpayer or taxpayers in the County may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections of this Resolution. Nothing contained herein shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation of this Resolution.

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 Commissioners 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 Commissioners without amendment of this Resolution.

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.

ARTICLE 14 LEGAL STATUS PROVISIONS

SECTION 1401 **SEVERABILITY:** Should any Article, Section or provision of this Resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect 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.