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## **ARTICLE 1 - GENERAL PROVISIONS**

### **SECTION 101 - TITLE**

These zoning regulations shall be known and cited as the Zoning Regulation of Perkins County, Nebraska.

### **SECTION 102 - JURISDICTION**

The provisions of this Resolution shall apply within the boundaries of Perkins County, Nebraska, excluding the land included, now or in the future, in the corporate limits of any incorporated municipality in the County and also excluding any land which may be contained in the territorial zoning jurisdiction area around any incorporated municipality in the County, as defined on the Official Zoning Maps of any such incorporated municipalities.

### **SECTION 103 - PURPOSE**

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

- 1) Developing both urban and non-urban areas;
- 2) Lessening congestion in the streets or roads;
- 3) Reducing the waste of excessive amounts of roads;
- 4) Securing safety from fire and other dangers;
- 5) Lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters;
- 6) Providing adequate light and air;
- 7) Preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;
- 8) 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;
- 9) Protecting the tax base;
- 10) Protecting property against blight and depreciation;
- 11) Securing economy in governmental expenditures;
- 12) Fostering the state's agriculture, recreation, and other industries;
- 13) Encouraging the most appropriate use of land in the County, and;
- 14) Preserving, protecting, and enhancing historic buildings, places and districts.

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

### **SECTION 201 - GENERAL**

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

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

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved or structurally altered except in conformity with all zoning regulations herein specified for the zoning district in which it is located. Further, no building or structure shall hereafter be erected or altered to exceed the height or bulk, to accommodate or house a greater number of persons, to occupy a greater percentage of lot area, to have a narrower or smaller front, side or rear setback than is herein permitted, or be in any other manner contrary to the provisions of this Resolution, except that non-residential agricultural buildings, less than 132 feet in height, shall be exempt from the requirements of this Resolution, but further provided that the uses within such farm buildings, if not considered agricultural uses under the definitions and terms of this Resolution, shall not be exempt from the requirements of this Resolution. Waste handling facility uses, which may be associated with any agricultural building, shall not be exempt from the requirements of this Resolution.

***AMENDED SECTION 202 5-2-11***

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

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

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

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

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

This Resolution is a zoning regulation only and regulates only land usage. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical or other code regulating the design and construction of any building or structure within the jurisdiction of this Resolution. Any permits or certificates issued in accordance with the requirements of this Resolution are solely for purpose of assuring compliance with the land usage regulations set forth in this Resolution for the purposes set forth in Section 103 of this Resolution. Perkins County assumes no liability and shall not in any manner be held liable for any design or construction problem or defect in any building or structure for which a zoning permit, certificate of compliance or other form of land usage approval may have been issued nor shall Perkins County assume any liability for any 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 context of this Resolution:

**301.01 TENSE:** Words used in the present tense include the future tense.

**301.02 NUMBER:** Words used in the singular include the plural, and words used in the plural include the singular.

**301.03 SHALL AND MAY:** The word “shall” is mandatory, the word “may” is permissive.

**301.04 GENDER:** The masculine shall include the feminine and the neuter.

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

### SECTION 302 - GENERAL TERMINOLOGY

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

### SECTION 303 - DEFINITIONS

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

**303.01 ABUT:** Any situation where a lot or parcel borders directly on another lot or parcel or is separated from an adjoining lot or parcel by a public road right-of-way.

**303.01A ACCESSORY DWELLING UNITS:** A dwelling unit that is constructed within the interior of another structure and is an accessory structure to the primary dwelling unit on the property.

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

**303.03 AEROBIC DIGESTION PROCESS:** Any process for digestion of waste in which the waste is digested using free oxygen.

**303.03A AGRICULTURAL BUILDING:** shall mean a structure designed and constructed, less than 132 feet in height, to store farm implements or hay, grain, poultry, livestock, fruit, and other agricultural products, provided that when the use or consequences of the agricultural use conducted in such building exit from the building onto, across or under the land, whether underneath the building or adjoining thereto or onto or into some other structure such use, if not an agricultural use, shall not be considered part of such building and shall be subject to the requirements and limitations of this Resolution. Controlled atmosphere and cold storage are not agricultural buildings. An agricultural building shall not be used for human habitation, processing, treating, packaging agricultural products, or as a place used by the public. Waste handling facilities as defined in this Resolution, which are associated with a use in an agricultural building, shall be considered a non-agricultural use and shall be subject to the requirements and limitations of this Resolution.  
*ADDED IN 303.03A AGRICULTURAL BUILDING 5-2-11*

**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, truck

farming, forestry or orchards and the non-commercial storage and processing of agricultural products produced on the premises, provided that such use shall not include any confined animal feeding operation, as defined in Section 303.25 of this Resolution, containing more than three hundred (300) animal units at any one time or intensive animal feeding operation, as defined in Section 303.43 of this Resolution, containing more than three hundred (300) animal units at any one time and further provided that such use shall not include any waste handling facilities, as defined in Section 303.87 of this Resolution. A confined or intensive animal feeding use shall not be considered an agricultural use, but shall, in accordance with Section 54-2402 Neb. Rev. Stat. be considered a commercial use and a regulated livestock production use separated and regulated under such statute from other types of livestock production uses which are not regulated by reason of the number of animal units involved in such use. The seasonal confinement of an unrestricted number of ruminant animals for birthing, weaning or backgrounding purposes for less than two hundred seventy five (275) days in any calendar year in lots or pens normally used for crop production or vegetation shall not be considered a confined or intensive animal feeding use, but shall be considered an agricultural use.

**303.04A AIRCRAFT** shall mean any device capable of flight. *ADDED IN 303.04A AIRCRAFT 5-2-11*

**303.04B AIRPORT, PRIVATE** shall mean a privately owned parcel of land or area used for the taking off and landing of aircraft which may or may not be registered with the Nebraska Department of Aeronautics and/or Federal Aviation Administration. *ADDED IN 303.04B AIRPORT, PRIVATE 5-2-11*

**303.04 C AIRPORT, PUBLIC** shall mean any publicly or privately owned airport licensed by the State of Nebraska operated as a public airport or area which is used or is intended to be used for the general flying public for taking off and landing of aircraft, including helicopters, and any appurtenant areas which are used or are intended to be used for airport buildings or facilities, including open spaces, taxiways, and tie-down areas. Such public airports, including the Grant Municipal Airport, have in place an airport approach overlay district to prevent interference of objects, structures and uses with the safe and efficient operation of the airport. *ADDED IN 303.04C AIRPORT PUBLIC 5-2-11*

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

**303.06 ANIMAL HUSBANDRY:** The care and raising of animals.

**303.07 ANIMAL UNIT:** The relationship of various animals with regard to manure production based upon one thousand (1,000) pounds of animal(s) regardless of type. For purposes of this Resolution, the following this relationship shall be as follows:

<u>Type of Animal</u>	<u>Animal Unit(s)</u>
Beef Animal (500 - 1,200 pounds).....	1.00
Beef or Dairy Calf (150 - 500 pounds).....	0.50
Young Dairy Stock (500 - 1,000 pounds).....	0.75
Replacement Heifers.....	1.00
Dairy Cow.....	1.40
Horse.....	2.00
Swine (55 pounds or heavier).....	0.40
Swine (less than 55 pounds).....	0.05
Swine (sow and litter).....	0.50
Sow or Boar.....	0.40
Sheep.....	0.10
Chicken.....	0.01
Turkey.....	0.02
Ostrich.....	0.40

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

- 303.09 ANIMAL WASTE WATER:** 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 303.87 of this Resolution, or any spillage or overflow from animal watering systems, 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.
- 303.10 BASEMENT:** A building space wholly or partially underground and have more than one-half (1/2) of its height, measured from its floor to the top of its average wall height, below the average elevation of the finished grade of the soil around said space.
- 303.11 BED AND BREAKFAST, BOARDING OR LODGING HOUSE:** a building, other than a hotel or motel, where for compensation and by arrangement for definite periods, meals or lodging are provided for customers.
- 303.12 BUILDABLE AREA:** The portion of a lot or tract of land remaining after the front, side and rear setbacks, as herein defined, have been provided.
- 303.13 BUILDING:** A structure having a roof and/or walls and 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.
- 303.14 BUILDING HEIGHT:** The vertical distance, measured from the average ground level at the front of a building or structure to the highest point of the building roof, excluding chimneys, antennas or other similar appurtenances.
- 303.15 CAMPGROUND:** Any premises where two (2) or more camping units are parked or placed for camping purposes or any premises used to set apart for supplying camping space for two (2) or more camping units for camping purposes to the public. Campground shall include any buildings, structures, vehicles or enclosures used or intended to be used wholly or in part for the accommodation of campers.
- 303.16 CAMPING UNIT:** Any vehicle, trailer, tent or other movable shelter used for camping purposes.
- 303.17 CERTIFICATE OF ZONING COMPLIANCE / CERTIFICATE OF OCCUPANCY:** A 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 and that the use and premises complies in all respects with the requirements of this Resolution and may be occupied for the use declared.
- 303.18 COMMERCIAL USE:** A use, other than an agricultural use, where products are grown or purchased for sale or resale for profit or where services are sold for profit, including confined or intensive animal feeding uses.
- 303.19 COMPATIBLE USE:** A land use of one type that is suitable for direct association, location near or abutting a land 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 activities, and because neither use will diminish the value and enjoyment of the other.
- 303.20 COMPOSTING (AEROBIC):** The natural process of decomposing of vegetative refuse, manure and other naturally degradable materials using free oxygen.
- 303.21 COMPOSTING (ANAEROBIC):** The natural process of decomposing of vegetative refuse, manure and other naturally degradable materials in large piles where free oxygen is not available.



**303.22 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.

**303.23 CONDITIONAL USE:** A land use that would not be generally compatible with other permitted land uses in a zoning district, but which if controlled as to number, area, location, relation to surrounding uses or other attribute, could become compatible with such permitted land uses and would promote the public health, safety, convenience and general welfare.

**303.24 CONDITIONAL USE PERMIT:** A zoning permit issued by the Zoning Administrator upon approval of a conditional use to these regulations to permit a conditional use 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.

**303.25 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. Any waste handling facilities, as defined in Section 303.87 of this Resolution, associated with such confined animal feeding use shall be considered a separate use and shall be regulated with regard to type and location in accordance with Section 501.05 of this resolution. 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 Zoning Administrator, using forms provided by the Zoning Administrator, within one hundred eighty (180) days of the effective date of this Resolution. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the number of animal units by the Zoning Administrator or other duly appointed official at the time of such dispute. For purposes of this Resolution, confined animal feeding uses shall be classified and regulated with regard the number of animals confined and the potential for ground or surface water contamination or other environmental degradation, the potential for odor production and other negative impacts on or other incompatibilities with abutting and neighboring properties as follows:

Class I- A confined animal feeding use with a one time capacity of more than three hundred (300) animal units, but less than three thousand (3,001) animal units.

Class II - A confined animal feeding use with a one time capacity of three thousand and one (3,001) to ten thousand (10,000) animal units.

Class III - A confined animal feeding use with a one time capacity of ten thousand and one (10,001) to twenty thousand (20,000) animal units.

Class IV - A confined animal feeding use with a one time capacity of twenty thousand and one (20,001) or more animal units.

**303.25B DEVELOPED AREA:** An area of land, consisting of one or more parcels or lots, which front(s) on one (1) side of a road / street between two (2) intersecting streets / roads where such intersecting streets /roads are less than one-thousand (1,000) feet apart or in the absence of any intersecting street, a distance of one hundred fifty (150) feet on either or both sides of the boundaries of the lot on which building development is proposed, whereon at least fifty one percent (51%) of such parcels or lots on either or both sides are developed with buildings. *ADDED IN 303.25B-DEVELOPED AREA 1-6-03*

**303.26 DWELLING:** Any building or portion thereof, which is designed and/or used for residential purposes.

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

- 303.28 DWELLING, TWO-FAMILY (DUPLEX):** A dwelling unit having independent accommodations for or occupied by two 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 parcel of land for a specific purpose or purposes by the public, another person, corporation or other legal entity.
- 303.31 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.
- 303.32 FARM:** A crop production, livestock production or other similar enterprise containing twenty (20) acres or more of land from which one thousand dollars (\$1,000) or more of products are produced each year, excluding confined and intensive animal feeding operations.

*REMOVED 303.33 FARM BUILDING 5-2-11*

**303.34 FLOOD PLAIN:** Those lands within the zoning jurisdiction of Perkins 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 or from flood hazard maps which may be produced and provided by the Federal Flood Insurance Administration.

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

**303.36 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.

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

**303.37A GRAIN BIN** (see Agricultural Building) *ADDED 303.37A 5-2-11*

**303.37B GRAIN ELEVATOR, PRIVATE** shall mean a system of bins, constructed on any material for the purpose of storing grain. The system shall include any type of conveyance method used to transport and/or sort grain from a point on the ground level to a point within any of the storage areas. A Grain Elevator, Private shall also be considered an Agricultural Building. *ADDED 303.37B 5-2-11*

**303.38 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.

**303.39 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:

- A. Adaptation to living with, or rehabilitation from, disabilities;
- B. Adaptation to living with, or rehabilitation from, emotional or mental disorders, or mental retardation;
- C. Rehabilitation from the effects of drug or alcohol abuse;
- D. Supervision while under a program of alternatives to imprisonment, including, but not limited to pre-release, work release and probationary programs.

- 303.40 HOME OCCUPATION:** An occupation or business enterprise conducted in a dwelling unit by members of the family occupying the dwelling unit, established in accordance with standards established in this Resolution.
- 303.41 IMPACT EASEMENT:** An easement or deed restriction, recorded in the office of the Perkins 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, 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 by 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.
- 303.42 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 differences in use activities, and because such use would diminish the value and enjoyment of the other.
- 303.43 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 designed for or used for on-going 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 use existed prior to regulation by the Department of Environmental Quality and 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 Zoning Administrator, using forms provided by the Zoning Administrator, within one hundred eighty (180) days of the effective date of this Resolution. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the number of animal units by the Zoning Administrator or other duly appointed official at the time of such dispute. For purposes of this Resolution, intensive animal feeding uses shall be classified and regulated with regard to the number of animal units confined as follows:
- Class I - An intensive animal feeding use with a one time capacity of more than three hundred (300) animal units, but less than three thousand (3,001) animal units.
  - Class II- An intensive animal feeding use with a one time capacity of three thousand and one (3,001) to ten thousand (10,000) animal units.
  - Class III - An intensive animal feeding use with a one time capacity of ten thousand and one (10,001) to twenty thousand (20,000) animal units.
  - Class IV- An intensive animal feeding use with a one time capacity of twenty thousand and one (20,001) or more animal units.
- 303.44 JUNK YARD:** See Salvage Yard.
- 303.45 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.
- 303.46 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 record, a portion of a lot of record, a combination or complete lots or record, a combination of complete lots or record and portions of lots of record, or portions of lots of record.

- 303.47 LOT AREA:** The total horizontal area of a lot. Within subdivided parcels, tracts, and lots where the property has been platted and right-of-way dedicated the lot area shall not include any street or alley rights-of-way. However, on rural tracts, parcels and lots that are not platted, the right-of-way may be included in the total lot area calculation.
- 303.48 LOT, CORNER:** A lot which has frontage on two (2) or more streets or roads at the intersection of said streets or roads.
- 303.49 LOT DEPTH:** The average horizontal distance between the front and rear lot lines of any lot.
- 303.50 LOT OF RECORD:** A lot, which is part of a subdivision plat or lot, plot or parcel, described by metes and bounds, which has been recorded in the office of the Registrar of Deeds of Perkins County, Nebraska as of the effective date of this Resolution.
- 303.51 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.
- 303.52 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 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.
- 303.53 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 defined in this Resolution.
- 303.54 MOBILE HOME LOT:** A lot or parcel of land for the placement of one (1) mobile home.
- 303.55 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.

*AMENDED 303.47-LOT AREA 9-20-04*

- 303.56 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.
- 303.57 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.
- 303.58 NON-CONFORMING LOT OF RECORD:** A lawfully established lot, which is part of a subdivision plat or lot, plot or parcel described by metes and bounds, and which was recorded in the office of the Register of Deeds of Perkins County, Nebraska as of the effective date of this Resolution.
- 303.59 NON-CONFORMING STRUCTURE:** A lawfully erected structure in existence at the date of adoption 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.
- 303.60 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.

- 303.61 ODOR:** That characteristic of a substance, which makes it offensive to the human sense of smell, as determined by the majority of any three (3) or more people. Such people shall include the Zoning Administrator, a representative of the use being investigated for odor impact, and one or more other neutral persons as agreed upon by the Zoning Administrator and the owner of the use being investigated for odor impact.
- 303.61A OFF-PREMISE ADVERTISING SIGN:** A display of general advertising about products or services available at locations other than sign site. *ADDED 3-15-04*
- 303.61B ON-SITE ADVERTISING SIGN:** A display of general advertising about products or services available at the sign's location. *ADDED 3-15-04*
- 303.62 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.
- 303.63 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.
- 303.64 PREMISES:** The land area containing a land use, which is contiguous with and under the same ownership as the land use.
- 303.65 PREVAILING WINDS:** Prevailing seasonal winds for Perkins County are from the north, northwest in the winter months and south and southeast in the summer months. Wind directions with regard to regulations in this Resolution shall be further defined as follows, determined using magnetic north as determined through use of a compass:
- 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
- 303.65A PRIMARY DWELLING:** Any single-family dwelling on a tract or lot. *ADDED 3-15-04*
- 303.66 PRINCIPAL BUILDING:** A building in which the principal use on the lot is situated.
- 303.67 PRIVATE AIRPORT/AIRSTRIP:** A privately owned parcel of land used for take-off and landing of small aircraft which is duly registered with the Nebraska Department of Aeronautics.
- 303.68 PRIVATE ROADWAY:** A privately owned, open, unoccupied space other than a public road, reserved as the principal means of access to abutting property.
- 303.69 PUBLIC USE AREA:** An area of land or water, whether publicly or privately owned, which is designed for or 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 include any rights-of-way for roadways or privately owned land used for hunting and/or fishing.
- 303.70 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 that coincide with two (2) intersecting section lines and contains approximately one-fourth (1/4) of the land area contained within the square section.

- 303.71 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.
- 303.72 ROAD / ROADWAY:** A public right-of-way set aside for public travel which affords the principal means of access to abutting property.
- 303.73 ROAD CENTERLINE:** A line extending down the center of a road or street right-of-way, as established by official survey or other means.
- 303.74 ROADSIDE STAND:** A structure or portion thereof used for the shelter, display and sale of crafts and similar items, fruit, vegetables and other agricultural crops produced on the premises.
- 303.74A RUNWAY** shall mean a defined area on an airport prepared for landing and take-off of aircraft along its length. *ADDED 303.74A 5-2-11*
- 303.75 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.
- 303.75A SECONDARY DWELLING:** An independent single-family dwelling located on the same lot or tract as an existing single-family dwelling. *ADDED 3-15-04*
- 303.76 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 square miles) is divided by straight lines into thirty six (36) sections and these are again divided by straight lines into half- and quarter sections.
- 303.77 SETBACK:** A horizontal distance, as prescribed in the various zoning districts established in this Resolution, from the front, side or rear lot line of any lot in which a building may not be constructed. Setbacks are further defined as follows:
- A. **SETBACK, FRONT:** An open space extending across the entire width of a lot between the centerline of the road on which the subject 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 line 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.
- 303.78 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.
- 303.79 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 and waste produced by living swine, poultry or other animals which contains not less twenty five percent (25%) solids by weight.
- 303.80 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 303.87 of this Resolution.

- 303.81 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.
- 303.82 STREET:** See ROAD
- 303.83 STRUCTURE:** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground.
- 303.84 STRUCTURAL ALTERATIONS:** Any change in the supporting members of a structure, such as bearing walls, partitions, columns, beams or girders.
- 303.85 USE:** The activity for which land and buildings is actually arranged, occupied or maintained. *AMENDED 8-19-02*
- 303.86 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.
- 303.87 WASTE HANDLING FACILITY:** Any and all structures, combination of structures, underfloor pits, catch basins, aerobic lagoons, pipelines, diversion terraces, 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 generating waste, or municipal facility, used to store, process, digest, compost, transport, distribute, control or otherwise dispose of waste materials, other than solid waste as defined in Section 303.80 of this Resolution. Any facility, apparatus, or mechanism used to ventilate, exhaust, process or treat hazardous gases, odor, dust, smoke or other waste product emanating from any building or structure, including any Agricultural building, that occurs as a consequence of the use of that building or structure shall be considered part of a waste handling facility use. *AMENDED 303.87 "FARM BUILDING TO AGRICULTURAL BUILDING" 5-2-11*

Waste handling facilities shall be categorized into 3 allowable categories with regard to the allowable types and 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 all waste is collected and digested utilizing aerobic digestion facilities and processes, including aerobic lagoons, including aerobic lagoons, wherein the Biochemical Oxygen Demand (BOD) loading shall not exceed 0.17 pounds per one hundred (100) gallons of water in lagoon, and dust, hazardous gases, odor or other air contaminants emitted from any building or structure is collected and processed to minimize air contamination.

**Category R (Run-off / Catch basins):**

A waste handling facility use in which rainwater or other liquid run-off, which is contaminated with manure or other wastes, is impounded in liquid form for a period not exceeding one-hundred twenty (120) days in any calendar year. Compliance with the impoundment time limitation shall require evaporation of the liquid and cleaning out of the solid materials in the basin and/or pumping and injection of the liquid waste into the soil or for use in adding moisture to an aerobic composting process and cleaning out of the solid materials in the basin.

**Category S (Solid):**

A waste handling facility where solid manure, as defined in Section 303.79 of this Resolution, or other solid animal wastes is moved to and/or collected mechanically, but not by water flow, and aerobically processed utilizing aerobic composting or temporarily stored for a period of not more than one hundred twenty (120) days prior to land application.

- 303.88 YARD/SETBACK:** Open space on a lot unoccupied and unobstructed by any buildings or structure or portion thereof, except for fences, retaining walls, posts and other customary yard accessories.
- 303.89 YARD, FRONT:** A yard extending across the entire width of the lot between the front lot line and the nearest point of a building. For purposes of determining yard requirements for corner and through lots, all sides of a lot abutting a road shall be considered a front yard and shall comply with the requirements thereof.
- 303.90 YARD, REAR:** A yard extending across the entire width of the lot between the rear lot line and the nearest part of a building or non-minor structure.
- 303.91 YARD, SIDE:** On single frontage lots, a yard extending along the side lot line from the front yard to the rear yard and lying between the side lot line and the nearest part of a building on non-minor structure. On through lots, a yard extending along the side lot line from front yard to front yard and lying between the side lot lines and the nearest part of the building or non-minor structure. On corner lots, a yard extending along the side lot line from the front yard to the opposite side lot line lying between the side lot line and the nearest part of a building or non-minor structure.
- 303.92 YARD, SPECIAL:** A yard behind any required yard adjacent to a public street, required to perform the same functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term “side yard” or “rear yard” clearly applies. In such cases, the Zoning Administrator shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the zoning district, determining which shall apply by the relationship of the portion of the lot on which the yard is to be located to the adjoining lot or lots with due regard to the orientation and location of buildings, structures and buildable areas thereon.
- 303.93 ZONING ADMINISTRATOR:** The person, duly designated by the Perkins County Board of Commissioners, to administer and enforce the regulations established under this Resolution.
- 303.94 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 and intensity of use of land 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 original districts and appropriate regulations to be enforced therein. The Planning Commission shall make a preliminary report and hold public hearings thereon before submitting its final report to the Board of Commissioners, and the Board of Commissioners shall not hold its public hearing or take final action on such recommendations until it has received the final report of the Planning Commission.

### SECTION 402 - DISTRICTS CREATED

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

AG - G	General Agricultural District
AG - T	Transitional Agricultural District
AA	Airport / Airstrip Approach District
FH	Flood Hazard Zoning 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 Perkins County, Nebraska referred to in Section 403 of Resolution No. \_\_\_ of the County of Perkins, Nebraska" together with the date of the adoption of this Resolution. The signed copy of the Official Zoning Map shall be maintained in the office of the County Clerk for the use and benefit of the public.

### SECTION 404 - OFFICIAL ZONING MAP CHANGES

**404.01 CHANGES ON OFFICIAL ZONING MAP:** If, in accordance with the provisions of this Resolution, changes are made in the zoning district boundaries or other explanatory matter portrayed on the Official Zoning Map, such changes shall be promptly entered on said Official Zoning Map after amendment of same has been approved by the County Board together with an entry on the Official Zoning Map as follows: "On (date), by official action of the County Board of 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 entry on such Official Zoning Map have been made.

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

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

**404.04 FINAL AUTHORITY OF OFFICIAL ZONING MAP:** Regardless of the existence of purported copies of the Official Zoning map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the County Clerk, shall be the final authority as to the current zoning status of land within Perkins 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 Perkins 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 INTERPOLATION OF DISTRICT BOUNDARIES**

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

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

**406.02** Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines and boundaries indicated as approximately following the corporate limit boundaries of any municipality shall be construed to follow such corporate limit boundaries.

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

**406.04** Boundaries indicated as following 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.

**406.05** Boundaries indicated as parallel to or extensions of features indicated in Items 01 through 04 immediately above shall be so construed.

**406.06** Distances not specified set forth on the Official Zoning Map shall be determined by the map scale.

**406.07** Where a district boundary line divides a lot which was under single ownership and control at the date of adoption of this Resolution, the Board of Zoning Adjustment may, upon application, permit the extension of the regulations for either portion of the lot into the remaining portion of the lot.

**406.08** In circumstances not covered by Items 01 through 07 immediately above or where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the Board of Adjustment shall interpret the district boundaries to best accomplish the objectives of the Intent statements of the zoning districts involved.

#### **SECTION 407 - ANNEXATION RULE**

Annexation of land to any incorporated municipality in Perkins County, Nebraska shall remove such land from the jurisdiction of this Resolution and any legal extension of any jurisdictional zoning area boundary resulting from any such annexation by any incorporated municipality in Perkins County, Nebraska shall 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 promote and facilitate agricultural crop production, livestock production, which is in balance with the natural environment, and other and new forms of agricultural production which are compatible with existing agricultural uses and the environmental limitations of the County. The intent is also to encourage soil and water conservation, to prevent contamination of the natural environment within the County and to preserve and protect land best suited for agricultural uses by preventing or regulating the introduction, encroachment and location of commercial uses, including confined or intensive livestock feeding uses, industrial uses and other non-agricultural uses, including non-farm residential uses, which would be or could become incompatible with the agricultural character and occasional generation of dust, odors, and other similar events produced agricultural uses, or which could result in contamination of the air, soils and water, or which could negatively impact the use, value and enjoyment of property, and the culture and way of life in Perkins County.

#### 501.02 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 agricultural buildings, less than 132 feet in height, but excluding any dwelling unit(s) whether or not associated with an agricultural use, as defined in Article 3 of this Resolution.
2. Grain and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities, less than 132 feet in height.
3. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities.
4. Forestry, tree farms and plant nurseries.
5. Oil and gas wells. *AMENDED 501.02, ADDED #5, OIL AND GAS WELLS 5-21-07*

#### 501.03 PERMITTED PRINCIPAL USES AND STRUCTURES:

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

1. Class I confined and intensive animal feeding uses, as defined in Sections 303.25 and 303.43 of this Resolution, when in compliance with the following restrictions:
  - A. A Class I feeding use shall not be located closer than three fourths (3/4) mile north or south and one-half (1/2) mile east or west of any church, school, public use area or any dwelling unit not of the same ownership and not on the same premises as the feeding use. Measurement of this distance shall be from the point of lot, pen, building nearest to said church, school, public use area or dwelling unit not of the same ownership and not on the same premises as the feeding use. If one or more impact easement(s), as defined in Section 303.41 of this Resolution, shall have been granted to the owner of the animal feeding use, any residence(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Any waste handling facility, as defined in Section 303.87 of this Resolution shall not be considered part of the intensive animal feeding use and shall be permitted only through conditional use approval in accordance with the procedures and requirements set forth in this Resolution.

For purposes of this regulation, a dwelling unit not of the same ownership and on the same premises as the intensive animal feeding use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and,

- B. If vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable.

- C. Utilizing a 25 year storm as an engineering basis, surface runoff or other drainage from such feeding use shall not flow directly or indirectly into any river, stream or other drainage way which would allow any waste to contaminate ground or surface water. Further no such use shall be located within an area which is subject to flooding on a one-hundred (100) year basis. **AMENDED 10-3-05**
- D. For new Class I operations established after February 2001, the total number of animals maintained for intensive animal feeding purposes shall not exceed three thousand (3,000) animal units per section of land, as defined in section 303.76, except where a conditional use for larger number of animals has been authorized by the County Board of Commissioners in accordance with the procedures and requirements of this Resolution.

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, a such determination shall be by written declaration of the owner of such use of the one-time capacity of such use to the Zoning Administrator, using forms provided by the Zoning Administrator, within one hundred eighty (180) days of the effective date of this Resolution. In the event of any dispute over the number of animal units, such determination shall be by on-site inspection and actual counting of the number of animal unit capacity by the Zoning Administrator or other duly appointed official at the time of such dispute.

- E. Animals shall not be introduced into the facility until any permit required to be issued by the Nebraska Department of Environmental Quality, or other applicable or successor agency, shall have been issued and such use shall be operated at all times in a manner consistent with the requirements of any such required permit and any applicable regulations of this Resolution.
- F. Any Class I confined or intensive animal feeding use in existence as of the effective date of this Resolution which is in conformance with the regulations of this Resolution may be expanded in the number of animal units and / or land area occupied by such use provided that such expansion shall comply with all of the following limitations:
  - 1) Such expansion will not decrease the distance from the confined or intensive animal feeding use and any church, school, public use area or dwelling unit not of the same ownership and not on the same premises with such use, below the minimum distances set forth in Paragraph A immediately above;
  - 2) Any physical expansion of such use shall be immediately contiguous with the existing animal feeding facilities;
  - 3) Such expansion may occur over time, but such expansion(s) shall not result in the one-time animal unit capacity which is more than fifty (50) percent above the one- time capacity which existed as of the effective date of this Resolution. This provision allows qualifying operations to increase to no more than 4,500 animal units without obtaining a Conditional Use Permit. **AMENDED 10-3-05**
  - 4) Any expansion or modification of any waste handling facility, as defined in Section 303.87 of this Resolution, shall be permitted only by conditional use approval in accordance with the procedures and requirements of this Resolution.
  - 5) Additional animals shall not be added to the use until any new permit required to be issued by the Nebraska Department of Environmental Quality or other applicable or successor agency shall have been issued and such use shall be operated at all times in a manner consistent with the requirements of any such permit and any applicable regulations of this Resolution.
- G. Exceptions to the minimum distance requirements set forth in Paragraph A immediately above, may be approved by conditional use where special types of intensive feeding uses, special provisions for odor control, special provisions for dust control, topography, prevailing winds, or other factor or combination of factors exist and it is determined by the Board of Commissioners that reduction of this minimum spacing distance will not interfere with the value, use and enjoyment of adjoining and neighboring properties. For purposes of this regulation, a dwelling unit not of the same ownership and not on the same premises as the intensive animal feeding use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and, if vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable.

2. Public service facilities, including public, parochial, private non-religious, road maintenance equipment sheds, fire stations, public utility substations and utility distribution systems.
3. Churches, cemeteries and related uses.
4. Fish hatcheries, game farms and commercial hunting and fishing where such hunting and fishing does not involve development of lodges or other buildings devoted solely to the support of such hunting and fishing activities. Temporary housing of hunters and fishermen and temporary hunting or fishing shelters shall be permitted.
5. Signs, including permanent on-site and off-site advertising signs, provided the number of such permanent on-site signs shall not exceed three (3) per premises and that permanent off-site advertising signs shall be located no closer than two-hundred fifty (250) feet from any other on-site or off-site sign and further provided that such on-site and off-site advertising signs shall be setback from the right-of-way line of any public roadway, that on-site and off-site signs shall not exceed one-hundred (100) feet in height, or have a sign face area larger than one-thousand (1,000) square feet, and that off-site and on-site advertising signs shall have a minimum of seven (7) feet from the ground to the bottom of the sign for signs over twenty-five (25) square feet. On-site and off-site signs shall be setback one hundred (100) feet from the middle of an intersection and all quadrants of an intersection. Signs, including E-911 and identification signs, shall not be located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic. Temporary signs under twenty-five (25) square feet, including, but not limited to, E-911, identification signs, crop seed identification signs, insecticide and herbicide signs, yard sale, real estate for sale/lease and political campaign signs shall be exempt from these regulations. (All permanent signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads.) **AMENDED 501.03 (5) SIGNS 3-15-04**
6. Day care and child care uses.
7. Agricultural Buildings, 132 feet in height or taller provided the minimum requirements are met:
  - A. All proposed agricultural buildings shall meet the minimum setbacks as noted in this Resolution from County Road and Highway intersections.
  - B. All proposed agricultural buildings shall be separated from all private airports/runways a distance equal to a 7:1 slope (accounting for the change in grade between the two uses) from the edge of said private landing strip, and shall include an area 600 feet wide centered upon each runway and shall extend out from each end for a distance of 5,280 feet on a 40:1 slope, (also accounting for the change in grade between the two uses.) **ADDED IN AGRICULTURAL BUILDINGS 5-2-11**
8. Single-Family dwellings, including manufactured housing, modular housing and mobile homes, provided such dwellings comply with all of the following conditions. (**AMENDED 6-4-2012**)
  - A. Such dwellings, if not on the same lot with and not of the same ownership as any existing confined animal feeding use, as defined in Section 303.25 of this Resolution, any existing intensive animal feeding use, as defined in Section 303.43 of this Resolution, or any waste handling facility, as defined in Section 303.87 of this Resolution, shall be separated from such use by the minimum distance specified in Table 501.05, MINIMUM SEPARATION DISTANCES FOR CONFINED AND INTENSIVE ANIMAL FEEDING USES for the size of the use and the type of waste handling facility proposed, 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 animal feeding use, in which case any residence dwelling unit(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Such minimum distance shall be measured from the nearest point of the area used or approved under this Resolution for the animal feeding or waste handling use, to such dwelling. Application of waste which in solid form to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.
  - B. Such dwelling shall be located on a lot with an area of not less than three (3) acres, as set forth in Section 501.07 of this Resolution, and such lot shall have a minimum lot width as set forth in Section 501.08 of this Resolution, provided that a larger lot may be required if the regulations of the Nebraska Department of Environmental Quality or its successor with regard to proper sizing and location of a septic tank and tile field or lagoon sewage disposal system indicate that a larger lot is appropriate.

- C. The lot on which such dwelling is located shall front on or have access to an existing public roadway. The total number of dwellings per quarter section of land shall not exceed four (4) and the minimum distance between dwelling units shall be five hundred (500) or more feet,
  - unless a conditional use for a residential subdivision has been authorized by the County Board of Commissioners in accordance with the procedures and requirements of this Resolution, or:
  - Up to two dwelling units sited on one tract of land or lot and share an access road and driveway. Secondary dwellings (as defined in 303.75-A), and dwelling units located closer than 500 feet to an existing dwelling (other than the primary dwelling, as defined in 303.65-A), shall require a Conditional Use Permit.
  - All secondary dwelling units shall not count against the overall density of the ¼ section, unless separated into an individual tract or parcel. Separation into an individual tract shall require the dwelling unit to meet all applicable lot, lot area, setback, and density requirements. No secondary dwelling shall be allowed to separate if it cannot meet the minimum/maximum requirements of this Resolution.

***AMENDED 501.03-8-D, Removal of allowance for residences on minimum maintenance roads, 9-4-07/AMENDED 501.03-8-D, DWELLING SPACING 3-15-04***

- D. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use, as defined in Sections 303.25 and 303.43 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership and on the same premises with such confined or intensive animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use has been abandoned. 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 as set forth in this Resolution.

**501.04 PERMITTED ACCESSORY USES AND STRUCTURES:**

The following uses and structures shall be permitted as accessory to the permitted principal uses and structures:

1. Accessory uses, buildings and structures normally and commonly appurtenant to the permitted principal uses and structures. Such uses, buildings or structures, if not an agricultural building as defined, 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.
3. Roadside stands for the temporary sale of produce grown or crafts produced on the premises. No zoning permit shall be required.

**501.05 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 AG - G, General Agricultural District:

1. Expansion of existing Class I confined or intensive animal feeding uses not in compliance with the requirements of this Resolution, expansion of existing Class II, III or IV confined or intensive animal feeding use or development of a new Class II, III, and IV confined or intensive animal feeding uses, as defined and classified in Sections 303.25 and 303.43 of this Resolution, provided each such confined or intensive animal feeding use shall meet all of the following requirements and be restricted in size as set forth below: Such confined or intensive animal feeding uses shall meet or exceed the requirements set forth below and the use and any waste handling facility use associated with such use shall meet or exceed the separation distances set forth in Table 501.05 MINIMUM SEPARATION DISTANCES FOR CONFINED AND INTENSIVE ANIMAL FEEDING USES for the class of the confined or intensive animal feeding use and the type of waste handling facility use. Any waste handling facility use shall also meet or exceed all requirements for waste handling facility uses, as set forth in Subsection 2 of this Section.

- A. Confined or intensive animal feeding uses in existence as of the effective date of this Resolution shall require a declaration of the current capacity of the existing use. 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, a such determination shall be such determination shall be by written declaration of the owner of such use of the one-time capacity of such use to the Zoning Administrator, using forms provided by the Zoning Administrator, within one hundred eighty (180) days of the effective date of this Resolution. In the event of any dispute over the number of animal units, such determination shall be by on-site inspection and actual counting of the

number of animal unit capacity by the Zoning Administrator or other duly appointed official at the time of such dispute.

- B. For all categories 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 County Board of Commissioners who may request review and recommendations by the applicable Natural Resource District, the Natural Resources Conservation Service, the Nebraska Department of Environmental Quality, their successor agencies, geologists, soil scientists, agronomist, biological engineers, civil engineers and any other entity with environmental protection expertise and shall have a permit from the Nebraska Department of Environmental Quality if a permit is so required by said Department.
- C. Any confined or intensive animal feeding use shall be located only in areas of the County which are not subject to flooding on a one hundred (100) year basis, and only in areas where it is determined by the County Board of Commissioners that the geology, soil permeability, depth to water table, drainage patterns and other natural environment characteristics will minimize the potential for surface and ground water contamination. In making a determination regarding the appropriateness of the site, the County Board of Commissioners shall utilize the advice and recommendations of the Natural Resource District, the Natural Resources Conservation Service, and any geologist, soil scientists or other persons or entities with applicable environmental protection expertise.
- D. Any confined or intensive animal feeding use shall generally be located only in areas of the County where the impact(s) on the public infrastructure and services, particularly roads and bridges, will not result in an undue cost burden to the taxpayers of the County in providing such infrastructure and services. In making a determination regarding the appropriateness of the site, if the County Board of Commissioners determine that the anticipated impacts will unduly impact the present level of services, road maintenance or bridge capacities and maintenance, the Board may require financial participation by the owner of the animal feeding use in the maintenance of said infrastructure.
- E. Each confined and intensive animal feeding use shall be engineered, constructed and operated utilizing best management practices to minimize odor, dust, flies, vermin and other problems and hazards to avoid environmental contamination and/or negative impacts on adjoining and neighboring properties.
- F. Each confined and intensive animal feeding use shall submit a plan for the proper and timely disposal of dead animals. Such plan shall comply with any requirements of law or regulations of the State of Nebraska and shall be subject to the approval of the County Board of Commissioners, who may establish additional requirements regarding the proper and timely disposal of dead animals. The proposed use of a separate entity or company to collect and dispose of dead animals shall require written verification of the availability of and commitment to provide such services by the separate entity or company and written notice to the County immediately upon the cessation of such services by said entity or company and an indication of how dead animal disposal will occur in a timely manner.
- G. All locations which are used by any authorized confined or intensive animal feeding use for stockpiling or composting of livestock manure, bedding or other waste shall be subject to authorization by the County Board of Commissioners as part of the authorization of any waste handling facility use and such authorization may include the establishment of maximum amounts of waste which may be stockpiled, the methods and operation of any waste composting facility, and facilities to collect and properly digest or dispose of any waste contaminated runoff from any waste stockpiling or composting site.
- H. Each confined or intensive animal feeding use authorized by the County Board of Commissioners shall agree to permit unannounced access to the use to allow inspection of the premises by persons 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 make a reasonable effort to contact the owner/operator of the confined or intensive feeding use to be inspected prior to such inspection, but in the event such reasonable effort is unsuccessful, the inspector shall be authorized to enter the subject premises to conduct the necessary inspection. If the Zoning Administrator shall determine that additional inspection expertise is needed to verify compliance, the Administrator shall report such determination to the County Board of Commissioners who shall identify and appoint such person with the needed expertise as an inspector. Such inspections shall be considered a general function of the



enforcement of this Resolution by the County 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 an intensive feeding use(s).

Upon a finding by the Zoning Administrator or other inspector that the confined or intensive animal feeding 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 involved, in writing, that the use is in violation of the approved conditions of use and shall state the specific violation(s) of such conditions. The owner/operator of such use(s) 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 or other appointed inspector, the Zoning Administrator shall initiate any and 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 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 shall be that the owner(s)/operator of each intensive animal feeding 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 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 the confined or intensive animal feeding 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 Sixty (60) calendar days. Failure to comply with the order for compliance within the time specified shall result in a further order to remove all animals from the premises until such time as compliance with these regulations can be achieved.

The provisions for inspections of confined or intensive animal feeding uses shall apply to 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 uses which were in existence as of the effective date of this Resolution, if any such use has been expanded in its capacity beyond that which existed as of the effective date of this and a conditional use for such expansion has been authorized by the County Board of Commissioners.

- I. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use as of the effective date of this Resolution shall remain under the same ownership and on the same premises with such confined or intensive animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use has been abandoned. Nothing in this subsection shall prohibit the relocation of any such dwelling unit.
- J. In authorizing any confined or intensive animal feeding use, the County Board of Commissioners may attach any additional requirement or condition of design or operation of such use, which may be in excess of any standards or requirements of the Nebraska Department of Environmental Quality or the United States Department of Environmental Protection, which will minimize the potential for environmental degradation and/or negative impacts on adjoining and neighboring properties, provided such requirement or condition is based upon scientific fact, which may include recommendations by the Natural Resource District, the Natural Resources Conservation Service, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise and not here say, unfounded public remonstrance or other reason not based on reasonable finding or fact.
- K. Where any Federal or State of Nebraska permit for facilities associated with a confined or Intensive animal feeding uses is required, such permits shall be approved by the appropriate Federal or State agency and all facilities required by such Federal or State agency and all facilities and safeguards required by the County Board of Commissioners shall be in place and operable prior to introduction of any animals into such use.
- L. Exceptions to the minimum distance requirements may be approved as part of granting of a conditional use where special types of confined or intensive animal feeding uses, special provisions for odor control, special provisions for dust control, topography, prevailing winds or other factor or combination of other factors exist

and it is determined by the Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties.

- M. Any conditional use application for a confined or intensive animal feeding use, which is determined by the County Board of Commissioners to be in compliance with all requirements of this Section, to be in compliance with the requirements for any waste handling facility as set forth in Subsection 2 of this Section and for which there is agreement by the owner of such proposed use to comply with any additional requirement or condition established by the Board of Commissioners, as set forth in Paragraph J above and Subsection 2, Paragraph G immediately below shall be authorized by the County Board of Commissioners.
2. Waste handling facilities of the three allowable categories (A-Aerobic, R-Runoff/Catchbasin, and S-Solid) as defined in Section 303.87 of this Resolution, including any land application of waste from a waste handling facility use serving confined or intensive animal feeding uses located outside the boundaries of Perkins County, Nebraska, on land within the County, provided such waste handling facilities shall meet or exceed all the requirements of this Subsection listed below. All other types of waste handling facilities shall be prohibited.
- A. Such use shall meet or exceed the minimum separation distances set forth in Table 501.05, MINIMUM SEPARATION DISTANCES FOR CONFINED AND INTENSIVE ANIMAL FEEDING USES for the size of the use and the type of waste handling facility proposed.
- B. For all categories of waste handling facility uses, regardless of size or type, all run-off, control ponds and basins, methods of waste disposal and related waste handling facilities and operational activities shall 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 County Board of Commissioners who may request review and recommendations by the applicable Natural Resource District, the Natural Resources Conservation Service, the Nebraska Department of Environmental Quality, their successor agencies, geologists, soil scientists, agronomist, biological engineers, civil engineers and any other entity with environmental protection expertise and shall have a permit from the Nebraska Department of Environmental Quality if a permit is so required by said Department.
- C. Any waste handling facility use which proposes to dispose of any waste through application of said waste on crop or other land shall indicate that the owners of such 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 the nutrient needs of the crops to be produced and avoid any build-up of nutrients or chemicals which can damage the production capacity of the land, result in runoff of such waste or chemicals into abutting property or into any stream or drainage way or in any way contaminate the environment. The County Board of Commissioners, in authorizing any waste handling facility use, may utilize recommendations of the Natural Resources Conservation Service, the Cooperative Extension Service and any other crop production experts in determining the maximum amount of waste to be placed on each acre of land to be used for such purposes, the timing of such waste placements, and the total amount of land necessary to distribute all waste, and shall establish such maximum per acre application limits and such minimum total land area, which may be beyond the standards established by the Nebraska Department of Environmental Quality and the United States Environmental Protection Agency, as conditions of such authorization. The County Board of Commissioners may require the owner/operator of such waste handling facility use to conduct, or allow to be conducted by a third party at the owner's/operator's expense, soil sampling and testing for build up of nutrients on all locations where waste is to be placed and may require the submission of the results of such soil sampling and testing to the County Board of Commissioners. Application of completely composted animal waste shall be exempt for the requirements of this subsection, provided that the site for such composting shall be authorized in accordance with Subsection D immediately below.
- D. All locations which are used by any authorized waste handling facility use for stockpiling or composting of waste shall be subject to authorization by the County Board of Commissioners as part of the authorization of any waste handling facility use and such authorization may include the establishment of maximum amounts of waste which may be stockpiled, the methods and operation of any waste composting facility, and facilities to collect and properly digest or dispose of any waste contaminated runoff from any waste stockpiling or composting site.
- E. The owner/operator of any waste handling facility use authorized by the County Board of Commissioners shall agree to permit unannounced access to the 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, provided that the Zoning Administrator or other designated person(s) shall make a reasonable

effort to notify the owner of such use of the proposed inspection prior to said inspection by telephone. The inability to notify the owner of such use of the proposed inspection, after reasonable effort to do so, shall not serve to prohibit any proposed inspection. 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. 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 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 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 use 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 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 sixty (60) 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 waste handling facilities shall apply to 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 waste handling facility uses which were in existence as of the effective date of this Resolution, if any such use has been expanded in its capacity beyond that which existed as of the effective date of this and a conditional use for such expansion has been authorized by the County Board of Commissioners.

- F. Any waste handling facility use shall be located only in areas of the County which are not subject to flooding on a one hundred (100) year basis, and only in areas where it is determined by the County Board of Commissioners that the geology, soil permeability, depth to water table, drainage patterns and other natural environment characteristics will minimize the potential for surface and ground water contamination. In making a determination regarding the appropriateness of the site, the County Board of Commissioners may utilize the advice and recommendations of the Natural Resource District, the Natural Resources Conservation Service, geologist and any other entities with applicable environmental protection expertise. Where it is determined that the geology, soil permeability, depth to water table, drainage patterns or other environmental characteristic would present a reasonable potential for contamination of groundwater through leakage from a lagoon or waste holding pond, the County Board of Commissioners may require the use of above ground waste storage tanks.

- G. Each waste handling facility use shall be engineered, constructed and operated utilizing best management practices to minimize odor, dust, flies, vermin and other problems and hazards to avoid environmental contamination and / or negative impacts on adjoining and neighboring properties.
- H. In authorizing any waste handling facility use, the County Board of Commissioners may attach any additional requirement or condition of design or operation of such use, which may be in excess of any requirement or condition of the Nebraska Department of Environmental Quality or the United States Department of Environmental Protection, which will minimize the potential for environmental degradation and/or negative impacts on adjoining and neighboring properties, provided such requirement or condition is based upon scientific fact, which may include recommendations by the Natural Resource District, the Natural Resources Conservation Service, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise and not here say, unfounded public remonstrance or other reason not based on reasonable finding or fact.
- I. In authorizing any waste handling facility use, the County Board of Commissioners may, after recommendation by the applicable Natural Resources District, require the installation of one or more groundwater monitoring wells at recommended locations, require that sampling from such well(s) occur on a particular schedule, that sampling of the well(s) be conducted by an independent party, that independent laboratory analysis of the samples be conducted, and that the results of the laboratory analysis be provided to the County Board of Commissioners in accordance with the sampling schedule, all at the expense of the owner of the waste handling facility use. In establishing any requirement for monitoring wells, the County Board of Commissioners shall take into account any such wells required by the Nebraska Department of Environmental Quality in its permitting process.
- J. Any waste handling facility use shall generally be located only in areas of the County where the impact(s) on the public infrastructure and services, particularly roads and bridges, will not result in an undue cost burden to the taxpayers of the County in providing such infrastructure and services. In making a determination regarding the appropriateness of the site, if the County Board of Commissioners determine that the anticipated impacts will unduly impact the present level of services, road maintenance or bridge capacities and maintenance, the Board may require financial participation by the owner of the animal feeding use in the maintenance of said infrastructure.
- K. Where any Federal and/or State of Nebraska permit for facilities associated with a waste handling facility use is required, such permit(s) shall be approved by the appropriate Federal or State agency and all facilities required by such Federal or State agency and all facilities and safeguards required by the County Board of 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.
- L. Exceptions to the minimum separation distance requirements set forth in Table 501.05 of this Resolution may be approved as part of granting of a conditional use where special types of waste handling facility uses, special provisions for odor control, special provisions for dust control, topography, prevailing winds, or other factor or combination of other factors exist and it is determined by the County Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties.
- M. Any conditional use application for a waste handling facility use which is determined by the County Board of Commissioners to be in compliance with all requirements of this Section and for which there is agreement by the owner of such proposed use to comply with any additional requirement or condition established by the Board of Commissioners, as set forth in Subsection I and J immediately above, shall be authorized by the County Board of Commissioners.

**TABLE 501.05  
MINIMUM SEPARATION DISTANCES FOR CONFINED AND INTENSIVE ANIMAL FEEDING USES**

ANIMAL FEEDING USE (by class) and WASTE HANDLING FACILITY USE (by type)	Minimum distance from Confined Animal Feeding Use to any neighboring dwelling unit, church, school or public use area*		Minimum distance from Waste Handling Facility Use to any neighboring dwelling unit, church, school or public use area*	
	<u>North / South</u>	<u>East / West</u>	<u>North / South</u>	<u>East / West</u>
<b><u>CONFINED ANIMAL FEEDING USE</u></b>				
<b>Class I Confined Animal Feeding Use:</b>	<b>0.75 mile</b>	<b>0.5 mile</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	0.5 mile	0.25 mile
Category R (runoff / catch basin)**	na	na	0.75 mile	0.5 mile
Category S (solid)	na	na	0.75 mile	0.5 mile
<b>Class II Confined Animal Feeding Use:</b>	<b>1.0 mile</b>	<b>0.75 mile</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	0.75 mile	0.5 mile
Category R (runoff / catch basin)**	na	na	1.0 mile	0.75 mile
Category S (solid)	na	na	1.0 mile	0.75 mile
<b>Class III Confined Animal Feeding Use:</b>	<b>1.5 miles</b>	<b>1.0 mile</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	1.0 mile	0.75 mile
Category R (runoff / catch basin)**	na	na	1.5 miles	1.0 mile
Category S (solid)	na	na	1.5 miles	1.0 mile
<b>Class IV Confined Animal Feeding Use:</b>	<b>2.0 miles</b>	<b>1.25 miles</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	1.25 miles	1.0 mile
Category R (runoff / catch basin)**	na	na	2.0 miles	1.25 miles
Category S (solid)	na	na	2.0 miles	1.25 miles
<b><u>INTENSIVE ANIMAL FEEDING USE</u></b>				
<b>Class I Intensive Animal Feeding Use:</b>	<b>0.75 mile</b>	<b>0.5 mile</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	0.75 mile	0.5 mile
Category R (runoff / catch basin)**	na	na	0.75 mile	0.5 mile
Category S (solid)	na	na	0.75 mile	0.5 mile
<b>Class II Intensive Animal Feeding Use:</b>	<b>1.5 mile</b>	<b>1.0 mile</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	1.5 mile	1.0 mile
Category R (runoff / catch basin)**	na	na	1.5 mile	1.0 mile
Category S (solid)	na	na	1.5 mile	1.0 mile
<b>Class III Intensive Animal Feeding Use:</b>	<b>2.0 miles</b>	<b>1.25 miles</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	2.0 miles	1.25 miles
Category R (runoff / catch basin)**	na	na	2.0 miles	1.25 miles
Category S (solid)	na	na	2.0 miles	1.25 miles
<b>Class IV Intensive Animal Feeding Use:</b>	<b>3.0 miles</b>	<b>1.5 miles</b>	na	na
<u>Waste Handling Facility Use:</u>				
Category A (aerobic)	na	na	3.0 miles	1.5 miles
Category R (runoff / catch basin)**	na	na	3.0 miles	1.5 miles
Category S (solid)	na	na	3.0 miles	1.5 miles

Footnotes: na - not applicable

\* Measurement of this distance shall be from the point of the building, lot or pen of a confined or intensive animal feeding use or waste handling facility use nearest to a church, school, public use area or dwelling not on the same premises and not of the same ownership as the confined or intensive animal feeding use or waste handling facility use to the nearest point of such dwelling, church, public use area or school, provided that if one or more impact easement(s), as defined in Section 303.41 of this Resolution, shall have been granted to the owner of the confined or intensive animal feeding use or waste handling facility use, in which case any residence(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements.

\*\* Liquid waste from any Category R (runoff / catch basin) may be applied to land by injection into the soil only. Liquid waste may be stored in a runoff or catch basin not longer than one hundred twenty (120) days in a calendar year. Compliance with this impoundment time limitation shall require evaporation of the liquid and cleaning out of the solid materials in the basin and/or pumping and injection of the liquid waste into the solid or for use in adding moisture to an aerobic composting process and cleaning out of the solids in the basin.

3. General welding and agricultural equipment repair businesses, automobile repair and body shop businesses and other commercial business and industrial uses determined by the Board of Commissioners to be reasonably compatible with the surrounding land uses with regard to traffic generation, noise, odors, dust, vibrations and potential air, soil or water pollution or explosion or other hazards.
4. Livestock auction barns and yards.
5. Crop dusting businesses and related aircraft landing strips and airports.
6. Commercial fuel and fertilizer bulk plants, provided such higher density residential uses are located near municipalities within the County or in such other areas where the development of higher density uses can be adequately served by roadways, water and sewer utilities, as well as law enforcement, fire protection and other public services, as determined by the Board of Commissioners.
7. Recycling facilities and solid waste transfer stations when in compliance with all requirements established by the Board of Commissioners in granting a conditional use and in compliance with all requirements of the Nebraska Department of Environmental Quality.
8. Waste handling facility uses, not associated with confined or intensive animal feeding uses, subject to the requirements of Section 501.05, Subsection 2 of this Resolution.
9. 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-half (1/2) mile.
10. Residential dwellings in excess of the four (4) dwellings per section of land limitation established in Section 501.03, Subsection 10 of this Resolution and residential subdivisions where it can be demonstrated that development of such additional dwellings will not result in incompatibilities with agricultural uses and operations or confined or intensive animal feeding uses and will not result in undue increases in costs maintain County roads, bridges or other structures or undue increases in the costs of providing law enforcement, fire protection and other applicable public services.
11. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, game lodges, canoe outfitters, rental cabins, camp stores, public or commercial river access sites and other similar uses including bed and breakfast operations and motels.
12. Mineral extraction and sand and gravel extraction facilities and operations.
13. Nursing home facilities and group homes.
14. Dwelling units and secondary units that are closer than 1,000 feet from another dwelling unit, except for a secondary dwelling being closer to its primary dwelling unit. **ADDED 3-15-04**
15. More than one secondary dwelling to a primary dwelling. **ADDED 3-15-04**
16. Private airports, provided such airports are not located within the Airport Approach Overlay District extending around the Grand Municipal Airport and runway(s) or the designated Approach Overlay of any other established public airport, and including, but not limited to, the following conditions:
  - A. Such airports shall request a “No Objection, No objection with provisions, or Objectionable Determination” from the Federal Aviation Administration, prior to applying to the county and shall abide by all conditions set by the FAA in that determination. Any conditions or objections noted in the document may form the basis for denial of the Conditional Use.

- B. Such airports shall not be so located as to prohibit federal funding for the location, expansion or improvements of public airports.
  - C. All runways shall be set back from any residence, church, school, or places of public assembly, excluding the owners, provided that the residence, church, school or place of public assembly be set back a minimum horizontal distance of 2,000 feet beyond the end or side of the required runway length, except for the residence and buildings of the runway owner.
  - D. An aircraft that is approaching or departing from the runways of a private airport shall meet all FAA flyover minimums.
  - E. A private airport may construct closer to an existing building or structure, provided that such private airport receive an impact easement from the property owner of the existing building or structure. Said easement shall be recorded in the public real estate record, and shall describe the benefitted and burdened parcels and shall run with the land. **ADDED PRIVATE AIRPORTS 5-2-11**
17. Commercial Wind energy conversion systems, provided the following minimum requirements are followed:
- A. The minimum requirements of Section 611 shall be met.
  - B. All proposed Commercial Wind Energy Conversion Systems shall be separated from all private airports/runways a distance equal to a 7:1 slope (accounting for the change in grade between the two uses) from the sides of said private runway, and shall include an area 600 feet wide centered upon each runway and shall extend out from each end for a distance of 5, 280 feet on a 40:1 slope (also accounting for the change in grade between the two uses.)
  - C. All proposed Commercial Wind Energy Conversion Systems shall be separated from all private airports/runways a distance equal to 15 rotor diameters from the sides of said private runway.
  - D. A Commercial Wind Energy Conversion System may construct closer to an existing private airport; provided that such Commercial Wind Conversion System receive an impact easement from said private airport owner. Said easement shall be recorded in the public real estate record, and the easement shall describe the benefitted and burdened parcels and shall run with the land. **ADDED COMMERCIAL WIND ENERGY CONVERSION SYSTEMS 5-2-11**
18. Radio, Television, microwave and other types of erected towers, subject to applicable airport, airstrip and heliport zoning restrictions set forth in this Resolution, including the following:
- A. The minimum requirements of Section 609: Radio, TV and Wireless Communication Towers.
  - B. All radio, TV and wireless Communication towers shall be separated from all private airports/runways a distance equal to a 7:1 slope (accounting for the change in grade between the two uses) from the sides of said private runway, and shall include an area 600 feet wide centered upon each runway and shall extend out from each end for a distance of 5,280 feet on a 40:1 slope, (also accounting for the change in grade between the two uses). **AMENDED RADIO, TV, AND MICROWAVE TOWERS 5-2-11**
19. Accessory Dwelling Units provided the following minimum conditions are met:
- A. The property owner shall notify the local E911 and fire department regarding the accessory dwelling unit. Proof of such notification shall be provided to the Zoning Administrator.

20. Sanitary Landfills

**AMENDED 501.05, REMOVED #14, OTHER COMPARABLE USES 5-21-07. AMENDED 501.05 ADDED SANITARY LANDFILLS #20 09-05-2017.**

**501.06 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 shall be prohibited.

**501.07 MINIMUM LOT AREA REQUIREMENTS:**

The following shall be the minimum lot area requirements for uses located within this district:

- 1. The minimum lot area for a single-family dwelling unit, manufactured home, modular home or mobile home shall be three (3) acres, provided that a larger lot area may be required by the standards and regulations of the Nebraska Department of Health and the Nebraska Department of Environmental Quality with regard to proper sizing and location of septic tank and tile field or lagoon sewage disposal systems.

2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall be less than three (3) acres in area.

**501.08 MINIMUM LOT WIDTH, DEPTH AND FRONTAGE:**

The following shall be the minimum lot width, depth and frontage for uses located in this district:

1. The minimum lot width shall be three hundred (300) feet, minimum lot depth shall be three hundred (300) feet and the minimum frontage on maintained road shall be no less than fifty (50) feet, except that the minimum lot width, depth and frontage for uses identified as conditional uses in this district shall be the lot width, depth and frontage appropriate to such uses, as determined by the County 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 three hundred (300) feet, a depth of less than three hundred (300) feet and a minimum frontage on maintained road of less than fifty (50) feet. (Amended 01-02-2018)

**501.09 MINIMUM SETBACK REQUIREMENTS: (AMENDED 6-4-2012)**

The following shall be the minimum yard requirements for uses located within this district:

1. Front Setback - Eighty Four (83) feet, provided that for lots which front on a Federal or State Highway the front setback shall be one-half (1/2) the width of the highway right-of-way plus fifty (50) feet
2. Side Setback - Fifty (50) feet for Primary structures and ten (10) feet for accessory structures
3. Rear Setback - Fifty (50) feet for Primary structures and ten (10) feet for accessory structures

A building or structure may construct closer to an existing private airport, provided that they receive an impact easement from said property owner. Said easement shall be recorded in the public real estate record, and the easement shall describe the benefitted and burdened parcels and shall run with the land.

**ADDED AIRPORT LANGUAGE 5-2-11**

**AMENDED 501.09: SETBACKS IN A GENERAL AG DISTRICT 8-19-02**

**501.10 MAXIMUM HEIGHT:**

No limitation, unless otherwise noted in this Resolution, except for buildings designed for human habitation which shall be a height limitation of thirty-five (35) feet and, except for any applicable restrictions in airport approach zones as set forth in Section 503 of this Resolution.

No building or structure, EXCEPT the residence and buildings of the owner of a private airport shall be constructed closer than what a 40:1 slope will allow from the end of the private runway and what a slope of 7:1 will allow from the sides of a private runway, unless the parties have an impact easement. Said easement shall be recorded in the public real estate record, shall describe the benefitted and burdened parcels and shall run with the land.

The maximum height requirements for the end of a private runway shall include an area 600 feet wide, centered upon said private runway and shall extend out from each end for a total of 5, 280 feet.

**ADDED AIRPORT LANGUAGE 5-2-11**





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## **SECTION 502 - AG - T    TRANSITIONAL AGRICULTURAL DISTRICT**

### **502.01 INTENT:**

The intent of this district is to preserve land for and encourage residential, commercial and industrial developments in a compatible relationship to each other around the incorporated municipalities within the County and provide protection of these urban areas from encroachment of incompatible confined or intensive animal feeding and other land uses while allowing agricultural uses which will not negatively impact non-agricultural uses in the zoning district or the incorporated municipalities, around which this zoning 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 agricultural buildings less than 132 feet in height, but excluding any dwelling unit(s) whether or not associated with an agricultural use as defined in Article 3 of this Resolution.
2. Grain and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities, less than 132 feet in height.
3. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities.
4. Forestry, tree farms and plant nurseries.
5. Child and day care uses conducted within a permitted dwelling unit
6. Oil and Gas wells. *ADDED 502.025-2-11*

### **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 and / or certificate of zoning compliance:

1. Public service facilities, including public, parochial, private non-religious, road maintenance equipment sheds, fire stations, public utility substations and utility distribution systems.
2. Churches, cemeteries and related uses.
3. Fish hatcheries, game farms and commercial hunting and fishing where such hunting and fishing does not involve development of lodges or other buildings devoted solely to the support of such hunting and fishing activities. Temporary housing of hunters and fishermen and temporary hunting or fishing shelters shall be permitted.
4. Signs, including permanent on-site and off-site advertising signs, provided the number of such permanent on-site signs shall not exceed three (3) per premises and that permanent off-site advertising signs shall be located no closer than two-hundred fifty (250) feet from any other on-site or off-site sign and further provided that such on-site and off-site advertising signs shall be setback from the right-of-way line of any public roadway, that on-site and off-site signs shall not exceed one-hundred (100) feet in height, or have a sign face area larger than one-thousand (1,000) square feet, and that off-site and on-site advertising signs shall have a minimum of seven (7) feet from the ground to the bottom of the sign for signs over twenty-five (25) square feet. On-site and off-site signs shall be setback one hundred (100) feet from the middle of an intersection and all quadrants of an intersection. Signs, including E-911 and identification signs, shall not be located in such a manner as to obstruct or otherwise interfere with an official traffic sign, signal or device, or obstruct or interfere with a driver's view of approaching, merging, or intersecting traffic. Temporary signs under twenty-five (25) square feet, including, but not limited to, E-911, identification signs, crop seed identification signs, insecticide and herbicide signs, yard sale, real estate for sale/lease and political campaign signs shall be exempt from these regulations. (All permanent signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads. *AMENDED 502.03(4) SIGNS 3-15-04*)
5. Child care and day care uses, involving buildings other than a residential dwelling unit.
6. Single-Family dwellings, including manufactured housing, modular homes and mobile homes, provided such dwellings comply with all of the following conditions. *(AMENDED 6-4-2012)*

- A. Such dwellings, if not on the same lot with and not of the same ownership as any existing confined animal feeding use, as defined in Section 303.25 of this Resolution, any existing intensive animal feeding use, as defined in Section 303.43 of this Resolution, or any waste handling facility, as defined in Section 303.87 of this Resolution, shall be separated from such animal feeding use by the minimum distance specified in Table 501.05, MINIMUM SEPARATION DISTANCES FOR CONFINED AND INTENSIVE ANIMAL FEEDING USES for the size of the use and the type of waste handling facility proposed, 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 animal feeding use, in which case any residence dwelling unit(s) associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Such minimum distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, including any waste handling facility use, to such dwelling. Application of waste which in solid form to the surface of the land, the application of composted waste or the injection of liquid or slurry waste into the soil shall not be subject to the minimum spacing distance herein specified.
  - B. Such dwelling shall be located on a lot with an area of not less than one (1) acre, as set forth in Section 502.07 of this Resolution, and such lot shall have a minimum lot width as set forth in Section 502.08 of this Resolution, provided that a larger lot may be required if the regulations of the Nebraska Department of Environmental Quality or its successor with regard to proper sizing and location of a septic tank and tile field or lagoon sewage disposal system indicate that a larger lot is appropriate.
  - C. The lot on which such dwelling is located shall front on or have access to an existing public roadway. The total number of dwellings per quarter section of land shall not exceed four (4) and that the minimum distance between dwelling units shall be five hundred (500) or more feet, unless a conditional use for a residential subdivision has been authorized by the County Board of Commissioners in accordance with the procedures and requirements of this Resolution. **AMENDED 502.03 (D) Removal of allowance for residences on minimum maintenance roads 9-4-07**
  - D. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use, as defined in Sections 303.25 and 303.43 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership and on the same premises with such confined or intensive animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use has been abandoned. 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 as set forth in this Resolution.
8. Agricultural Buildings, 132 feet in height or taller provided the minimum requirements are met.
- A. All proposed agricultural buildings shall meet the minimum setbacks as noted in this Resolution from County Road and Highway intersections.
  - B. All proposed agricultural buildings shall be separated from all private airports/runways a distance equal to a 7:1 slope (accounting for the change in grade between the two uses) from the edge of said private runway, and shall include an area 600 feet wide centered upon each runway and shall extend out from each end for a distance of 5, 280 feet on a 40:1 slope, (also accounting for the change in grade between the two uses.)  
**ADDED #8 AGRICULTURAL BUILDINGS 5-2-11**

**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 an agricultural building, as defined, shall require the issuance of a zoning permit and / or certificate of zoning compliance.  
**AMENDED ACCESSORY USES 5-2-11**
- 2. Home occupations, in accordance with Section 608 of this Resolution.
- 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 AG - T Transitional Agricultural District:

1. Expansion of Class I confined or intensive animal feedings uses and any associated waste handling facility uses, whether conforming or non-conforming with the requirements of this Resolution, provided such expansion shall not result in any confined or intensive animal feeding use becoming a Class II or larger use. Confined or intensive animal feeding uses in existence as of the effective date of this Resolution shall require a declaration of the current capacity of the existing use. 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 Zoning Administrator, using forms provided by the Zoning Administrator, within one hundred eighty (180) days of the effective date of this Resolution. In the event of any dispute over the number of animal units, such determination shall be by on-site inspection and actual counting of the number of animal unit capacity by the Zoning Administrator or other duly appointed official at the time of such dispute. In authorizing an expansion the Planning Commission, in making its recommendation and the County Board of Commissioners, in deciding on any such conditional use, shall consider all factors regarding such conditional use as set forth in Section 501.05, Subsections 1 and 2 of this Resolution.
2. Two-family and multi-family dwellings, provided such higher density residential uses are located near the incorporated municipalities in the County or in such other areas where the development of higher density uses can be adequately served by roadways, water, sewer, as well as law enforcement, fire protection and other public services, as determined by the Board of Commissioners.
3. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, game lodges, canoe outfitters, rental cabins, camp stores, public or commercial river access sites and other similar uses, including bed and breakfast operations and motels.
4. Mineral extraction and sand and gravel extraction facilities and operations,
5. Nursing home facilities and group homes,
6. Commercial and industrial uses, excluding confined and intensive animal feeding uses, determined by the Board of Commissioners to be compatible with adjoining land uses,
7. Waste handling facility uses, not associated with confined or intensive animal feeding uses, subject to the requirements of Section 501.05, Subsection 2 of this Resolution.
8. Radio, Television, microwave and other types of erected towers, subject to applicable airport, airstrip and heliport zoning restrictions set forth in this Resolution, including the following:
  - A. The minimum requirements of Section 609: Radio, TV, and Wireless Communication Towers.
  - B. All radio, TV and wireless Communication towers shall be separated from all private airports/landing strips a distance equal to a 7:1 slope (accounting for the change in grade between the two uses) from the sides of said private runway, and shall include an area 600 feet wide centered upon each runway and shall extend out from each end for a distance of 5, 280 feet on a 40:1 slope, (also accounting for the change in grade between the two uses) **AMENDED #8 TO ADD AIRPORT LANGUAGE 5-2-11/ AMENDED 502.05 ADDED #8, RADIO, TV, AND WIRELESS COMMUNICATION TOWERS 4-16-07**
9. Accessory Dwelling Units provided the following minimum conditions are met:
  - A. The property owner shall notify the local E911 and fire department regarding the accessory dwelling unit. Proof of such notification shall be provided to the Zoning Administrator.

**AMENDED 502.05 REMOVED OTHER COMPARABLE USES 5-21-07**

#### **502.06 PROHIBITED USES 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 new development of all classes of confined or

intensive animal feeding uses, as defined in Sections 303.25 and 303.43 of the Resolution and any associated waste handling facility uses, as defined in Section 303.87 of this Resolution.

**502.07 MINIMUM LOT AREA REQUIREMENTS:**

The following shall be the minimum lot area requirements for uses located within this district.

1. The minimum lot area for a single-family dwelling unit, manufactured home or mobile home shall be one-half (1/2) acre, provided that a larger lot area may be required by the standards and regulations of the Nebraska Department of Health and the Nebraska Department of Environmental Quality with regard to proper sizing and location of septic tank and tile field or lagoon sewage disposal systems indicate that a larger lot is appropriate, and further provided that where a semi-public or public sewer collection and treatment system is provided, the minimum lot size shall be ten thousand (10,000) square feet.
2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall be less than one-half (1/2) acre in area if on-site sewer disposal is proposed or not less than ten thousand (10,000) square feet if a semi-public or public sewer collection and treatment system is to be used.

***AMENDED 502.07 MINIMUM LOT AREA REQUIREMENTS 1-6-03***

**502.08 MINIMUM LOT WIDTH AND FRONTAGE:**

The following shall be the minimum lot width and frontage requirements for uses located within this district:

1. For lots on which on-site sewage disposal is proposed, the minimum lot width shall be eighty five (85) feet and the minimum lot frontage shall be sixty six (66) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of 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 sixty six (66) feet and a minimum frontage less than fifty (50) feet.
2. For lots on which connection to semi-public or public sewer collection and treatment system is to be used, the minimum lot width shall be sixty six (66) feet and the minimum lot frontage 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 sixty six (66) feet and a minimum frontage less than fifty (50) feet.

***AMENDED 502.08 MINIMUM LOT WIDTH AND FRONTAGE 1-6-03***

**AMENDED 502.08 MINIMUM LOT WIDTH AND FRONTAGE 1-6-03**

**502.09 MINIMUM SETBACK REQUIREMENTS: (AMENDED 6-4-2012)**

The following shall be the minimum yard requirements for uses located within this district:

For lots one-half (1/2) acre or larger utilizing on-site sewage disposal:

1. Front Setback - Fifty eight (58) feet, provided that for lots which front on a Federal or State Highway the front setback shall be one-half (1/2) the width of the right-of-way of the highway plus twenty five (25) feet
2. Side Setback - Ten (10) feet
3. Rear Setback - Thirty (30) feet for Primary structures and ten (10) feet for accessory structures

For lots smaller than one-half (1/2) acre:

1. Front Setback - Fifty eight (58) feet, provided that for lots which front on a Federal or State Highway the front setback shall be one-half (1/2) the width of the right-of-way of the highway plus twenty five (25) feet
2. Side Setback - Five (5) feet
3. Rear Setback - Thirty (30) feet for Primary structures and ten (10) feet for accessory structures

Front yard exception for lots in developed areas, as defined in Section 303.25B of this Resolution:

1. The required front yard shall be the average of the existing front yards for existing buildings, provided that in no event shall such front yard be less than fifty (50) feet, measured from the centerline of any local road, provided

that for lots which front on a Federal or State Highway, the minimum front yard shall be one-half (1/2) the width of the right-of-way of the highway plus twenty (20) feet.

***AMENDED 502.09 MINIMUM SETBACKS (TRANSITIONAL AG DIST.) 9-17-01***

**502.10 MAXIMUM HEIGHT:**

No limitation, unless otherwise noted in this Resolution, except that the maximum height for any building designed for human habitation shall be thirty-five (35) feet and, except for any applicable restrictions in airport approach zones as set forth in Section 503 of this Resolution.

No building or structure, EXCEPT the residence and buildings of the owner of a private airport shall be constructed closer than what a 40:1 slope will allow from the end of the private runway and what a slope of 7:1 will allow from the sides of a private runway, unless the parties have an impact easement. Said easement shall be recorded in the public real estate record, shall describe the benefitted and burdened parcels, and shall run with the land.

The maximum height requirements for the end of a private runway shall include an area 600 feet wide, centered upon said private runway and shall extend out from each end for a total of 5, 280 feet.

***ADDED AIRPORT LANGUGAGE TO 502.10 5-2-11***

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## **SECTION 503 - AA PUBLIC AIRPORT APPROACH DISTRICT**

### **503.01 INTENT:**

The intent of this district is that it is to be appended and to overlay any of the primary zoning districts as described in Sections 501 and 502 of this Resolution to protect the safe use of public airports in the County by limiting the location and height of structures within the operation, approach, transition and turning zones around public airports, as designated on the Official Zoning Map of Perkins County, Nebraska. Such airport approach overlay district shall include an area three statute miles in any direction adjacent to the boundary of the Grant Municipal Airport and the areas designated around other public airports in the County. *AMENDED 503.01 INTENT 5-2-11*

### **503.02 ZONE DESCRIPTIONS:**

The various areas around an airport are indicated in the official Grant Municipal Airport Zoning Map, dated 3/18/08, and as amended from time to time and described as follows: *AMENDED 503.02 ZONE DESCRIPTIONS 5-2-11*

1. **Operation Zone:** An operation zone shall be located along each existing or proposed runway, landing strip, or other portion of the air field used regularly for landing and takeoff of airplanes and shall begin or end at each end of each landing strip and two hundred (200) feet beyond the end of each runway and shall be one thousand (1,000) feet in width for each instrument runway or landing strip and five hundred (500) feet in width for all other runways and landing strips.
2. **Approach Zone:** An Approach Zone shall begin at the ends of the respective Operation Zones and shall extend and expand uniformly centered along the extended centerline of the respective runway or landing strip, to the outer boundary of the Approach Zone at a rate of thirty (30) feet in width for each one hundred (100) feet of horizontal length for the instrument runway or landing strip and twenty (20) feet in width for each one hundred (100) feet of horizontal length of all other runways.

The Inner Area of each Approach Zone shall be that portion of the Approach Zone beginning at the end of the respective or proposed Operation Zone and extending to the intersection of the controlling glide angle with a plane one hundred fifty (150) feet above the highest elevation of the end of the respective runway or landing strip.

The Outer Area of each Approach Zone shall be the area between the outer limits of the Inner Area of the Approach Zone and the outer limits of the Approach Zone.

3. **Transition Zone:** A Transitional Zone shall be the areas bounded by the Operation Zones of the Hazard Area, the sides of the contiguous inner areas of Approach Zones and the outer limits of the Transitional Zones; said outer limits of the Transition Zones being the intersections, at elevations of one hundred fifty (150) feet above the highest elevation at the ends or edges or the closest runway or landing strip, or proposed runway or landing strip, of a series of contiguous planes originating from bases established by the Operation Zones of the Hazard Area and the edges of adjacent inner areas of Approach Zones; said planes rising from their respective bases along lines perpendicular to the centerline of the landing strip or runway at the rate of one (1) foot vertically to Seven (7) feet horizontally to the lines of intersection previously referred to.
4. **Turning Zone:** A Turning Zone shall be comprised of all portions of the Hazard Area not contained in the Operation, Approach or Transition Zones. The outer limits of the Turning Zone shall be a series of points forming a line which is the horizontal distance of three (3) statute miles from the nearest points along the airport/airstrip property lines.

### **503.03 PERMITTED PRINCIPAL USES AND STRUCTURES:**

Any use or structure permitted in the primary zoning district where this district is overlain, provided all buildings, structures and other obstacles comply with the height restrictions established in Section 503.05 below.

### **503.04 CONDITIONAL USES:**

Any conditional use permitted in the primary zoning district where this district is overlain where such conditional use has been duly authorized by the County Board of Commissioners in accordance with the requirements and procedures specified in this Resolution, provided all buildings, structures and other obstacles comply with the height restrictions set forth in Section 504.05 below.



**503.05 HEIGHT RESTRICTIONS:**

No building, transmission line, communications line, pole, tree, smoke-stack, chimney, wires, tower, or other structure or appurtenance thereto of any kind or character shall hereafter be erected, constructed, or established, nor shall any tree or other object of natural growth be allowed to grow:

1. In Inner Areas of Approach Zones to a height above the elevation of the nearest point on the end or proposed end of an instrument runway or landing strip in excess of one-fiftieth (1/50), and all other runways or landing strips, in excess of one-fortieth (1/40) of the distance from the end of the approach zone (the end nearest the runway or landing strip) to said structure or object.
2. In the Outer Areas of Approach Zones and in Turning Zones to a height in excess of one hundred fifty (150) feet above the elevation at the end of the nearest runway or landing strip.
4. In the Transition Zones to a height above the planes forming the transition slopes, and In the existing or proposed Operation Zones to a height above the existing or proposed finished grade of said runways or landing strips or surface of the ground.

**5.03.06 PROHIBITED USES AND STRUCTURES:**

All other uses and structures which are not permitted in the primary zoning district either as permitted, accessory uses, or as a conditional use where this district is overlain are prohibited including all private airports. *ADDED 5.03.06 PROHIBITED USES AND STRUCTURES 5-2-11*

## SECTION 504 - FA FLOOD HAZARD DISTRICT

### 504.01 INTENT:

Pursuant to Sections 31-1001 to 31-1022 R.R.S. 1943, the Board of Commissioners of Perkins County, Nebraska are assigned the responsibility to adopt and enforce floodplain management regulations to protect the public health, safety and general welfare and the Board of Commissioners of Perkins County do hereby adopt, as part of the zoning regulations for Perkins County, Nebraska, the following regulations:

### FINDINGS OF FACT:

- A. FLOOD LOSSES RESULTING FOR PERIODIC INUNDATION:** The flood hazard areas of Perkins County, Nebraska are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.
- B. GENERAL CAUSES OF FLOOD LOSSES:** These flood losses are caused by: (1) The cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise unprotected from flood damages.

### STATEMENT OF PURPOSE:

It is the purpose of this Resolution to promote the public health, safety and general welfare and to minimize those losses described in Section 504.01, Subsection A above by applying the provisions of this Resolution to:

- A.** Restrict or prohibit uses which are dangerous to health, safety or property in times of flooding or cause undue increases in flood heights or velocities.
- B.** Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- C.** Protect individuals from buying lands which are unsuited for intended purposes because of flood hazards.
- D.** Assure that eligibility is maintained for property owners in the areas of the County under the jurisdiction of this Resolution to purchase flood insurance in the National Flood Insurance Program.

### 504.02 LOCAL ADMINISTRATOR RESPONSIBILITIES:

The Perkins County Zoning Administrator hereby is assigned these added responsibilities and is authorized and directed to enforce all of the provisions of these flood hazard regulations and all other Resolutions of the Perkins County Board of Commissioners now in force or hereafter adopted, related to zoning, subdivision regulation or building codes. The Zoning Administrator shall be appointed to these additional responsibilities by adoption of this Resolution and his/her appointment shall continue during good behavior and satisfactory service. During temporary absence or disability of the Zoning Administrator, the Board of Commissioners shall designate an acting administrator to administer these regulations.

### 504.03 DESIGNATION OF CURRENT FLOOD HAZARD BOUNDARY MAP (FHBM)/FLOOD HAZARD RATE MAP (FIRM):

Until a Flood Hazard Boundary Map / Flood Insurance Rate Map has been published, any development (zoning) permit shall not be issued except in compliance with these flood hazard regulations. In determining those areas such to flood hazard, soil survey and other published data shall be utilized. Further, when such Flood Hazard Boundary Map / Flood Insurance Rate Map have been published, such maps shall be automatically designated as the official map to be used in determining those areas of flood hazard.

### 504.04 PERMITS REQUIRED:

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a zoning permit for development as defined in this Resolution.

- A.** Within flood hazard areas, zoning permits are required for all new construction, substantial improvements and other developments, including the placement of any Agricultural building or manufactured home.

***AMENDED 504.04 AGRICULTURAL BUILDING 5-2-11***

- B. **APPLICATION:** To obtain a zoning permit, the applicant shall first file an application therefore in writing on a form furnished by Perkins County, Nebraska. Every such application shall:
1. Identify and describe the development to be covered by the floodplain development permit for which application is made.
  2. Describe the land on which the proposed development is to be done by lot, block, tract, house and street number or similar description which will readily identify and definitely locate the proposed building or development.
  3. Indicate the use or occupancy for which the proposed development is intended.
  4. Be accompanied by plans and specifications for the proposed construction.
  5. Be signed by the permittee or his/her authorized agent who may be required to submit evidence to indicate such authority.
  6. Within designated floodplain areas, be accompanied by elevations of the lowest floor, including basement, or in the case of floodproofed non-residential structures, the elevation to which it shall be floodproofed. Documentation or certification of such elevations will be maintained by the Zoning Administrator.
  7. Give such other information as reasonably may be required by the Zoning Administrator (i.e., require a written statement from the applicant that they are aware that elevating or floodproofing structures above minimum levels will result in premium reduction for flood insurance, especially in the case of non-residential floodproofing when a minus one (1) foot penalty is assessed at the time of rating the structure for the policy premium.)

#### **504.05 ZONING PERMIT APPLICATIONS REVIEW:**

The Zoning Administrator shall review all zoning permit applications to determine if the site of the proposed development is reasonably safe from flooding and that all necessary permits have been received as required by Federal or State Law. In reviewing all applications for new construction, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments as defined in this Resolution in flood hazard areas, the Zoning Administrator shall:

- A. Obtain, review and reasonably utilize, if available, any regulatory flood elevation data and floodway data available from Federal, State, or other sources, until such other data is provided by the Federal Insurance Administration in a Flood Insurance Study, and require within flood hazard areas that the following performance standards be met:
1. Until a floodway is designated, no development or substantial improvement may be permitted within the identified floodplain unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the 100 year flood more than One (1) foot at any location.
  2. New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated at least One (1) foot above the base flood elevation.
  3. New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least One (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below such a level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Planning and Zoning Administrator.
  4. New construction or substantial improvements of any type shall be such that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than One (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than One (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices, provided that such devices permit the automatic entry and exit of floodwaters.

- B. Require the use of construction materials that are resistant to flood damage.
- C. Require the use of construction methods and practices that will minimize flood damage.
- D. Require that new structures be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- E. New structures be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- F. Assure that all manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with State Laws, local building codes, Manufacturers specifications and Federal Emergency Management Agency guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
  - 1. Over-the-top ties be provided at each of the Four (4) corners of the manufactured home with Two (2) additional ties per side at the intermediate locations and manufactured homes less than Fifty (50) feet long requiring One (1) additional tie per side.
  - 2. Frame ties be provided at each corner of the home with Five (5) additional ties per side at intermediate points and manufactured homes less than Fifty (50) feet long requiring One (1) additional tie per side.
  - 3. All components of the anchoring system shall be capable of carrying a force of Four Thousand Eight Hundred (4,800) pounds.
  - 4. Any additions to manufactured homes shall be similarly anchored.
- G. Assure that all manufactured homes that are placed or substantially improved within a flood hazard areas on sites:
  - 1. Outside of a manufactured home park or subdivision,
  - 2. In a new manufactured home park or subdivision,
  - 3. In an expansion to an existing manufactured home park or subdivision, or
  - 4. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least One (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section F, immediately above.
- H. Assure that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within a flood hazard areas that are not subject to the provisions of Section G, immediately above, be elevated so that either:
  - 1. The lowest floor of the manufactured home is at least One (1) foot above the base flood elevation, or
  - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than Thirty Six (36) inches in height above grade and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section E, immediately above.
- I. Require that recreational vehicles placed on sites within the identified flood hazard areas either (1) be on the site for fewer than One Hundred Eighty (180) consecutive days, (2) be fully licensed and ready for highway use, or (3) meet the permit requirements and the elevation and anchoring requirements for manufactured homes of this Resolution. A recreational vehicle is ready for highway use if it is on wheels or jacking system is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**504.06 SUBDIVISION REVIEW:**

The Perkins County Board of Commissioners shall review the plans of any proposed subdivision of land where all or a portion of such land is located in a flood hazard area and shall make findings of fact that:

- A. All proposed developments are consistent with the need to minimize flood damage.
- B. Subdivision information include regulatory flood elevation data.
- C. Adequate drainage is provided so as to reduce exposure to flood hazards.

D. All public utilities and facilities are located so as to minimize or eliminate flood damage.

In its review of such subdivisions, the Board of Commissioners may require modifications to the subdivision design to minimize flood hazards and assure that all developments within the subdivision comply with these flood hazard regulations.

**504.07 WATER AND SEWAGE SYSTEMS:**

New and replacement water and sewage systems shall be constructed to eliminate or minimize infiltration by, or discharge into floodwaters. Moreover, on-site waste disposal systems shall be designed to avoid impairment or contamination during flooding.

**504.08 STORAGE OF MATERIAL AND EQUIPMENT:**

The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited. Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.

**504.09 FLOOD CARRYING CAPACITY WITHIN ANY WATERCOURSE:**

The Board of Commissioners of Perkins County, Nebraska shall ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained. The County Board of Commissioners shall notify, in riverine situations, adjacent communities and the Nebraska Natural Resources Commission, prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Federal Emergency Management Agency. Moreover, the Board of Commissioners shall work with appropriate State and Federal agencies in every way possible in complying with the National Flood Insurance Program in accordance with the National Disaster Protection Act of 1973.

**504.10 VARIANCE PROCEDURES:**

The Perkins County Board of Adjustment, as established by the Perkins County Board of Commissioners shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determinations made by the Planning and Zoning Administrator in the enforcement of these flood hazard regulations and requests for variances from the requirements of these flood hazard regulations. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court as provided in Section 23-168, R.R.S., 1943.

**A. CONDITIONS FOR VARIANCE:**

1. Generally, a variance may be issued for new construction and substantial improvements to be erected on a lot of One-Half (1/2) acre or less in size which is contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing Subsections 2 through 6 immediately below have been fully considered. As the lot size increases beyond One-Half acre, the technical justification required for authorizing a variance shall be increased.
2. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief from any undue hardship.
4. Variances shall only be authorized upon:
  - a) A showing of good and sufficient cause;
  - b) A determination that failure to authorize a variance would result in exceptional hardship to the applicant;
  - c) A determination that authorizing of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with other applicable laws or resolutions.
5. The applicant shall be given written notice over the signature of the Zoning Administrator that:
  - a) The authorization of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as Twenty Five Dollars (\$25.00) for One Hundred Dollars (\$100.00) of insurance coverage, and
  - b) Such construction below the base flood level increases risks to life and property.

A copy of such signed notification shall be maintained with the record of all such variances, as required by this Resolution.

6. In authorizing any variance to these flood hazard regulations, the Board of Adjustment shall consider all technical data and all relevant factors and standards specified in Section 609 of the Resolution, including:
  - a) the danger that materials may be swept onto other lands to the injury of others;
  - b) the danger to life and property due to flooding or erosion damage;
  - c) the susceptibility of any proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d) the importance of services provided by the proposed facility to the County;
  - e) the necessity to any facility of a waterfront location, where applicable;
  - f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - g) the compatibility of the proposed use with existing and anticipated development;
  - h) the relationship of the proposed use to the Comprehensive Plan;
  - i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j) the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site, and
  - k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sanitary sewers, gas, electrical and water systems and road and bridges.

**504.11 INTERPRETATION:**

In their interpretation and application, the flood hazard provisions of the Resolution shall be held to be minimum requirements and shall be construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by Nebraska Statutes.

**504.12 WARNING AND DISCLAIMER OF LIABILITY:**

The degree of flood protection required by this Resolution is considered reasonable for regulatory purposes and is based upon engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Resolution does not imply that areas outside floodplain boundaries or land use permitted within floodplain areas will be free from flooding or flood damage. This Resolution shall not create liability on the part of Perkins County, Nebraska or any officer or employee thereof for any flood damages that may result from reliance on this Resolution or any administrative decision lawfully made thereunder.

## **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:

- 602.01 Any setback so placed or oriented that none of the specific setback definitions contained in this Resolution are applicable shall necessitate a determination by the Zoning Administrator of a suitable setback dimension which will be consistent with the intent of the setback requirements within the applicable zoning district.
- 602.02 No structure shall project into a required front, side or rear setback except for the following:
1. An eave, cornice, overhang, awning, balcony, or bay window projecting not more than four (4) feet from the building wall.
  2. The ordinary projection of belt courses, sills, lintels, chimneys and other similar ornamental or architectural features, provided such features do not project more than eighteen (18) inches from the building wall.
  3. Unenclosed, uncovered steps, entrance platforms, ramps, terraces or landings not over two (2) feet above grade level and not projecting more than eight (8) feet from the building wall

### **SECTION 603 - FENCES AND WALLS**

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

### **SECTION 604 - SETBACK EXEMPTIONS**

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

### **SECTION 605 - DIVISION OF LOTS**

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

### **SECTION 606 - CONVERSIONS OF USE**

Any use of land which is converted to another use shall comply in all respects with the requirements of this Resolution.

### **SECTION 607 - ACCESSORY USES**

Accessory uses shall be permitted as specified in all zoning districts in accordance with the following provisions:

- 607.01 Any accessory use shall be incidental to, subordinate to and commonly associated with the primary use of the lot.
- 607.02 Any accessory use shall be operated and maintained under the same ownership and control and on the same lot as the primary use of the lot.
- 607.03 Any accessory use shall be clearly subordinate to the primary use of the lot in height, area, bulk and extent.
- 607.04 Any accessory use shall be permitted only after the erection and operation of a primary use of the lot.

### **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 an occupancy permit:

- 608.01 The home occupation shall be conducted within the dwelling unit or accessory building and only by a member or members of the occupants of the dwelling unit.
- 608.02 The home occupation is clearly subordinate to the residential / agricultural use of the lot and does not change the residential / agricultural character of the lot nor infringe upon the right of neighboring owners to enjoy their property.

## **SECTION 609 - RADIO, TELEVISION, AND WIRELESS COMMUNICATION TOWERS**

### **609.01 Intent**

Based upon the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act) grants the Federal Communications Commission (FCC) exclusive jurisdiction over certain aspects of telecommunication services. This section is intended to regulate towers, telecommunications facilities and antennas in the County in conformance with the Act without prohibiting or tending to prohibit any person from providing wireless telecommunication service. Telecommunication facilities, towers and antennas in the County, to protect residential areas and land uses from potential adverse impact of installation of towers and antennas through careful design, siting, and camouflaging, to promote and encourage shared use / collocation of towers and other antenna support structures rather than the construction of additional single use towers, to avoid potential damage to property caused by towers, telecommunications facilities and antennas by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, repaired and removed when no longer used or are determined to be structurally unsound and to ensure that towers and antennas are compatible with surrounding land uses.

### **609.02 Definitions**

All terms in this Section which are not specifically defined herein shall be construed in accordance with the Communications Act of 1934, the Telecommunications Act of 1996 and the Rules and Regulations of the Federal Communications Commission (FCC). As used in this Section, the following terms shall have the following meanings:

**ANTENNA** shall mean a device, designed and intended for transmitting or receiving television, radio, or microwave signals, direct satellite service (including direct-to-home satellite service), and/or video programming services via multi-point distribution services.

**ANTENNA SUPPORT STRUCTURE** shall mean any building or structure other than a tower which can be used for location of telecommunications facilities.

**APPLICANT** shall mean any person that applies for a Tower Development Permit.

**APPLICATION** shall mean a process by which the owner of a tract of land within the zoning jurisdiction of the County submits a request to develop, construct, modify, or operate a tower upon such tract of land. The term application includes all written documentation, verbal statements, and representations, in whatever, formal forum, made by an applicant to the County concerning such request.

**CONFORMING COMMERCIAL EARTH STATION** shall mean a satellite dish which is two meters or less in diameter and is located in an area where commercial or industrial uses are generally permitted under this regulation.

**ENGINEER** shall mean any engineer qualified and licensed by any state or territory of the United States of America.

**FALL ZONE** shall mean that area below and around a tower where the structure might collapse if damaged or structurally fails.

**FALL ZONE EASEMENT** shall mean a signed, notarized and recorded document from an adjacent property owner that allows the tower owner to use the adjacent property as part of the designed fall zone for a tower, which shall run with the land.

**OWNER** shall mean any person with a fee simple title or a leasehold exceeding 10 years in duration to any tract of land within the zoning jurisdiction of the County who desires to develop, construct, modify, or operate a tower upon such tract of land.



**PERSON** shall mean any person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

**SATELLITE DISH ANTENNA** shall mean an antenna consisting of a radiation element intended for transmitting or receiving television, radio, microwave, or radiation signals and supported by a structure with or without a reflective component to the radiating dish, usually circular in shape.

**STEALTH** shall mean any telecommunications facility, tower, or antenna which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than a tower, such as light poles, power poles and trees.

**TELECOMMUNICATIONS FACILITIES** shall mean any cables, wires, lines, wave guides, antennas, or any other equipment or facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

1. Any Conforming Commercial Earth Station antenna two meters or less in diameter which is located on real estate zoned General Ag District, Transitional Ag District.
2. Any earth station antenna or satellite dish antenna of one meter or less in diameter, regardless of zoning applicable to the location of the antenna.

**TOWER** shall mean a self-supporting lattice, guyed, or monopole structure that supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operator's equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.

**TOWER DEVELOPMENT PERMIT** shall mean a permit issued by the County upon approval by the County Board of an application to develop a tower within the zoning jurisdiction of the County; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Section. Upon issuance, a Tower Development Permit shall be deemed to run with the land during the permits duration and may be transferred, conveyed, and assigned by the applicant to assigns and successors-in-interest.

**TOWER OWNER** shall mean any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a Tower Development Permit.

### **609.03 Location of Towers and Construction Standards**

1. Towers shall be permitted conditional uses of land in only those zoning districts where specifically listed and authorized in this regulation.
2. No proposed tower shall be located within five miles of any existing tower, without approval of the Perkins County Board of Commissioners.
3. No person shall develop, construct, modify or operate a tower upon any tract of land within the zoning jurisdiction of the County prior to approval of its application for a Tower Development Permit by the County Board and issuance of the permit by the County. Applicants shall submit their application for a Tower Development Permit to the Zoning Administrator and shall pay a filing fee in accordance with the County's fee schedule.
4. All towers, telecommunications facilities and antennas on which construction has commenced within the zoning jurisdiction of the County after the effective date of this regulation shall conform to the Building Codes and all other construction standards set forth by the County, federal, and state law and applicable American National Standards Institute (ANSI). Upon completion of construction of a tower and prior to the commencement of use, an engineer's certification that the tower is structurally sound and in conformance with all of the aforementioned applicable regulatory standards shall be filed with the Zoning Administrator.

### **609.04 Application to develop a Tower**

Prior to commencement of development or construction of a tower, an application shall be submitted to the Zoning Administrator for a Tower Development Permit and shall include the following:

1. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.

2. The legal description and address of the tract of land on which the tower is to be located.
3. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one mile radius of the proposed tower, including publicly and privately owned towers and structures.
4. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicants telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicants telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
5. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other applicable construction standards set forth by the County Board and federal and state and ANSI standards.
6. Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and / or zoned property and nearest roadway, street or highway.
7. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturers literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.

**609.05 Tower Development Permit: Procedure**

After receipt of an application for a Tower Development Permit, the Zoning Administrator shall schedule a public hearing before the Planning Commission, following all statutory requirements for publication and notice, to consider such application. The Planning Commission shall receive testimony on the Tower Development Permit and shall make a recommendation to the County Board. Upon the completion of the Planning Commission Public Hearing the Zoning Administrator shall schedule a public hearing before the County Board, following all statutory requirements for publication and notice, to consider such application and the recommendation of the County Planning Commission. Notice, for each Public Hearing, shall be made at least one time and at least 10 days prior to such hearing. In addition, the Zoning Administrator shall cause a notice to be posted in a conspicuous place on the property on which action is pending. The Planning Commission and County Board may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and / or input received at the public hearings or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

**609.06 Setbacks and Separation or Buffer Requirements**

1. All towers up to 50 feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district.
2. Towers in excess of 50 feet in height shall meet the following:
  - A. All proposed towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded public road rights-of-way and public road and street lines by the lesser of the following distances
    - a. A distance equal to 100% of the tower height or
    - b. A distance equal to the manufacturer’s designed fall distances of the proposed Tower or Wireless Telecommunications Facility structure. The manufacturer’s designed fall distance setback shall be accompanied by an engineer’s signed and sealed statement defining the manufacturer’s designed fall distance.
    - c. If the setback in item b above cannot be obtained then the applicant may provide fall zone easements from adjoining property owners in order to meet the required setbacks; however, fall zone easements shall not be allowed for Federal, State or county rights-of-way.
  - B. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
3. All towers shall be required to meet the 40:1 height ratio (accounting for topographic changes) 600’ wide centered upon each runway and shall extend out from each end for a distance of 5,280 feet. In addition, said tower shall

be required to meet a 7:1 height ratio (accounting for topographic changes) from all other directions around a private runway.

4. Towers must meet the following minimum separation requirements from other towers:
  - a. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
  - b. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

**ADDED # 2 DEALING WITH PRIVATE AIRPORTS 5-2-11, AMENDED 609.06 9-16-13**

**609.07 Structural Standards for Towers Adopted**

The *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*, 1991 Edition (ANSI/EIA/TIA 222-E-1991) is hereby adopted, together with any amendments thereto as may be made from time to time, except such portions as are hereinafter deleted, modified, or amended by regulation and set forth in this Article of the Zoning Regulation.

**609.08 Illumination and Security Fences**

1. Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA).
  - a. No day running lights and shall be painted per FAA requirements.
  - b. In no case shall said tower be allowed to operate a strobe lighting system after sunset and before dawn.
2. All self-supporting lattice or guyed towers shall be enclosed within a security fence or other structure designed to preclude unauthorized access. Monopole towers shall be designed and constructed in a manner which will preclude to the extent practical, unauthorized climbing of said structure.

**609.09 Exterior Finish**

Towers not requiring FAA painting or marking shall have an exterior finish which enhances compatibility with adjacent land uses, subject to review and approval by the Planning Commission and County Board as part of the application approval process. All towers that must be approved as a conditional use shall be stealth design unless stealth features are impractical or the cost of such features represents an undue burden on the applicant.

**609.10 Landscaping**

All tracts of land on which towers, antenna support structures, telecommunications facilities and/or antennas are located shall be subject to the landscaping requirements of the County.

**609.11 Maintenance, Repair or Modification of Existing Towers**

All towers constructed or under construction on the date of approval of this regulation may continue in existence as a non-conforming structure and may be maintained or repaired without complying with any of the requirements of this Section. Nonconforming structures or uses may not be enlarged or the degree of nonconformance increased without complying with this Section, including applying for and obtaining a Tower Development Permit. Any modification or reconstruction of a tower constructed or under construction on the date of approval of this regulation shall be required to comply with the requirements of this Section including applying for and obtaining a Tower Development Permit. Said application shall describe and specify all items which do not comply with this Section and may request subject to final review and approval of the County Board, an exemption from compliance as a condition of the Tower Development Permit.

**609.12 Inspections**

The County reserves the right to conduct inspection of towers, antenna support structures, telecommunications facilities and antenna upon reasonable notice to the tower owner or operator to determine compliance with this Section and to prevent structural and equipment failures and accidents which may cause damage, injuries or nuisances to the public. Inspections may be made to determine compliance with the County's Zoning Codes and any other construction standards set forth by the County, federal, and state law or applicable ANSI standards. Either an employee of the County's Zoning Office or a duly appointed independent representative of the County shall make inspections.

**609.13 Maintenance**

The towers, antenna support structures, telecommunications facilities and antennas shall at all times be kept and maintained in good condition, order and repair so that the same does not constitute a nuisance to or a danger to the life or property of any person or the public.

#### **609.14 Abandonment**

If any tower shall cease to be used for a period of one year, the Zoning Administrator shall notify the tower owner that the site will be subject to determination by the Zoning Administrator that the site has been abandoned. Upon issuance of written notice to show cause by the Zoning Administrator, the tower owner shall have 30 days to show preponderance of evidence that the tower has been in use or under repair during the period of apparent abandonment. In the event the tower owner fails to show that the tower has been in use or under repair during the relevant period, the Zoning Administrator shall issue a final determination of abandonment of the site and the tower owner shall have 75 days thereafter to dismantle and move the tower. In the event the tower is not dismantled and removed, the tower shall be declared a public nuisance by the Zoning Administrator, or his/her designee and a written request shall be directed to the County Attorney to proceed to abate said public nuisance pursuant to authority of the Revised Nebraska State Statutes and Perkins County codes, and charge the costs thereof against the real estate on which the tower is located or the owner of record of the said real estate.

#### **609.15 Satellite Dish Antennas, Regulation**

Upon adoption of this regulation, installation of satellite dish antennas shall be permitted within the zoning jurisdiction of Perkins County only upon compliance with the following criteria:

1. In residentially zoned districts, satellite dish antennas may not exceed a diameter of 10 feet.
2. Single family residences may not have more than two satellite dish antenna over three feet in diameter.
3. Multiple family residences with 10 or less dwelling units may have no more than one satellite dish antenna over three feet in diameter. Multiple family residences with more than 10 dwelling units may have no more than two satellite dish antennas over three feet in diameter.
4. In residential zoning districts, satellite dish antennas shall not be installed in the required front yard setback or side yard setback area.
5. All satellite dish antennas installed within the zoning jurisdiction of Perkins County, upon adoption of this regulation, shall be of a neutral color such as black, gray, brown, or such color as will blend with the surrounding dominant color in order to camouflage the antenna.

*AMDENDED: ADDED SECTION 609, TOWER REGULATIONS 5-21-07*

## **Section 610: Adult Entertainment Establishments**

### **Section 610.01 Intent:**

The intent of this section is to provide for guidelines and criteria for the regulation, not the elimination of, Adult Entertainment Establishments. The overall intent is to regulate the secondary effects of these uses within the community.

### **Section 610.02 Definitions:**

The following definitions have been adopted by Perkins County, and as amended from time to time.

1. **ADULT ARCADE** shall mean any place to which the public is permitted or invited in which coin-operated, slug-operated or for any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.
2. **ADULT CABARET** shall mean a nightclub, bar, restaurant, or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities or films, motion pictures, video cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material that is characterized by any emphasis upon the depiction of specified sexual activities or specified anatomical areas.
3. **ADULT COMPANIONSHIP ESTABLISHMENT** shall mean an establishment which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
4. **ADULT ESTABLISHMENT** shall mean any business offering its patrons services or entertainment characterized by an emphasis on matter depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas," including, but without limitation, adult bookstores, adult motion picture theaters, adult saunas, adult companionship establishments, adult health clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotel or motel, and adult body painting studios.
5. **ADULT HOTEL OR MOTEL** shall mean a hotel or motel from which minors are specifically excluded from patronage and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
6. **ADULT MASSAGE PARLOR, HEALTH CLUB** shall mean a massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
7. **ADULT MINI-MOTION PICTURE THEATER** shall mean a business premises within an enclosed building with a capacity for less than 50 persons used for presenting visual-media material if such business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
8. **ADULT MOTION PICTURE ARCADE** shall mean any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motor picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."
9. **ADULT MOTION PICTURE THEATERS** shall mean a business premises within an enclosed building with a capacity of 50 or more persons used for presenting visual media material if said business as a prevailing practice excludes minors by virtue of age, or if said material is distinguished or characterized by an emphasis on the

depiction of description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

10. **ADULT NOVELTY BUSINESS** shall mean a business which has as a principal activity the sale of devices which simulate human genitals or devices, which are designed for sexual stimulation.
11. **ADULT SAUNA** shall mean a sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."
12. **ESCORT** shall mean a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
13. **ESCORT AGENCY** shall mean a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
14. **MASSAGE PARLOR** (See Adult Uses)
15. **NUDE MODEL STUDIO** shall mean any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a college, community college or university supported entirely or in part by public money; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college or university supported entirely, partly by public money or in a structure or private studio:
  - a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
  - b. where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
  - c. where no more than one nude or semi-nude model is on the premises at any one time.
16. **NUDITY OR A STATE OF NUDITY** shall mean the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the showing of the covered male genitals in a discernibly turgid state.
17. **SPECIFIED ANATOMICAL AREAS** shall mean anatomical areas consisting of less than completely and opaquely covered human genitals, buttock, or female breast(s) below a point immediately above the top of the areola.
18. **SPECIFIED SEXUAL ACTIVITIES** shall mean activities consisting of the following:
  - a. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts of conduct: Anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; or
  - b. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or
  - c. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or
  - d. Situation involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint or any such persons; or
  - e. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal by a human being; or
  - f. Human excretion, urination, menstruation, vaginal, or anal irrigation.

19. **SEXUAL ENCOUNTER CENTER** shall mean a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - b. activities between either male and female persons or persons of the same sex, or both, when one or more of the persons is in a state of nudity or semi-nude.

**Section 610.03 Geography:**

Uses defined as Adult Entertainment Establishments are allowed in a limited manner within Perkins County and are strictly allowed solely in the Transitional Agricultural District that will minimize the secondary effects upon the community at-large.

#### **Section 610.04 Special Requirements:**

The following Special Requirements shall be the minimum standards necessary for the County to issue a Conditional Use Permit. The County reserves the right to add additional requirements that are dependent upon the intensity of the uses within the application and its proximity to other uses and its overall visibility.

1. Said establishments shall be along improved county roads and shall not be more than 1,320 feet from a road designated either as a Major Arterial or Arterial.
2. Said businesses shall be screened along adjoining property lines as to prevent any direct visual contact of the adult business at the perimeter.
3. No Adult business shall be closer than 1,000 feet to any similar use and no closer than 3,000 feet to a residential district or use, religious use, educational use or recreational use. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the main entrance of such adult business to the closest point on the property line of such other adult business, residential district or use, religious use, educational use or recreational use.
4. Doors, curtains and any other means of obstruction to the opening of all booths and other preview areas, including but not limited to Adult Novelty Store and Adult Motion Picture Theaters shall be removed and kept off at all times during the execution of this Permit. Failure to comply with this condition shall result in revocation of the Conditional Use Permit.
5. No adult business shall be open for business between the hours of twelve-midnight (12:00 a.m.) and six a.m. (6:00 a.m.).
6. The proposed location, design, construction and operation of the particular use shall provide adequate safeguards to protect the health, safety, and general welfare of persons residing or working in adjoining or surrounding property.
7. Such use shall not impair an adequate supply of light and air to surrounding property.
8. Such use shall not unduly increase congestion in the streets or public dangers, including fire and safety hazards.
9. Such use shall be in accord with the intent, purpose and spirit of this Resolution and the Comprehensive Development Plan of Perkins County, Nebraska.
10. Applications for adult businesses under the terms of this Section shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on surrounding property. The application shall also include a site plan defining the areas to be developed for buildings and structures, the areas to be developed for parking, driveways and points of ingress and egress, the location and height of walls, the location and type of landscaping, and the location, size and number of signs.
11. An adult business shall post a sign at the entrance of the premises that shall state the nature of the business and shall state that no one under the age of 18 years of age is allowed on the premises. This Section shall not be construed to prohibit the owner from establishing an older age limitation for admission to the premises.
12. *Prohibited Activities of Adult Businesses:*
  - a. No adult business shall employ any person under 18 years of age
  - b. No adult business shall furnish any merchandise or services to any person who is under 18 years of age
  - c. No adult business shall be conducted in any manner that permits the observation of any model or any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use. No operator of an adult business or any officer, associate, member, representative, agent, owner, or employee of such business shall engage in any activity or conduct in or about the premises which is prohibited by this Resolution or any other laws of the State.
  - d. No part of the interior of the adult business shall be visible from the pedestrian sidewalk, walkway, street, or other public or semi-public area.

### **Section 611 Small Wind Energy Systems**

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

**611.02 Definitions:** The following are defined for the specific use of this section.

**SMALL WIND ENERGY SYSTEM** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.



**Tower Height** shall mean the height above grade of the first fixed portion of the tower, excluding the wind turbine itself.

**611.03 Requirements:** Small wind energy systems shall be permitted as an Accessory Use within any district where the use is listed and allowed. Certain requirements as set forth below shall be met:

1. Tower Height
  - a. For property sizes between ½ acre and one acre the tower height shall be limited to 80 feet.
  - b. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. Noise
  - a. Small wind energy systems shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling unit.
  - b. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
3. Approved Wind Turbines
  - a. Small wind turbines must have been approved under the any small wind certification program recognized by the American Wind Energy Association.
4. Compliance with Building and Zoning Codes
  - a. Applications for small wind energy systems shall be accomplished by standard drawings of the wind turbine structure, including the tower base, and footings.
  - b. An engineering analysis of the tower showing compliance with official building code of the governing body and/or the State of Nebraska and certified by a licensed professional engineer shall also be submitted.
  - c. Wet stamps shall not be required.
5. Compliance with FAA Regulations
  - a. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.
6. Compliance with National Electrical Code
  - a. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
  - b. The manufacturer frequently supplies this analysis.
7. Utility Notification
  - a. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer’s intent to install an interconnected customer owned generator.
  - b. Off-grid systems shall be exempt from this requirement.
8. Setbacks
  - a. No part of the wind system structure, including guy-wire anchors, may extend closer than 10 feet to the property lines of the installation site.
9. All towers shall adhere to the setbacks established in the following table:

	Wind Turbine – Non Commercial WECS	Meteorological Towers
Property Lines	One times the total height	One times the tower height.
Neighboring Dwelling Units*		One times the tower height.
Road Rights-of-Way**	One times the tower height.	One times the tower height.
Other Rights-of-Way	One times the tower height.	One times the tower height.
Wildlife Management Areas and State Recreational Areas	NA	600 feet
Wetlands, USFW Types III, IV, and V	NA	600 feet
Other structures adjacent to the	NA	One times the tower height.

applicant's sites		
Other existing WECS not owned by the applicant.	NA	
Private Airports	7:1 slope off sides of runway, 40:1 slope off ends of Runway 600' centered on runway; plus 15 rotor blade diameters from edge of runway, whichever is farther	7:1 slope off sides of runway, 40:1 slope off ends of Runway 600' centered on runway; plus 15 rotor blade diameters from edge of runway, whichever is farther

- A. \* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.
- B. \*\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded right-of-Way is known.

## Section 612 Commercial/Utility Grade Wind Energy Systems

**612.01 Purpose:** It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy conversion systems within Perkins County.

**612.02 Definitions:** The following are defined for the specific use of this section.

**AGGREGATE PROJECT** shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

**COMMERCIAL WECS** shall mean a wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.

**HUB HEIGHT** shall mean the distance from ground level as measured to the centerline of the rotor.

**FALL ZONE** shall mean the area, defined as the furthest distance from the tower base, in which a guyed or tubular tower will collapse in the event of a structural failure. This area may be less than the total height of the structure.

**FEEDER LINE** shall mean any power line that carries electrical power from one or more 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.

**METEOROLOGICAL TOWER** shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting 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.

**PROPERTY LINE** shall mean the boundary line of the area over which the entity applying for a Wind Energy Conversion System permit has legal control for the purpose of installing, maintaining and operating a Wind Energy Conversion System.

**PUBLIC CONSERVATION LANDS** shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by nonprofit conservation organizations, Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.

**ROTOR DIAMETER** shall mean the diameter of the circle described by the moving rotor blades.

**SMALL WIND ENERGY SYSTEM** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

**SUBSTATIONS** shall mean any electrical facility to convert electricity produced by wind turbines to a higher voltage for interconnection with high voltage transmission lines.

**TOTAL HEIGHT** shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.

**TOWER** shall mean the vertical structures, including the foundation, that support the electrical generator, rotor blades, or meteorological equipment.

**TOWER HEIGHT** shall mean the total height of the Wind Energy Conversion System exclusive of the

rotor blades.

**TRANSMISSION LINE** shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**WIND ENERGY CONVERSION SYSTEM or WECS** shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.

**WIND TURBINES** shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

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

1. The name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
5. Site layout, including the location of property lines, wind turbines, feeder lines, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Certification by an Engineer competent in disciplines of WEC's.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines; included with this shall be an area or zone in close proximity that meets all setbacks; where actual WEC will be considered.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System, within 10 rotor distances of the proposed Wind Energy Conversion System not owned by the applicant.
10. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed Wind Energy Conversion System.
11. An Acoustical Analysis that certifies that the noise requirements within this regulation can be met
12. The applicant shall supply the emergency management agency and/or fire departments with a basic emergency response plan.
13. FAA and FCC permit, if necessary. Applicant shall submit permit or evidence that the permit has been filed with the appropriate agency.

**612.04 Aggregated Projects:**

1. Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, public hearings, reviews and as appropriate approvals.
2. Permits may be issued and recorded separately.
3. Joint projects will be assessed fees as one project.

**611.05 Setbacks:**

All towers shall adhere to the setbacks established in the following table:

	Wind Turbine – Commercial/Utility WECS	Meteorological Towers
Property Lines	150 feet from property lines; however, the setback may be less when two adjoining property owners are within the aggregate project.	One times the tower height.
Neighboring Dwelling Units*	2,000 feet	One times the tower height.
Road Rights-of-Way**	One-half the rotor diameter.	One times the tower height.
Private Airports	7:1 slope off sides of runway, 40:1 slope off ends of Runway 600' centered on runway; or 15 rotor blade Diameters from edge of runway, whichever is farther	7:1 slope off sides of runway, 40:1 slope off ends of Runway 600' centered on runway; or 15 rotor blade Diameters from edge of runway, whichever is farther
Wildlife Management Areas and State Recreational Areas	600 feet	600 feet

Wetlands, USFW Types III, IV, and V	600 feet	600 feet
Other structures and cemeteries adjacent to the applicant's sites	One-half the rotor diameter.	One times the tower height.
Other existing WECS not owned by the applicant.	NA	NA

\* The setback for dwelling units shall be reciprocal in that no dwelling unit shall be constructed within the same distance required for a commercial/utility Wind Energy Conversion System.

\*\* The setback shall be measured from any future Rights-of-Way if a planned change or expanded Right-of-Way is known.

**612.06 Special Safety and Design Standards:** All towers shall adhere to the following safety and design standards:

1. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
2. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
3. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
4. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.
5. Color and finish: All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.
6. Lighting: Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
7. Other signage: All other signage shall comply with the sign regulations found in these regulations.
8. Feeder Lines: All communications and feeder lines associated with the project distribution system installed as part of a WECS shall be buried, where physically feasible. Where obstacles to the buried lines create a need to go above ground, these lines may be placed above ground only to miss the obstacle. All distribution and/or transmission lines outside of the project distribution system may be above ground.
9. Waste Disposal: Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
10. Discontinuation and Decommissioning:
  - A. The wind energy facility owner shall, within 6 (six) months, complete the decommissioning of any wind turbine that has not generated electricity for a period of 12 (twelve) consecutive months, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the WECS to service. The 180 days may be extended if proof of weather delays is provided.
  - B. Decommissioning shall include removal of wind turbines, buildings, cabling, electrical components, monitoring towers and any other associated facilities and infrastructure down to a minimum of forty eight

(48) inches below grade. Disturbed earth shall be brought to normal grade by compaction, and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

C. Road removal shall be done only by the request of the land owner or county department of roads superintendent.

D. The contract between the landowner and the WECS shall identify the financial resources that will be available to pay for decommissioning as stated in part “b” above. The cost estimates shall be made by a competent party; such as a Professional Engineer, a contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning.

11. Noise: No Commercial/Utility WECS shall exceed 50 dBA at the nearest structure or use occupied by humans.

12. Interference: The applicant shall minimize or mitigate interference with any commercial or public safety electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the county for permits.

13. Roads: Applicants shall:

A. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.

B. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public road.

C. Be responsible for restoring the road(s) and bridges to preconstruction conditions; and must be completed within 120 days following wind turbine construction, or a timeframe mutually agreed upon with the County Highway Superintendent and County Board of Commissioners.

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

15. A conditional use permit for a commercial/utility Wind Energy Conversion System shall be reviewed each year on the anniversary of issuance. A Conditional Use permit for a commercial/utility WECS shall be considered null and void if construction has not begun within one year following issuance of the WECS Conditional Use Permit or produced energy for one year, unless a plan is submitted to the Perkins County Planning and Zoning Office outlining the steps and schedule for returning the WECS to service.

## **Section 6.13 Sanitary Landfill Regulations**

### **6.13.01 Intent**

It is hereby found and declared that unsanitary disposal of garbage and refuse creates health and sanitary hazards, promotes the breeding of rats, flies and other vermin, pollutes water and the atmosphere, produces noxious odors and insults the aesthetic values of the citizens of Perkins County. It is hereby further found and declared that the elimination of open dumps and the prevention of health, sanitation and aesthetic nuisances in the future is in the best interests of the citizens of Perkins County and the State of Nebraska; and that the accomplishment of this end will be fostered and encouraged by the enactment and enforcement of this Regulation. The enactment and enforcement of this Regulation is hereby declared to be essential to the public

interest and it is intended that the Regulation be liberally construed to effectuate the purposes as stated herein.

### **6.13.02 Definitions**

For the purpose of this Regulation, certain terms and words are herewith defined, as set forth in this Section. All words used in the present tense shall include the future tense, all words in the plural number shall include the singular number and all words in the singular number shall include the plural number; unless the natural construction of the wording indicates otherwise.

**APPLICANT** means an individual, firm, corporation or any political subdivision of the State including any governmental authority created by statute.

**AQUIFER** Means a geological formation, group of formations, or part of a formation capable of yielding water for a well. Spring or other discharge in usable amounts.

**BEST MANAGEMENT PRACTICES (BMP)** means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective and practicable methods for specific sites to prevent or reduce the discharge of pollutants to waters of the State or control odor where appropriate. Best management practices also include operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal or drainage from raw material storage.

**BUFFER ZONE** means an area of land, including, but not limited to, landscaping, berms, walls, fences, and building setbacks, that are located between land uses of different character and is intended to mitigate negative impacts of the more intensive use.

**CLOSURE** means those actions, which are taken upon the cessation of the use of a Solid Waste Management Facility, which prepares the facility for post-closure care, and assures the protection of human health and the environment.

**COLLECTION** means the act of removing and conveying solid waste from the storage area to a Solid Waste Management Facility.

**COMMENCEMENT OF CONSTRUCTION** means any substantial action, such as clearing of land, excavation or other action that reflects a substantially irreversible commitment to physically construct a facility, or that may affect the environment of a facility. The term does not include: site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other pre-construction monitoring, or testing to establish background information related to the suitability of the site for the protection of the environment.

**COMMERCIAL SOLID WASTE** means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes..

**CONSTRUCTION FOR SOLID WASTE FACILITIES** means the erection or building of new structures or containment systems for Solid Waste Management Facilities, or the remodeling, alteration, modernization or extension of existing structures.

**CONSTRUCTION AND DEMOLITION WASTE** means waste which results from land clearing, the demolition of buildings, roads or other structures, including, but not limited to, beneficial fill materials, wood (including painted and treated wood), land clearing debris other than yard waste, wall coverings (including wall paper, paneling and tile), drywall, plaster, non-asbestos insulation, roofing shingles and other roof coverings, plumbing fixtures, glass, plastic, carpeting, electrical wiring, pipe and metals. Such waste shall also include the above listed types of waste that result from construction projects. Construction and demolition waste shall not include friable asbestos waste, special waste, liquid waste, hazardous waste and waste that contains polychlorinated biphenyl (PCB), putrescible waste, household waste, industrial solid waste, corrugated cardboard, appliances, tires, drums, and/or fuel tanks.

**CONSTRUCTION AND DEMOLITION WASTE DISPOSAL AREA** means any Solid Waste Disposal Area used for the sole purpose of disposal of construction and demolition waste.

**CONTAINMENT SYSTEM** means the system of engineered and designed barriers surrounding the solid waste in a Solid Waste Disposal Area unit which is intended to encapsulate and contain the emplaced solid waste and any leachate.

**COVER MATERIAL** means six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Other materials may qualify if approved by NDEQ and Perkins County.

**DELISTED WASTE** means hazardous waste which has been delisted pursuant to the procedures outlined in Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

**DELISTED WASTE DISPOSAL AREA** means any solid waste disposal area used for the sole purpose of disposal of delisted waste.

**DEPARTMENT** means the Nebraska Department of Environmental Quality.

**DISCARDED HOUSEHOLD APPLIANCES** means discarded clothes washers and dryers, water heaters, heat pumps, air conditioners, dehumidifiers, refrigerators, freezers, trash compactors, dishwashers, conventional ovens, ranges, stoves, and wood stoves.

**DISCHARGE** means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the State or in a place which will likely reach waters of the State.

**DISEASE VECTORS** means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

**DISPOSAL OF NUCLEAR WASTE** means the isolation and final disposition of low-level radioactive wastes from the biosphere by emplacement in a facility that employs technology dictated by a zero-release objective.

**DISPOSAL SITE** means that portion of a facility used for disposal of waste. It consists of disposal units and a buffer zone.

**DISPOSAL OF SOLID WASTE** means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air, land or water of the state.

**DISPOSAL UNIT** means a discrete portion of the disposal site into which waste is placed for disposal.

**DISTRICT** means a natural resources district created pursuant to Chapter 2, article 32 of Nebr. RRS 1997.

**DIVERSION TERRACE** means an individually designed grade channel with a supporting ridge on the lower side, constructed across the slope with a non-erosive grade.

**ENGINEERED BARRIER** means a man-made structure or device that is intended to improve the facility's ability to meet the performance objectives in Chapter 4 of Title 194 of the Nebraska Administrative Code.

**EXISTING SOLID WASTE DISPOSAL AREA** means any solid waste disposal area that is permitted to receive solid waste.

**EXPLOSIVE MATERIAL** means any chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

**FOSSIL FUEL COMBUSTION ASH** means fly ash, bottom ash, slag, and flue gas emission control ash generated from utility plants or other facilities in which coal is the primary fuel source.

**FOSSIL FUEL COMBUSTION ASH DISPOSAL AREA** means any area or site used for the sole disposal of fossil fuel combustion ash.

**GARBAGE** means rejected food wastes including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables and dead animals rejected by rendering plants.

**GROUNDWATER** means water occurring beneath the surface of the ground that fills available openings in the rock or soil materials such that they may be considered saturated.

**HAZARDOUS WASTE** means any waste designated or defined as a hazardous waste by N.A.C. Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska, which for purposes of general definition is a solid waste which, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

1. Cause, or significantly contribute to, an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or
2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

**HAZARDOUS WASTE, CONVERTED (TREATED)** means any waste defined as hazardous which has been processed in a manner that would either eliminate or dilute the level of the hazardous material. These include soils contaminated by lead, arsenic, chemicals used in the manufacturing of ballistics and munitions, and other items as declared by the Environmental Protection Agency, Corps of Engineers, Nebraska Department of Environmental Quality or another controlling agency.

**HIGH LEVEL RADIOACTIVE WASTE** means:

1. Irradiated reactor fuel;
2. Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel;
3. Solids into which such liquid wastes have been converted; and
4. Other highly radioactive waste material as defined by the U.S. Nuclear Regulatory Commission.

**HOST AGREEMENT** means any agreement that pertains to the operation of the landfill within the County by said operator. A Host Agreement may include but is not limited to road maintenance, tipping fees, cleanup of blowing waste, closure and other negotiated terms.

**HOUSEHOLD WASTE** means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

**HYDROGEOLOGIC UNIT** means any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

**INDUSTRIAL SOLID WASTE** means solid waste generated by manufacturing or industrial processes that is not a hazardous waste.

1. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing;



- pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.
2. This term does not include mining waste or oil and gas waste.

**INDUSTRIAL WASTE DISPOSAL AREA** means any solid waste disposal area used for the sole purpose of disposal of industrial waste.

**INFECTIOUS WASTE** means a solid waste capable of causing an infectious disease to humans. For a waste to be deemed infectious, consideration will be given to those elements required in order for infection to occur. These elements include the presence of a pathogen or causative organism, of significant virulence, in an adequate dose, which is able to gain a portal of entry in a susceptible host. Infectious waste shall include, but not be limited to, substances from the following classifications:

1. **Blood, Blood Products and Body Fluids.** This classification includes fluid blood, blood products and body fluids, and any items contaminated with any of these fluids, if a pourable quantity (ability of a liquid or semi-solid form to drip or flow) is present. The term blood and blood products includes serum, plasma, and other blood components. The term body fluid includes semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid, amniotic fluid and any other body fluid visibly contaminated with blood.
2. **Infectious Sharps Waste.** This classification includes all discarded items from diagnosis, treatment, or immunization which can potentially transmit disease by breaking the human skin, and includes hypodermic needles, scalpels, razor blades, breakable glass containers, blood vials, culture dishes, used slides, glass products and broken glass or other sharp items that have come into contact with or have been contaminated by material considered infectious.
3. **Laboratory Waste.** This classification includes all cultures and stocks of infectious agents, including specimen cultures from medical and pathological laboratories, cultures and stocks from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.
4. **Contaminated Animal Waste.** This classification includes blood and body fluids, carcasses, body parts, excrement and bedding from animals contaminated with agents that may cause human disease.
5. **Waste Identified by Infectious Waste Generators.** This classification includes those wastes determined by the infectious waste generator or the infectious waste generator's infectious control staff/committee to be treated as infectious waste because of the risk of disease posed by such waste.

**INTEGRATED SOLID WASTE MANAGEMENT** means solid waste management which is focused on planned development of programs and facilities that reduce waste toxicity and volume, recycle marketable materials, and provide for safe disposal of residuals.

**JUNK** means materials which will not be utilized if not collected and processed for reuse or recycling, including but not limited to mean: old scrap; copper; brass; iron; steel; rope; wire; glass; rags; batteries; paper trash; rubber; debris; demolition waste; abandoned mobile homes, dismantled or wrecked; untaxed, untitled or unlicensed vehicles or parts thereof; and other old or scrap ferrous or nonferrous material.

**LANDFILL** means a disposal site employing a method of disposing of solid wastes in a manner that minimizes environmental hazards in accordance with state and federal requirements.

**LANDFILL UNIT** means a discrete area of land which has been developed and constructed with containment features according to an operational plan and designed for disposal of solid waste.

**LATERAL EXPANSION** means a discrete area of land which has not previously been permitted to receive solid waste, or any discrete area of land which has previously received solid waste and which has been certified closed by NDEQ, and is proposed for development as a landfill unit.

**LEACHATE** means liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

**LEAD-ACID BATTERY** means an electrical storage battery with cells that contain lead electrodes and an acidic electrolyte, such as those commonly used in motor vehicles.

**LONG-TERM STORAGE** means the keeping of materials on a permanent basis. This shall not include the temporary storage of materials that are awaiting transport to another facility.

**LOW-LEVEL RADIOACTIVE WASTE** means radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material and classified by the federal government as low-level radioactive waste but shall not include waste which remains a federal responsibility as designated in section 3(b) of the low-level Radioactive Waste Policy Act as amended, 42 U.S.C. 2021C(b).

**LOWER EXPLOSIVE LIMIT** means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five (25) degrees centigrade and one atmosphere pressure.

**MATERIALS RECOVERY FACILITY** means any facility at which solid waste is processed for the purpose of resource recovery.

**MINIMUM DESIGN CRITERIA** means the minimum storage criteria plus the calculated open lot and contributing drainage area runoff for the month of June, plus the net precipitation on the holding pond surface for the month of June, plus solid accumulations of at least one-half inch per acre of open lot and other sources of waste water.

**MINIMUM STORAGE CRITERIA** means the calculated runoff produced by a 25 year - 24-hour rainfall event per acre of drainage, for open lots and contributing drainage areas.

**MIXED WASTE** means low-level radioactive waste that also contains hazardous waste that is identified in Title 128 of the Nebraska Administrative Code.

**MONITORING** means the combination of activities designed to assess the impact of any solid waste or nuclear disposal area upon the environment.

**MUNICIPAL SOLID WASTE** means household waste and/or the combination of household waste with industrial or commercial solid wastes.

**MUNICIPAL SOLID WASTE DISPOSAL AREA** means a publicly or privately owned discrete area of land or excavation that receives household waste, alone or in combination with other types of wastes such as commercial solid waste, industrial solid waste, nonhazardous sludge, or conditionally exempt small quantity generator waste, and which is not a land application unit, surface impoundment, injection well, or waste pile.

**NATURAL DISASTER** means the occurrence of widespread or severe damage or loss of property resulting from any natural cause, including but not limited to, flood, earthquake, wind or storm.

**NEAR-SURFACE DISPOSAL FACILITY** means a facility in which waste is disposed of on the earth's surface or within approximately the upper 30 meters of the earth's surface. Near surface disposal includes disposal in engineered facilities which may be built totally or partially above-grade provided there is a protective earthen cover at or before the time of facility closure.

**NEW SOLID WASTE DISPOSAL AREA** means any solid waste disposal area or lateral expansion that has not been permitted to receive waste.

**ODOR** means that characteristic of a substance which makes it offensive to the human sense of smell, as determined by the majority of three (3) or more people; such people shall include the Zoning Administrator, a representative of the owner of the use being investigated for odor impact, and one or more other neutral persons as agreed upon by the Zoning Administrator and the owner of the use being investigated for odor impact.

**OPEN BURNING** means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient burning;
2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; or
3. Control of the emission of the combustion products.

**OPEN DUMP** means a site for the disposal of solid waste which does not comply with the requirements of these regulations.

**OPERATING RECORD** means a record or file maintained by an owner or operator to contain documents and records pertaining to the solid waste management facility.

**OPERATIONAL LIFE OF THE FACILITY** means the period of time commencing when waste is initially received at the facility and ending when the facility permanently ceases to receive such waste for disposal.

**PERFORMANCE GUARANTEE** means a financial guarantee to ensure that all improvements, facilities, or work required by these regulations will be completed in compliance with these regulations.

**PERSON** means any person, firm, partnership, association, corporation, company or organization or other entity.

**PLASTIC** means any material made of polymeric organic compounds and additives that can be shaped by flow.

**PLASTIC BOTTLE** means a plastic container intended for a single use that has a neck smaller than the body of the container, is designed for a screw-top, snap cap, or other closure, and has a capacity of not less than sixteen fluid ounces or more than five gallons.

**POST-CLOSURE CARE** means the continued observation, maintenance and monitoring, for a period of time, of a closed solid waste management facility in order to protect human health and the environment.

**POST-CONSUMER MATERIAL** means those products or other materials generated by a business or consumer that have served their intended end uses, and that have been recovered from or otherwise diverted from the solid waste stream for the purpose of recycling. Post-consumer material does not include manufacturing or converting scrap or by-products generated from, and commonly reused within, an original manufacturing process.

**PRACTICABLE WASTE MANAGEMENT ALTERNATIVE** means another solid waste disposal area, transfer station materials recovery facility, or other facility that may serve as a viable substitute for the solid waste management method(s) currently employed for solid waste management.

**PUBLIC WATER SUPPLY** means a water supply system designed to provide public piped water fit for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five individuals. This definition shall include: (1) Any collection, treatment, storage, or distribution facilities under the control of the operator of such system and used primarily in connection with such system; and (2) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

**PUTRESCIBLE** means capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors, gases, or otherwise. Kitchen wastes, offal, and dead animals are examples of putrescible components of solid waste.

**PYROPHORIC LIQUID** means any liquid that ignites spontaneously in dry or moist air at or below 130 °F (54.4 °C).

**PYROPHORIC SOLID** means any solid material, other than one classed as an explosive, which under normal conditions, is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

**QUALITY ASSURANCE PROGRAM** means a multi-disciplinary system of management controls backed by quality verification and overview activities that demonstrate completeness and appropriateness of achieved quality. Quality assurance comprises all the planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises the quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

**QUALITY CONTROL** means a procedure or set of procedures intended to ensure that a process meets the required/established standards and/or best practices agreed upon by all parties.

**RADIOACTIVE MATERIAL** means any material, solid, liquid, or gas, which emits ionizing radiation spontaneously, including accelerator-produced, byproduct, naturally occurring, source, and special nuclear materials.

**RECOVERABLE** means the capability and likelihood of being recovered from solid waste for commercial or industrial use.

**RECOVERY** means the acts, actions, and processes necessary to cleanup contaminants; defined as radioactive material or hazardous substances from low-level radioactive waste that, when released to the environment outside the disposal unit and combined with air, soil, biota, or water, may cause the concentrations of that material or substance to exceed the levels specified in Title 180, or which is reportable as a hazardous substance release in Title 126, Chapter 18 that are no longer isolated by the disposal unit and whose migration beyond site boundaries could result in failure to meet the performance objectives of Chapter 4 of Title 194 of the Nebraska Administrative Code.

**RECYCLED** means recovered waste materials, such as post-consumer material used, in the manufacture or production of new items.

**RECYCLING** means the process by which recovered waste materials are transformed into new products in such a manner that the original products may lose their identity.

**RECYCLING CENTER** means any facility which is maintained and operated for the purpose of receiving, collecting and processing source-separated recyclable materials for resale or transfer. For the purposes of this definition, "processing" shall mean the modification of materials by baling, crushing, grinding, chipping or other means to prepare the materials for markets.

**RECYCLING COLLECTION SITE** means a premises which is maintained and operated for the purposes of receiving and collecting source separated recyclable materials, and shall not include on site activities for significantly processing or modifying the collected materials.

**REFUSE** means putrescible and non-putrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, industrial wastes, and other such wastes.

**RELEASE** means, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying or dumping of pesticide, fertilizer or materials containing pesticide or fertilizer, upon land, beneath the surface of the land or into waters of the State, either by accident or otherwise, except that this definition shall not apply to normal field applications or the normal rinsing and washing activities of the loadout facility.

**RESOURCE CONSERVATION** means reduction of the amounts of solid wastes that are generated, reduction of overall resource consumption and utilization of recovered resources.

**RESOURCE RECOVERY SYSTEM** means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of non-recoverable waste residues.

**RETRIEVABILITY** means the capability to, in a deliberate, planned manner, remove or retrieve waste from containment in the disposal unit.

**REUSE** means the reintroduction of a commodity into the economic stream without change.

**RIGID PLASTIC CONTAINER** means any formed or molded container intended for a single use, composed predominately of plastic resin that has a relatively inflexible finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

**RUBBISH** means non-putrescible solid waste, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety.

**RUN-ON** means any precipitation, leachate, or other liquid that drains over land onto any part of a facility.

**SANITARY LANDFILL** means a type of operation in which garbage, rubbish, and refuse is deposited by plan on a specified portion of land, is compacted by force applied by mechanical equipment, and then is covered by compacted suitable covering material over individual cells of garbage and refuse or garbage or refuse, which are closed at the end of each day, and to a depth of at least three feet over the finished landfill.

**SALVAGE OPERATION** means the controlled and safe removal and collection of valuable or useful waste materials at any point in the solid waste stream.

**SATURATED ZONE** means that part of the earth's crust in which all voids are filled with water.

**SCAVENGING** means the uncontrolled and unsafe removal of materials at any point in the solid waste stream.

**SECONDARY CONTAINMENT** means a device or structure designed, constructed, and maintained to hold or confine a release of a petroleum product from a storage facility.

**SET ASIDES** means that percentage of the total annual purchase of a product or material that contains post-consumer material.

**SINGLE RETENTION STRUCTURE** means an impoundment made by excavation or embankment which functions to collect and store all runoff (liquid and solid) from the livestock operation and any contributing drainage area for subsequent removal.

**SITE STABILIZATION** means those actions that are taken upon completion of operations which prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

**SOLID WASTE COMPOST SITE** means a tract of land, location, area or premises used for composting solid waste.

**SOLID WASTE DISPOSAL** means the disposal of solid waste, including any household waste, commercial solid waste, fossil fuel combustion ash, special waste, industrial solid waste, and construction and demolition waste.

**SOLID WASTE DISPOSAL AREA** means a discrete area of land or excavation which receives solid waste and includes all contiguous land and structures, other appurtenances and improvements on the land used for the disposal of solid wastes or improvements necessary to carry out the disposal of solid wastes. Solid waste disposal areas shall include, but not be limited to the following disposal areas: municipal solid waste disposal areas, construction and demolition waste disposal areas, fossil fuel combustion ash disposal areas, industrial waste disposal areas, delisted hazardous waste disposal areas and land application units for repeated disposal and/or treatment of special wastes.

**SOLID WASTE MANAGEMENT** means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

**SOLID WASTE MANAGEMENT FACILITY** means a public or private site, location, tract of land, installation or building which has been used for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste, and shall include solid waste disposal areas and solid waste processing facilities.

**SOLID WASTE MANAGEMENT PLAN** means a plan adopted by a county or municipality, including a joint plan adopted by an agency, for integrated solid waste management.

**SOLID WASTE PROCESSING** means the process by which solid wastes are physically or chemically changed, temporarily stored, or salvaged prior to being transferred to a solid waste disposal area or to a secondary materials recovery facility.

**SOLID WASTE PROCESSING FACILITY** means any facility where solid wastes are processed, and shall include, but not be limited to, solid waste compost sites, materials recovery facilities, recycling centers and solid waste transfer stations.

**SOLID WASTE TRANSFER STATION** means any site, location, tract of land, installation, or building that is used or intended to be used primarily for the purpose of transferring solid wastes that are generated off of the premises of the facility from vehicles or containers, into other vehicles or containers for transportation to a solid waste disposal area or solid waste processing facility.

**SOURCE MATERIAL** means:

1. Uranium or thorium or any combination thereof in any chemical or physical form; or
2. Ores which contain by weight one-twentieth of one per cent or more of uranium or thorium or any combination thereof. Source material does not include special nuclear material.

**SOURCE SEPARATED MATERIALS** means the waste products, for which a market exists, that have not been commingled with solid waste but have been kept separate from other wastes from the point of generation to final disposition.

**SPECIAL NUCLEAR MATERIAL** means:

1. Plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope 235 but not including source material; or
2. Any material artificially enriched by any of the foregoing, but not including source material.

**SPECIAL WASTE** means a solid waste, except waste which is regulated as a hazardous waste, which possesses physical, chemical, or biological characteristics that make it different from general municipal solid waste, or construction and demolition waste, and which requires special handling, treatment, or disposal methodologies in order to protect public health, safety, and the environment.

**SPENT NUCLEAR FUEL** means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor, including the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

**STATE** means the State of Nebraska.

**SURVEILLANCE** means the monitoring and observation of the disposal site for purposes of detection of need for maintenance, custodial care, evidence of intrusion, and compliance with other license and regulatory requirements of this Title.

**TOTALLY COVERED OR ENCLOSED** means protected from precipitation and any subsequent drainage so that unwanted moisture does not enter the structure.

**TRANSFER** means the act of transporting the solid waste from the point of storage to a processing facility or final disposal site.

**TRANSURANIC WASTE** means radioactive waste containing alpha emitting transuranic elements at levels determined by the U.S. Nuclear Regulatory Commission to be transuranic waste.

**TSCA REGULATED PCB WASTE** means polychlorinated biphenyl (PCB) wastes in concentrations greater than or equal to 50 ppm as regulated by Toxic Substances Control Act (TSCA). PCB wastes less than 50 ppm are not regulated by TSCA and shall be considered special wastes.

**UNREGULATED HAZARDOUS WASTES** means a hazardous waste generated by a conditionally exempt small quantity generator, which contains free liquids, or is in solid form in a quantity greater in size or volume than 5 gallons or in a quantity greater in weight than 19.5 kilograms (43 pounds), provided, however, that these quantity limits are daily maximum values.

**UPPERMOST AQUIFER** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary

**WASTE MANAGEMENT UNIT BOUNDARY** means a vertical surface located at the hydraulically downgradient limit of the landfill unit. This vertical surface extends down into the uppermost aquifer.

**WASTE OIL** means any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities, or used oil as defined in Title 128 - Rules and Regulations Governing Hazardous Waste Management in Nebraska.

**WATER POLLUTION** means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

**WATER TABLE** means the surface of underground gravity-controlled water.

**ZERO-RELEASE OBJECTIVE** means a goal of preventing the release into the environment of any detectable radioactive material resulting from the disposal of low-level radioactive waste at the facility.

### **6.13.03 Permits**

1. It shall be unlawful for any person to use any land, premises or property within Perkins County for the disposal of any garbage, rubbish, and refuse, or garbage, rubbish, or refuse without first making application for and securing a conditional use permit (CUP) to operate a new or expanded Sanitary Landfill.
2. The application for a CUP to operate a sanitary landfill shall be filed with the Perkins County Zoning Office and shall contain:
  - a. A description and plat of the land on which the disposal of garbage and refuse or garbage or refuse is proposed;
  - b. A description of the sequence and plan of operation;
  - c. Type and capacity of equipment to be used for operations;
  - d. Plans for fire, nuisance and vermin control;
  - e. A diagram and written statement showing existing and proposed roadways and easements;
  - f. A diagram and written statement showing existing topography and water courses;
  - g. A diagram and written statement explaining the proposed location and extent of earthwork and fill operations, as well as fencing of the premises;
  - h. Proposed measures to control storm drainage and estimated daily or weekly volume of garbage and refuse, or garbage or refuse to be placed in the sanitary landfill;
  - i. Subsoil data including percolation tests, ground water, and soil types; and
  - j. Planned locations for monitoring wells to monitor leachate and other hazardous materials as defined herein and in Perkins County's Health and Safety Resolution.



3. No CUP to operate a sanitary landfill will be issued unless the applicant has first complied with the requirements of the Nebraska Department of Environmental Quality for operation of a sanitary landfill and all requirements of the Nebraska Department of Environmental Quality.
4. No CUP to operate a new, or expansion of existing sanitary landfill will be issued unless the applicant has successfully negotiated a Host Agreement with the County Board of Commissioners.
5. Any CUP to operate a sanitary landfill will become null and void whenever the Nebraska Department of Environmental Quality revokes a license or does not renew a license.

#### **6.13.04 Disposal Conditions**

1. No person shall dump or otherwise dispose of any refuse, garbage, junk, or rubbish at any place except a licensed and permitted sanitary landfill area; however, this does not prohibit a person from disposing of refuse and rubbish from his own household upon his own land as long as such disposal does not create a nuisance or hazard to health of the landowners or others; and provided, however, that the placement of broken concrete for rip-rap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP shall be exempt from the requirements of this Section.
2. No CUP to operate a sanitary landfill shall be granted by the Perkins County Board of Commissioners until the following conditions have been met:
  - a. The permittee, and the agents, employees and independent contractors of the permittee, will comply with all of the terms, conditions, provisions, requirements and specifications contained in these regulations.
  - b. The permittee, and the agents, employees and independent contractors of the permittee, will faithfully operate the sanitary landfill for which the permit is issued in accordance with the provisions of these Regulations.
  - c. The permittee, and the agents, employees and independent contractors of the permittee, will save harmless Perkins County from any expense incurred through the failure of the permittee, and the agents, employees and independent contractors of the permittee to operate and maintain the sanitary landfill as required by these Regulations, including any expense Perkins County may be put to for correcting any condition or violation of these Regulations, including Perkins County's own labor and equipment whenever the Perkins County Board of Commissioners determines, upon providing the permittee with reasonable opportunity to cure any condition or violation, it is necessary for Perkins County to correct any unsanitary condition or conditions that violate any of these Regulations or from any damages growing out of the negligence of the permittee or the agents, employees and independent contractors of the permittee or servants.
  - d. The permittee and the agents, employees and independent contractors of the permittee as further assurance for the operation of the sanitary landfill, shall provide, that in the event, the permittee and the agents, employees and independent contractors of the permittee fails to comply and fails to operate the sanitary landfill within the terms, requirements, and conditions of these

Regulations for any period of time, the Perkins County Board of Commissioners may then, upon resolution, and after providing Permittee reasonable opportunity to cure any non-compliance, have the right to hire the necessary equipment and labor to adequately bring the landfill operation to a satisfactory closing at the permittee's expense.

#### **6.13.05 Physical Improvements**

The following physical improvements shall be made before new, or expansion of existing sanitary landfill site is approved for operation:

1. The property shall be fenced as shown on the application for a CUP with an entrance gate that can be locked. A temporary inner fence shall be installed bordering all active areas of landfill areas to reasonably control or to stop blowing paper and other materials.
2. Operating procedures and time schedules shall be clearly listed on signs posted at the site entrance.
3. Where employees or personnel will be on duty for more than four consecutive hours, convenient sheltered toilet facilities shall be provided.

#### **6.13.06 Regulations**

The following regulations shall be observed by any person, firm or corporation to whom a permit is granted for the operation of a sanitary landfill. These regulations shall govern the operation of all sanitary landfills in Perkins County and any failure to observe these regulations shall be sufficient grounds for suspension or revocation of the permit as hereinafter provided.

1. All garbage and other refuse accepted by the permit holder shall be thoroughly compacted by equipment of a size and weight capable of carrying out all necessary operations. Sufficient auxiliary equipment shall be available on the site or otherwise available to permit operation in case of equipment breakdown.
2. No alternate daily cover may be used on the landfill unless the NDEQ has approved the material for use and has determined its equivalence in performance to application of a minimum 6 inches of daily cover.
3. The area of the landfill shall be policed as necessary to prevent fire and smoke and to collect all scattered materials, and shall be neat and orderly at all times and shall be covered at the end of each day's operation, as well as when wind conditions warrant it through the day, with sufficient material to prevent blowing litter, fly and rodent attraction and breeding, release of odor, fire hazard, and unsightly appearance.
4. A minimum depth, as required by NDEQ, of compacted cover and final spread cover material shall be kept on all inactive faces of the landfill at all times. The active faces of the landfill shall be covered at the end of each day's operation, with cover material.
5. For any area where wastes will not be disposed for a period of one hundred eighty (180) days or longer, that area shall be covered with the required daily cover material and an additional twelve (12) inches of intermediate cover. Vegetative cover shall be established as soon as possible on these areas.
6. Where the trench system of sanitary landfill is used, successive parallel trenches must be at least two feet apart.
7. Where the landfill operation is conducted in a ravine, the sides of the ravine shall be terraced prior to landfilling if the slope of the sides of the ravine is 1:1 or greater.
8. In the event that refuse material exists on the site at the time the permit is issued, whether in the form of an open dump or any other form, such refuse material shall be

- collected, compacted, and covered with cover material as required by NDEQ This cover operation shall be completed within 15 working days after the issuance of a permit for the sanitary landfill, unless some other period of time is specified in the permit.
9. Access roads to the disposal area within the Solid Waste Disposal Area shall be maintained and surfaced so as to be negotiable by trucks and other motor vehicles at all reasonable times.
  10. The salvage or scavenging of materials from the landfill is prohibited.
  11. The burning of garbage and refuse, or garbage or refuse, on the landfill site, without prior approval from the appropriate Fire District and NDEQ, is prohibited.
  12. No landfill operations shall be conducted so that fill will be placed in streambeds or other areas where streams would be obstructed or where erosion by the stream would remove cover material. There shall be no seepage or drainage of any material from the fill of such a nature as would constitute an odor nuisance or health hazard, or pollute any water course or underground water aquifer.
  13. The permittee shall provide surface drainage facilities on the landfill site which will permit the drainage of storm water. The existence of standing pools of water on the finished face of the landfill six hours after the last precipitation shall constitute evidence of inadequate surface drainage.
  14. The permittee shall take such measures as are necessary and agreed to by the County Board of Commissioners as part of the CUP to control dust.
  15. No hazardous waste, contaminated or radioactive material, infectious waste, converted hazardous waste or polluted liquids or hazardous substance shall be deposited within the facility.
  16. All reasonable measures shall be taken to control insects and rodents.
  17. Noncombustible and non-putrescible waste such as cinders, broken paving or materials resulting from construction or demolition work may be deposited in the landfill provided that such materials shall be leveled and spread at sufficient intervals to prevent unsightly appearance or rodent harborage and shall be covered as required for a completed sanitary landfill; provided, however, that the placement of broken concrete for rip-rap and fill material for embankment reconstruction and erosion retardation only, with a County approved CUP, shall be exempt from the requirements of this Section.
  18. The discharging of firearms is prohibited.
  19. Before any site is abandoned, all exposed refuse shall be covered with a layer of suitable cover material, to minimum compacted depth of at least three feet. The site otherwise shall be left in a reasonably neat condition so as not to offend adjacent property owners and incite opposition to the establishment of new sites.

#### **6.13.07 Enforcement - Permit Suspension and Revocation**

The officers responsible for the enforcement of the provisions of this Regulation shall be the Zoning Administrator and County Sheriff, or other designees as set by the Board of Commissioners.

The officers will notify in writing any permit holder who is violating the provisions of this Section, or of the Zoning Regulations, of the specific manner in which the Regulations are being violated and the time frame within which the violation must be remedied. Unless said violation is

corrected within the reasonable time set forth in the notice, the officers shall notify the County Board of Commissioners in writing stating the non-compliance or violation.

In the case of an extremely hazardous situation, the County Board of Commissioners may, in the interest of public health, direct the proper individuals to remedy the situation either with the equipment and employees of the permit holder or with equipment and employees of Perkins County.

The cost of correcting such conditions, including any cost to Perkins County, shall be the responsibility of the permit holder who is required to pay all costs and expenses. The County Board of Commissioners may, after the permit holder is given an opportunity for a hearing, revoke the permit for the violation of any of the provisions of this Regulation.

#### **6.13.08 Permit Reinstatement**

Whenever any sanitary landfill permit provided for in this Regulation has been revoked, a request for reinstatement shall be treated the same as the initial CUP application.

In the case of an extremely hazardous situation, the County Board of Commissioners may, in the interest of public health, direct the proper individuals to remedy the situation either with the equipment and employees of the permit holder or with equipment and employees of Perkins County.

The cost of correcting such conditions, including any cost to Perkins County, shall be the responsibility of the permit holder who is required to pay all costs and expenses. The County Board of Commissioners may, after the permit holder is given an opportunity for a hearing, revoke the permit for the violation of any of the provisions of this Regulation.

#### **6.13.08 Permit Reinstatement**

Whenever any sanitary landfill permit provided for in this Regulation has been revoked, a request for reinstatement shall be treated the same as the initial CUP application.

### **6.14 Solar Conversion Systems**

#### **6.14.01 Applicability**

No Solar Conversion System shall be installed or constructed within the zoning jurisdiction of Perkins County without first undergoing the specified review(s) and obtaining the permit(s) required under these regulations. All Solar Conversion Systems for which the required permits are issued shall be constructed in conformance with these regulations and with all applicable state and national codes, including but not limited to building, electrical, plumbing and fire codes. For those Solar Conversion Systems that include electrical, plumbing and/or heating components or sub-systems, any and all applicable additional required permits shall also be obtained. Photovoltaic solar panels shall be UL listed or meet the requirements of one or more other established testing and standards organization(s) of the PV solar industry.

#### **6.14.02 General Solar Definitions**

**ACCESSORY SOLAR ENERGY SYSTEM:** A Solar Conversion System, including but not limited to any photovoltaic, concentrated solar thermal, or solar hot water devices, that is not the primary use of a property but rather is accessory to, and incorporated into the development of an authorized primary use of the property, and which is designed for the purpose of reducing or meeting on-site energy needs.

**CONCENTRATED SOLAR POWER:** A Solar Conversion System (SCS) that generates power by using mirrors or lenses to concentrate sunlight or solar thermal energy, collected from a relatively large area into a relatively small area. Such Systems include but are not limited to the following technologies: Parabolic trough, Solar power tower, enclosed trough, Fresnel reflectors and Dish Stirling.

**DEVELOPMENT:** Any plat, subdivision, or planned unit development created under the Perkins County subdivision and zoning regulations.

**ELECTRIC UTILITY:** The public electric utility providing retail service to a given area.

**NET EXCESS GENERATION:** For an ISCS, net excess generation means the net amount of energy, if any, by which the output of a qualified facility exceeds a customer-generator's total electricity requirements during a billing period;

**NET METERING:** Net metering means a system of metering electricity in which a local distribution utility:

1. Credits a customer-generator at the applicable retail rate for each kilowatt-hour produced by a qualified facility during a billing period up to the total of the customer-generator's electricity requirements during that billing period. A customer-generator may be charged a minimum monthly fee that is the same as other noncustomer- generators in the same rate class but shall not be charged any additional standby, capacity, demand, interconnection, or other fee or charge; and
2. Compensates the customer-generator for Net Excess Generation during the billing period at a rate equal to the electric utility avoided cost of electric supply over the billing period. The monetary credits shall be applied to the bills of the customer-generator for the preceding billing period and shall offset the cost of energy owed by the customer-generator. If the energy portion of the customer-generator's bill is less than zero in any month, monetary credits shall be carried over to future bills of the customer-generator until the balance is zero. At the end of each annualized period, any excess monetary credits shall be paid out to coincide with the final bill of that period;

**SOLAR ACCESS:** the ability to receive sunlight across real property for any solar energy device.

**SOLAR ACCESS EASEMENT:** A legal right, expressed as an easement, covenant, condition, restriction or other property interest in any deed, will or other instrument executed by or on behalf of any landowner or in any order of taking, appropriate to protect the solar skyspace of a solar collector at a particularly described location to forbid or limit any or all of the following where detrimental to access to solar energy: structures on or above ground; vegetation on or above ground; or other activities or impediments to sunlight being received within the identified solar skyspace. Such right shall specifically describe a solar skyspace in three- dimensional terms in

which the activity, structures or vegetation are forbidden or limited or in which such an easement shall set performance criteria for adequate collections of solar energy at a particular location.

**SOLAR CONVERSION SYSTEM (SCS):** A device or equipment, or a system or collection of devices and/or equipment or an assembly, structure, or design, including passive elements, used for gathering, concentrating or absorbing direct or indirect sunlight, specifically designed to: (1) convert sunlight directly into electrical energy through a photovoltaic process or, alternatively, (2) for holding a substantial amount of useful thermal energy and to transfer that thermal energy to a gas, solid or liquid or to use that energy directly. The use of thermal energy derived from sunlight may include, but is not limited to, a mechanism or process used for gathering solar energy through thermal gradients, or a component used to transfer thermal energy to a gas, solid or liquid for use with machines that generate electricity.

**SOLAR CONVERSION SYSTEM, COMMERCIAL:** A commercial solar conversion system (CSCS) is a series of solar panels, on fixed or movable mounting systems, and related equipment connected together in order to commercially supply the converted energy to the public indirectly through an electric utility or, if permitted under applicable regulations, to one or more large-scale commercial users of electrical power.. A CSCS shall have a one-way connection to the power grid.

**SOLAR CONVERSION SYSTEM, GROUND-MOUNTED:** Any SCS which is directly supported and attached to the ground, whether the panels are fixed in place or movable to track the path of the sun.

**SOLAR CONVERSION SYSTEM, INDIVIDUAL:** An individual solar conversion system (ISCS) shall be for the specific use of an individual residential, commercial, public or industrial use.

**SOLAR CONVERSION SYSTEM, STRUCTURE-MOUNTED:** Any SCS which is directly connected to and supported by a building.

**SOLAR SKYSPACE:** The maximum three-dimensional space extending from a solar collector, or from the surface of the ground beneath such a collector, to all positions of the sun necessary for efficient use of the collector.

1. Where a solar energy system is used for heating purposes only, solar skyspace shall mean the maximum three-dimensional space extending from a solar energy collector to all positions of the sun between nine o'clock (9:00) A.M. and three o'clock (3:00) P.M. local apparent time from September 22 through March 22 of each year.
2. Where a solar energy system is used for cooling purposes only, solar skyspace shall mean the maximum three-dimensional space extending from a solar collector to all positions of the sun between eight o'clock (8:00) A.M. and four o'clock (4:00) P.M. local apparent time from March 23 through September 21 of each year.

**SOLAR ORIENTED SUBDIVISION:** A subdivision in which a minimum of 65 percent of the lots are solar- oriented lots.

**SOLAR ORIENTED LOT:** Any lot design and oriented in order to provide optimal solar usage for a solar array.

**SOUTH OR SOUTH-FACING:** True south, or 20 degrees east of magnetic south.

**SOLAR PANEL:** A solid-state device which, when exposed to sunlight, converts it directly into electrical energy by means of the photovoltaic effect, without using thermal energy transfer to liquids, gases, solids or machines to generate electricity.

**SOLAR ARRAY :** A collection of solar panels physically contained side-by-side within a common framework.

### **6.14.03 General Provisions Applying to ISCS, and/or CSCS**

The following provisions shall apply as set forth below to solar conversion systems:

1. For non-residential ISCS and commercial SCS: The project shall meet all required laws and regulations governing birds, wildlife and the environment at the time of application.
2. For non-residential ISCS and commercial SCS: Applicant shall comply with specific requirements of the appropriate Fire District.
3. Maintenance: All systems and components shall be kept in operational condition, including appearance of all components; plus, the ground beneath the SCS shall be kept in a presentable manner based upon the ground cover decided.
4. Decommissioning: All systems when they are no longer generating power and will no longer be used shall follow a decommissioning plan that has been agreed to as a condition of approval by Perkins County, the electric utility, and the owner/developer.
5. Repowering and Decommissioning: An SCS that is not operating, or which is operating at an output of less than 50% of rated capacity, for more than twelve continuous months will be considered abandoned and Decommissioning provisions will apply, unless the operator of the SCS shows good cause why additional time should be allowed to restore generation and obtains approval for such additional time from the County's Board of Commissioners, all as consistent with Section 6.14.17, below. However, if any SCS is temporarily not operating, or is temporarily operating at less than 50% of its rated output, due to a need to perform work on existing components and/or replace or re-power any existing component(s) of the SCS, up to six months shall be allowed for such work and/or replacement before the 12-month period of non-operation or reduced output that would trigger procedures to make a determination of abandonment under Section 6.14.17 would begin to run. Such six-month period may be extended by the Board of County Commissioners upon a demonstration of good cause by the owner of the SCS and shall work a further delay in the start of the 12-month period of non-generation or reduced generation that could trigger procedures to determine abandonment of the SCS. .
6. Repowering after a period of time of in operation or reduced output to allow for maintenance or replacement of components (consistent with sub-section 5 above) does not require a new permit or permit amendment if the footprint of the SCS is the same or reduced. Any increase in the footprint of the facility will require a permit amendment.
7. Except for CSCS projects, an applicant for an SCS project intending to connect to the electrical grid shall meet with and shall indicate they have met the requirements of the electrical utility and have in place an interconnection agreement with said utility.
8. All non-residential ISCS and CSCS operations shall have located at key access points signage stating specific language as outlined by the electric utility and including but not limited to emergency contact information.
9. SCS may be installed in the floodway fringe subject to the Perkins County floodplain regulations, as may be amended from time to time, given that all components are installed a minimum of one foot (1') above base flood elevation and subject to written authorization of the Floodplain Administrator.
10. No SCS shall be constructed in the identified Floodway.
11. Concentrated Solar Power (CSP) systems are prohibited within Perkins County.
12. Financial assurances shall be in place as part of the Decommissioning Plan.

### **6.14.04 Individual Solar Conversion System**

#### **1. General Requirements for ISCS:**

ISCS's shall conform to the required front, side and rear lot setback requirements except as provided herein:

1. An ISCS which is attached to an integral part of the principal building shall meet all local, state, and federal codes for building, electrical, plumbing, and accessibility.
2. A ground-mounted residential ISCS may be located in any required yard provided it does not exceed 12-feet in height and is located not less than five feet from the rear lot line and not closer than one foot to any existing easement as measured from the closest point of the structure including its foundation and anchorage.
3. The applicant for any ISCS shall provide evidence that they have a working Net Metering agreement with the electric utility.

### **6.14.05 Structural Requirements:**

The physical structure and connections to existing structures shall conform to the applicable local, state, and federal codes.

### **6.14.06 Site Plan:**

A residential ISCS shall require Site Plan review and approval. The applicant shall complete and submit the Site Plan application form prescribed by the County and shall submit, among other required materials specified in the application form, a detailed Site Plan, drawn to scale, showing the layout, existing structures and features, and all main components of the proposed ISCS. The Site Plan shall also show property lines, existing structures on the lot, proposed solar panel location with respect to property lines, and dimensions of the proposed arrays of solar panels. A non-residential ISCS shall require Conditional Use Permit review and approval.

#### **6.14.07 Preexisting Solar Panels:**

Notwithstanding noncompliance with the requirements of this section, a solar panel erected prior to the adoption of these Regulations, pursuant to a valid zoning permit issued by Perkins County, may continue to be utilized so long as it is maintained in operational condition.

#### **6.14.08 Decommissioning**

1. Whenever an ISCS ceases operation on a property, it shall be required to report this to the Perkins County Zoning Office and the electric utility.
2. Whenever, a ground mounted ISCS is no longer operating, the property owner shall have six months to completely remove the structure and wiring. The location of the ISCS shall be returned to a usable state based upon the surrounding property.

#### **6.14.09 Commercial Solar Conversion Systems:**

##### **1. Applicability**

The purpose of this subsection is to provide standards for CSCS consisting of ground-mounted solar panels, whether fixed or movable, capturing energy from the sun and converting it to electricity. The provisions of this section are based on a ground-mounted photovoltaic facility using a rammed post construction technique and panels supporting the flow of rainwater between each module and the growth of vegetation beneath the arrays and limiting the impacts of stormwater runoff. The rammed post construction technique allows for minimal disturbance to the existing ground and grading of the site.

Based on the assumed solar farm design, Perkins County finds the use to be low intensity with minimal trip generation, low amounts of impervious cover, and low emission thus the use is compatible in urbanized, non-urbanized, or low-density areas with other uses.

##### **2. Conditional Use Permit**

A CSCS shall require a Conditional Use Permit (CUP). The applicant shall complete and submit the CUP application form specified by the County and shall submit, among other required materials specified in the application form, a detailed plot plan, drawn to scale, showing the layout and all main components of the proposed CSCS. The application for a Conditional Use Permit shall also show property lines, existing structures and features on the lot, proposed location(s) of solar panel array(s) with respect to property lines, and dimensions of the proposed array(s) of solar panels, as well as any other required details. Uses and approximate location of structures on adjoining lots shall be shown and identified.

#### **6.14.10 Site Development Standards for CSCS**

1. Lot coverage: No more than one percent of the gross site area shall be occupied by enclosed buildings and structures.
2. Setbacks: A thirty-foot side and rear setback shall apply only to the setback area measured from a lot line that abuts a residential use or residential zoning district. The side or rear setback shall be eliminated where the use does not abut a residential use or residential zoning district, or the two districts are separated by a public right-of-way.
3. Height: The use of tracking systems to adjust the angle of solar panels shall be allowed. The average maximum height of the solar panel arrays shall not exceed fifteen (15) feet.
4. Landscaping Buffer: The primary use of the property shall determine the buffer requirement. Where a ground-mounted photovoltaic solar farm is the primary use the property shall be considered industrial or agricultural for the purposes of buffer requirements, there are no requirements for screening from public streets.
5. Stormwater Management: Solar arrays shall be considered pervious and the property shall be designed to absorb or detain specific runoff. The impervious cover calculation shall include the support posts of the panels, any paved roads or otherwise impervious roads or driveway surfaces, paved parking areas and buildings on the site.
6. A property developed pursuant to this subsection shall be required to plat; however, water and sewer connections shall not be required. Suitable fire department access shall be required.
7. Signage shall conform to the Perkins County Sign Regulations.
8. Customer owned on-site power lines shall be buried except where connecting to existing overhead utility lines. This requirement shall not apply to fiber optic connections.
9. Fencing: Due the unique security requirements of this land use, and to facilitate the educational value of seeing this land use, fencing up to eight feet in height is permitted provided the fencing material is predominantly open.
10. All State and Federal codes and provisions not specified in this subsection are required including but not limited to tree preservation, traffic impact analysis and historic preservation.
11. Revegetation of a site on which a CSCS has been installed or constructed shall be done using a certified weed-free seed mix appropriate for the location, as confirmed by the County's Weed Superintendent or, if applicable, the County's Extension Service or Agent.



#### **6.14.11 Submittal Requirements:**

All applications submitted for Site Plan or Conditional Permit review and approval shall contain the following in addition to any requirements set forth above:

1. A detailed plot plan, drawn to scale, of the property indicating the total site acreage, property lines, landscape and buffer areas, tree preservation, location of all existing structures and features on the property, layout and all main components of the proposed SCS, the proposed location(s) and dimensions of the solar panels and/or solar panel arrays, the distances of the solar panels/array(s) to structures on the property as well as distances to the property lines;
2. The plot plan shall also include any roads, electric lines and/ or overhead utility lines;
3. A description of the electrical generating capacity and means of interconnecting with the electrical grid, if connecting to said electrical grid;
4. Except for CSCS, when required, a copy of the interconnection agreement with the local electric utility
5. Except for CSCS, drawings or blueprints of solar panels and arrays in conjunction with the application for a zoning permit for a solar farm/solar powerplant;
6. Except for CSCS, structural engineering analysis for a solar panel, array and its foundation, as applicable.
7. Except for CSCS, manufacturer's recommended installation instructions, if any; and
8. Documentation of land ownership and/or legal authority to construct on the property.
9. A decommissioning plan shall be required to ensure that facilities are properly removed after their useful life. The plan shall include provisions for removal of all structures and foundations, restoration of soil and vegetation and a plan ensuring financial resources will be available to fully decommission the site. Perkins County reserves the right to require the posting of a bond, letter of credit or the establishment of an escrow account to ensure proper decommissioning.

#### **6.14.12 Compliance with Other Regulations:**

1. In addition to complying with all applicable provisions of these regulations, section 6.14 Solar Conversion Systems, all SCS proposed for and installed in Perkins County must comply with all applicable State and Federal regulations governing such systems.
2. This subsection does not waive any requirements of any state or Federal codes, electrical codes or other technical codes as applicable.

#### **6.14.13 Discontinuation and Decommissioning.**

Subject to sub-section 6.14.03(5), above, a SCS shall be considered abandoned after twelve (12) continuous months without energy production or with twelve (12) continuous months of production at less than 50% of rated capacity. Following the approval of a Resolution by the County Board of Commissioners (BOC), the owner of an SCS which the County believes to be abandoned shall be provided written notification to that effect, specifying the period of non-production or less-than-50%-production, and of the County's intent to make a formal determination of abandonment following a Public Hearing. The notification shall specify the date of the Public Hearing, which shall not be less than thirty (30) days after the date of the notification. At the Public Hearing and in submissions at and prior to the Public Hearing, the owner of the SCS may attempt to: (1) demonstrate that generation at the SCS occurred during the time period and/or that the power output level exceeded the level that would justify a determination of abandonment, or (2) show good cause why additional time should be allowed to restore or increase generation the SCS and request approval for such additional time from the BOC. In the event the BOC grants the owner's request for additional time, the BOC may thereafter extend such time upon a further showing of good cause by the owner at a Public Hearing. If the SCS owner does not request time to restore or increase generation output, or if the BOC denies the SCS owner's request, and if the BOC adopts a Resolution determining the SCS has been abandoned and rescinding the permit(s) for the SCS, the owner of the SCS shall remove all SCS equipment and appurtenances within nine (9) months of the date of such Resolution.



## **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 removed, discontinued or abandoned, but not to encourage their survival. It is further the intent of this Resolution that, with the exception of existing residential uses, 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.

### **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 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 construction or designated use of any building or structure for which actual construction has been lawfully initiated prior to the effective date of the Resolution or amendment thereto where actual construction activity has been carried on diligently. Actual construction is defined to be the placing of substantial construction materials, other than earth, in a permanent position and fastened in a permanent manner. Diligently carried on shall be defined to mean that construction has been on-going except through the winter months, defined as being November 1 through April 1 of the following year.

### **SECTION 704 - EXCEPTIONS**

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

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

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

**704.03** Notwithstanding the requirements of Section 501.03, Subsection 8, Paragraph 8 and Section 502.03, Subsection 7, Paragraph A, where a lawfully established lot, tract or parcel 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 waste handling facility, a residential use may be established on said lot, tract or parcel.

**704.04** Notwithstanding the requirements of Section 501.03, Subsection 8, Paragraph 8 and Section 502.03, Subsection 7, Paragraph A, where a lawfully established lot, tract or parcel 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 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 confined or intensive animal feeding use or waste handling facility.

**704.05** In accordance with Sections 501.03, 501.05, and 502.03 of this Resolution, lawfully existing confined or intensive animal feeding uses rendered non-conforming by these regulations may be expanded, but only in accordance with all restrictions set forth in the above referenced sections of this Resolution.

**704.06** The expansion of any non-conforming residential use or structure shall not be allowed to increase the level of non-conformity, including the further encroachment into a non-conforming setbacks that currently exist.

**ADDED 704.06:** *Allowing expansion of non-conforming residential uses if level of non-conformity doesn't increase 9-20-04*

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

In any zoning district in which single-family structures are permitted, a single-family dwelling unit and customary accessory buildings may be erected on any single lot of record after the effective date of this Resolution or amendment thereto notwithstanding limitations imposed by this Resolution or amendment thereto subject to the following conditions:

**705.01** Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are applicable to the zoning district in which such lot is located, provided that erection of said single-family dwelling unit shall comply with the 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.

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

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

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

**706.01** If any such non-conforming use of land ceases for any reason for a period of more than twelve (12) consecutive months, any subsequent use of such land shall conform with the requirements of this Resolution or amendments thereto.

**706.02** No additional building or structure which does not conform to the use restrictions and other regulations of the Resolution or amendment thereto shall be erected in connection with such non-conforming use.

**706.03** No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel of land on which it is located that has not been used in connection with such non-conforming use.

**706.04** No such non-conforming use shall be enlarged or expanded to occupy a greater area of the lot or parcel of land on which it is located than was used in association with such use on the effective date of this Resolution or amendment thereto.

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

If 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:

**707.01** 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, reconstructed, moved or structurally altered, except in changing the use permitted in the zoning district as a permitted use, an accessory use or a conditional use.

- 707.02** Any non-conforming use may be extended throughout any parts of a building or structure which were arranged or designed for such use as of the effective date of this Resolution or amendment thereto, but no such use shall be extended to occupy any land outside such building or structure which was not in use as of the effective date of this Resolution or amendment thereto.
- 707.03** If no structural alterations are made, any non-conforming use of a building or structure and land in combination, may as a conditional use, be changed to another non-conforming use provided that the County Board of Commissioners, in granting 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 granting 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.
- 707.04** Any building or structure or building or structure and land in combination, in or on which a non-conforming uses is superseded by a permitted use shall thereafter conform to the requirements of this Resolution and the non-conforming use may not thereafter be resumed.
- 707.05** When a non-conforming use of a building or structure or building or structure and land in combination is discontinued or abandoned for twelve (12) consecutive months, except when governmental action impedes access to the premises, the building, structure and land shall not thereafter be used for any use that is not in compliance with this Resolution or amendment thereto. Due to the potential for long periods of low commodity prices which may force temporary closure of confined or intensive animal feeding uses, as defined with this Resolution, any such non-conforming use which is discontinued for a period of less than thirty six (36) consecutive months 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 more than thirty six (36) consecutive months.
- 707.06** Where non-conforming use status applies to a building or structure, a building or structure and land in combination, removal or destruction of a building or structure, except by act of God, shall eliminate the non-conforming status of the land. Destruction, for the purposes of this Resolution, is defined as damage to an extent of more than seventy-five (75%) percent of the replacement cost at the time of destruction.

#### **SECTION 708 - REPAIRS AND MAINTENANCE**

Maintenance and ordinary repairs, replacement of bearing and non-bearing 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.

#### **SECTION 709 - USES UNDER CONDITIONAL USE**

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 Perkins County Planning Commission, the Perkins County Board of Adjustment, the Perkins County Board of Commissioners, the Zoning Administrator designated by the Board of Commissioners and the Perkins County Attorney.

### **SECTION 802 - AUTHORITIES**

#### **Planning Commission:**

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

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

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

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

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

#### **Board of Commissioners:**

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

- 802.10** Hear and decide conditional use applications upon which it is required to act under the terms of this Resolution.

- 802.11** Consider and adopt amendments to the text of this Resolution and / or changes (rezonings) to the Perkins County Official Zoning Map, after review and recommendation by the Planning Commission.
- 802.12** Consider and adopt a schedule of permit and application fees for administration of this Resolution, after review and recommendation by the Planning Commission.
- 802.13** 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 and the County Attorney to carry out the responsibilities assigned to them by adoption of this Resolution.

**Zoning Administrator:**

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

- 802.14** 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.
- 802.15** Conduct inspections of buildings, structures, premises and the uses of land to determine compliance with the terms of this Resolution. Where violations are determined to exist, the Zoning Administrator shall have the authority to issue letters of violation, stop work orders and any other legal remedy to assure compliance with the requirements of this Resolution.
- 802.16** Provide interpretation of the text of this Resolution and the Official Zoning Map when necessary and such other technical and clerical assistance as the Planning Commission, Board of Adjustment and Board of Commissioners may require.
- 802.17** Maintain and provide information to the public regarding the requirements of this Resolution and provide for the timely publishing of legal notices and other notifications relative to administration of this Resolution as prescribed by law.
- 802.18** 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.
- 802.19** Provide to the owner's of all confined and intensive animal feeding uses in existence as of the effective date of this Resolution, the appropriate written "Declaration of Capacity" form to be filled out and returned to the Zoning Administrator within one hundred eighty (180) days of the effective date of this Resolution, and maintaining of all such "Declaration of Capacity" records within the files of the Zoning Administrator.

**SECTION 803 - RESPONSIBILITIES**

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

- 803.01** It is the intent of this Resolution that all questions of interpretation and enforcement regarding this Resolution shall first be presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of the Zoning Administrator and that recourse from the decisions of the Board of Adjustment shall be to the courts, as prescribed by law.
- 803.02** 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 802.10 through 802.13 of this Resolution and shall not include the hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this Resolution.

- 803.03** If the Zoning Administrator shall find that any of the provisions of this Resolution are being violated, he/she shall notify the person(s) responsible for such violation in writing, indicating the nature of the violation and ordering the action or actions necessary to correct and eliminate such violation. The Zoning Administrator shall have the full authority to order discontinuance of prohibited or unauthorized uses of land, buildings or structures, removal of prohibited or unauthorized buildings or structures or prohibited or unauthorized additions thereto, discontinuance of any work being done in violation of the requirements of the Resolution, and the taking of any other legal action necessary to ensure compliance with or prevent violation of the provisions of this Resolution.
- 803.04** The Zoning Administrator, operating through the County 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 Perkins County Board of Commissioners is expressly intended to authorize the Zoning Administrator and County Attorney to initiate and carry out all legal actions appropriate and necessary to enforce the provisions of this Resolution that is or may be applicable under the laws of the State of Nebraska.

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

No building or other structure shall be erected, moved, added to or structurally altered without a zoning permit therefore, issued by the Zoning Administrator, provided however, that a zoning permit shall not be required for any non-residential agricultural building or structure, less than 132 feet in height. Buildings and structures used in connection with confined or intensive animal feeding uses, as defined in Sections 303.25 and 303.43 of this Resolution shall be considered agricultural buildings or structures and shall not require a zoning permit, provided, however, that the use within any buildings or structures associated with a confined or intensive animal feeding use shall be subject to all applicable requirements and restrictions of this Resolution. A zoning permit shall not 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 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. *AMENDED SECTION 804 AGRICULTURAL BUILDINGS 5-2-11*

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

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

- 805.01** All applications for a zoning permit shall be made on forms prescribed for such application by the Board of Commissioners and shall have incorporated into said forms a place for drawing of a plot plan showing the actual dimensions and shape of the lot to be built upon, the sizes and locations of all existing and proposed parking areas, water supply and sewage disposal facility locations, and such other information as may be pertinent to said application.
- 805.02** The application shall include, the name(s), address(es) and telephone number(s) of the applicant and such other information as may be lawfully required by the Zoning Administrator, including existing and proposed uses of land, buildings and structures, existing or proposed building or structure alterations, the number of families, housekeeping units on the premises, conditions existing on the premises, provisions for water supply, sewage disposal and erosion control, soil conditions and permeability and such other information as may be necessary to determine conformance with the requirements of the Resolution and enforcement thereof.
- 805.03** Upon receipt of a complete zoning permit application and receipt of any applicable application fee, the Zoning Administrator shall make two (2) copies of the zoning permit application and return one (1) copy to the applicant after he / she has marked the copy of the permit as approved or disapproved and attested to same by his / her dated signature. If a zoning permit application is denied, the Zoning Administrator shall state the reason(s) for such denial in writing and attach the same to the applicant's copy of the application. The Zoning Administrator shall mark the original of the zoning permit application as approved or disapproved in the same manner as the copy and shall maintain said original together with written reason(s) for denial of said application in the permanent files of the County.



**805.04** When the Zoning Administrator approves a zoning permit for erection of any building or structure or erection of any addition to or alteration thereof, he/she shall issue one (1) copy of such approved zoning permit to the Perkins County Assessor.

**805.05** Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such plot plan and permit and no other use, arrangement or construction. If the Zoning Administrator determines that the use, arrangement or construction developed under any approved permit is not proceeding according to the approved permit and applicable regulations or conditions, the Zoning Administrator shall revoke said permit and issue a written stop work order and require that such use, arrangement or construction be brought into conformance with the approved permit.

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

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

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

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

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

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

**808.01** It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises or both or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use, including confined and intensive animal feeding uses, until a Certificate of Zoning Compliance shall have been issued therefore by the Zoning Administrator

**808.02** No Certificate of Zoning Compliance shall be issued by the Zoning Administrator except in conformity with all provisions of this Resolution unless the Zoning Administrator shall receive written authorization from the Board of Zoning Adjustment in the form of an administrative appeal review or approved variance or a written authorization from the Board of Commissioners in the form of an approved conditional use, as provided for in this Resolution.

**808.03** Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such approved plot plans and permit and no other use, arrangement or construction developed under any approved permit is not according to the approved zoning permit and applicable regulations or conditions, the Zoning Administrator shall not issue a Certificate of Zoning Compliance, but shall instead inform the applicant in writing of the violations and specify the actions necessary to bring such use, arrangement or construction into compliance with the approved zoning permit.

**808.04** A Certificate of Zoning Compliance, once issued, shall remain in effect so long as the use of the land, buildings and structures is used in accordance with said Certificate.

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

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

## **ARTICLE 9 - BOARD OF ADJUSTMENT**

### **SECTION 901 - ESTABLISHMENT AND PROCEDURE**

A Board of Adjustment is hereby created and shall be known as the Perkins 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 is unable to attend for any reason. One (1) member of the Board of Adjustment shall be appointed from the membership of the Perkins 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 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:

- 907.01** Administrative Review: To hear and decide appeals where it is alleged by the appellant that there is an error in order, requirement, decision or refusal made by an administrative official or any agency based on or made in the enforcement of this Resolution or any regulation relating to the location or soundness of structures.
- 907.02** Zoning Map Interpretation: To hear and decide, in accordance with the provisions of this Resolution, requests for interpretation of any map.
- 907.03** Variances: To hear applications for and authorize, in specific cases, a variance from the specific terms of this Resolution which will not be contrary to the public interest and where, owing to special conditions, a

literal enforcement of the provisions of this Resolution would result in unnecessary hardship, and provided that the spirit of this Resolution shall be observed, public safety and welfare secured and substantial justice done. A variance shall not be granted by the Board of Adjustment unless and until the Board shall have made written findings that all of the following conditions exist or have been met:

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

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

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

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

1. Make a finding that the application for a variance is complete and in compliance with the requirements of this Resolution. Such finding shall be recorded in the minutes of the Board;
2. Make findings that the particular reasons set forth in the application for a variance justify the granting of the variance in accordance with the limitations for granting such variance as described in Section 907.03 of this Resolution and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structures involved and such findings shall be recorded in the minutes of the Board;
3. Make a finding that the granting of the variance will be in harmony with the purpose and intent of the Resolution and will not be injurious to adjacent lands or otherwise detrimental to the public welfare. Such finding shall be recorded in the minutes of the Board.

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

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

#### **SECTION 908 - PUBLIC HEARINGS**

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

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

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

#### **SECTION 910 - APPEALS**

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board or bureau of the County, may seek review of such decision by the District Court for the County in the manner provided by the laws of the State of Nebraska, particularly by Section 23-168.04 of such laws. Such petition for review shall be presented to the Court within fifteen (15) days after the filing of the decision of the Board of Adjustment in the office of the Zoning Administrator.

## **ARTICLE 10 - CONDITIONAL USES**

### **SECTION 1001 - GENERAL POWERS**

The Perkins 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:

- 1002.01** A legal description of the property on which the proposed conditional use is requested, including the specific size and dimension of the area on which the proposed conditional use would be located if less than the total property owned by the applicant;
- 1002.02** The size and locations of all existing and proposed buildings and structures;
- 1002.03** A detailed description of the use proposed and the activities involved in such use;
- 1002.04** The location(s) of access to public roadway(s);
- 1002.05** The type and locations of easements effecting the property;
- 1002.06** A description of the provisions made for adequate water supply, sewage disposal, public utilities and erosion control;
- 1002.07** The extent and location of parking, loading and refuse disposal and collection facilities;
- 1002.08** The locations of residential dwellings and other non-agricultural land uses within one (1) mile of the property in question. In the case of conditional use applications for confined or intensive animal feeding uses, the locations of all residential dwellings, schools, churches or public use areas within the minimum distances set forth in this Resolution for the type of confined or intensive animal feeding use shall be indicated.
- 1002.09** An indication of surface water drainage onto, through and off of the subject property which would occur after development of the proposed conditional use;
- 1002.10** For industrial uses, confined or intensive animal feeding uses, and waste handling facilities uses, a description of how the use or uses proposed will address the compatibility issues of traffic generation, noise, odor, dust, radiation or potential air, water or soil pollution or explosion hazards;
- 1002.11** Any areas on the property subject to flooding or considered to be a wetland.

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

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

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

Prior to consideration of a conditional use application by the Planning Commission, the County shall cause public notice to be given through publication of a legal notice in the legal newspaper of the County at least ten (10) calendar

days prior to the date of public hearing. Such notice shall fix the time and place of such public hearing together with a description of the type and location of the conditional use proposed. Written notification of such hearing shall also be given to any county which has territory within three (3) miles of the property affected by such action. In addition notice shall also be given to the Chairperson of any municipal, county or joint planning commission having jurisdiction over land within three (3) miles of the property affected by such modification or in the absence of a planning commission to the clerks of such units of government and to the Board of Education in which the real estate affected by such modifications is located. A copy of such notice shall also 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 immediately below. 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 immediately below. If the Commission recommends disapproves 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 its consideration and the Zoning Administrator shall provide the same written statement to the applicant within seven (7) calendar days of the date of action by the Planning Commission.

#### **SECTION 1006 - COUNTY BOARD OF COMMISSIONERS PUBLIC NOTICE**

Prior to consideration of a conditional use application by the County Board of Commissioners, the County shall cause public notice to be given through publication of a legal notice in the legal newspaper of the County at least ten (10) calendar days prior to the date of public hearing. Such notice shall fix the time and place of such public hearing together with a description of the type and location of the conditional use proposed. Written notification of such hearing shall also be given to any county which has territory within three (3) miles of the property affected by such action. In addition notice shall also be given to the Chairperson of any municipal, county or joint planning commission having jurisdiction over land within three (3) miles of the property affected by such modification or in the absence of a planning commission to the clerks of such units of government and to the Board of Education in which the real estate affected by such modifications is located. A copy of such notice shall also 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 immediately below. 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 immediately below. Upon approval of a conditional use, notice of the approval, including all conditions of approval shall be mailed to the applicant within seven (7) calendar days of the date of such approval. If the Board disapproves a request, it shall state the reason(s) for such disapproval and shall provide a written statement specifying the reason(s) for the disapproval to the applicant within seven (7) calendar days of the date of such disapproval.

#### **SECTION 1008 - REQUIREMENTS GOVERNING REVIEW AND APPROVAL 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 granting 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:

- 1008.01** Both ingress and egress to the property and conditional use thereon and the existing and proposed buildings and structures thereon is appropriate with particular reference to automobile and truck safety, traffic flow, site distance, roadway and bridge capacities, convenience and access in case of fire or catastrophe;
- 1008.02** Off-street parking, including spaces for handicapped persons;
- 1008.03** Refuse disposal and/or waste handling facilities and other service facilities are appropriate relative to location, capacity and safety;
- 1008.04** Water supply and sewage disposal facilities 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;
- 1008.05** 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.
- 1008.06** Front, side and rear setbacks meet or exceed the minimum setback requirements of the zoning district in which the conditional use is located.
- 1008.07** Provisions to avoid development within any area subject to flooding and/or to avoid modification of any wetlands.
- 1008.08** For proposed industrial uses, confined or intensive animal feeding uses, and waste handling facilities 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, water pollution or explosion hazards.
- 1008.09** For proposed industrial uses, confined or intensive animal feeding uses, and waste handling facilities uses, a consideration of the impact of the proposed use on the County roadways, bridges and other infrastructure components and determination of the need for financial participation by the applicant in improving or maintaining such roadways, bridges or other public infrastructure components.

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

In consideration of any conditional use application, the Board of Commissioners may prescribe any additional conditions, safeguards or limitations appropriate to assure the compatibility of the conditional use with adjacent lands, with the intent of the zoning district in which such use is to be located, and with the spirit of this Resolution.

#### **SECTION 1010 - EXPIRATION OF CONDITIONAL USE AUTHORIZATIONS**

Development of any approved conditional use shall be commenced within one (1) year of the date of approval of such conditional use by the Board of Commissioners and development of said approved conditional use shall be completed within two (2) years from the date of approval of such conditional use by the Board of Commissioners or such approval is automatically revoked. Development or completion of any conditional use authorization that has been so revoked shall be permitted only after reapplication and approval of such conditional use application by the Board of Commissioners, in the manner herein described.

In certain cases where the Planning Commission and the Board of Commissioners find it to be appropriate, a waiver to the above deadlines may be granted and longer time periods for commencement and completion of the project may be permitted. However, this waiver must be a part of the initial application and discussed as part of the public record in both public hearings. Any changes to the deadlines must be duly noted on the application copies given to all parties.

***ADDED TO SECTION 1010: Expiration of Conditional Use Authorizations 9-20-04***





## ARTICLE 11 - AMENDMENTS

### SECTION 1101 - AUTHORITY

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 hearings 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

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 be provided as follows:

**1102.01** At least ten (10) calendar days prior to the date of public hearing, a notice fixing the time and place of such public hearing together with a description of the modification or repeal proposed shall be provided by publication of such notice in the legal newspaper in general circulation in the County and by written notification of such hearing to any county which has territory within three (3) miles of the property affected by such action. In addition notice shall also be given to the Chairperson of any municipal, county or joint planning commission having jurisdiction over land within three (3) miles of the property affected by such modification or in the absence of a planning commission to the clerks of such units of government and to the Board of Education in which the real estate affected by such modifications is located.

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

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

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

### SECTION 1103 - AMENDMENT CONSIDERATION AND ADOPTION

**1103.01** Planning Commission: The procedure for the consideration and adoption of any proposed amendment to this Resolution shall be in like manner as that required for consideration and adoption of this Resolution. For action on amendments to the text of this Resolution or the zoning district boundaries indicated on the Official Zoning Map, a quorum of the Planning Commission to approve or disapprove a proposed amendment shall require a simple majority of all members of the Commission and shall constitute a recommendation of approval or disapproval to the Board of Commissioners.

**1103.02** Board of Commissioners: When the Planning Commission submits a recommendation of approval or disapproval regarding any amendment to this Resolution, the 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.

**SECTION 1104 - AMENDING 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 Perkins 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**

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, 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. The Zoning Administrator shall also take enforcement action upon information of any violation of the requirements of this Resolution gathered through his / her own investigations.

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

Violation of the provisions of this Resolution or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with approval of variance and conditional uses, shall constitute a misdemeanor. Any person who violates 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, upon conviction thereof, be punished by a fine or imprisonment as provided by the provisions of Section 23.114.05 R.R.S., or other applicable statute and in addition shall pay all costs and expenses associated with prosecution of such violation. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition, the County Board or other proper local authority of the County, as well as any owner(s) of property within the district affected may institute any appropriate action or proceedings to prevent such violation and such owner(s) of property may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by the provisions 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 and County Attorney 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 building permits, Certificates of Zoning Compliance, appeals, rezoning applications, conditional use applications and 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.

### **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 - SEPARABILITY**

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.

**APPENDIX 1 - APPLICATION AND PERMIT FORMS**