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## ARTICLE 1 GENERAL PROVISIONS

- SECTION 101 TITLE:** These regulations shall be known, referred to, and cited as the Zoning Resolution of Valley County, Nebraska.
- SECTION 102 JURISDICTION:** The provisions of this Resolution shall apply to a land within the boundaries of Valley County, Nebraska, excluding the land included, now or in the future, in the corporate limits of any incorporated municipality within or adjoining the County and excluding any legally established planning and zoning jurisdictional areas of any incorporated municipality within or adjoining the County, as defined on the Official Zoning Map of any such municipality.
- SECTION 103 PURPOSE:** In pursuance of and in compliance with the authority conferred to Nebraska counties by Section 23 of the Nebraska Statutes, as amended, this Resolution is enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Valley County, Nebraska and for the purpose of assisting in the implementation of the duly adopted Valley County, Nebraska Comprehensive Plan. This Resolution is also enacted to preserve and protect the customs and culture of the people of Valley County and the following specific purposes:
1. Developing both urban and non-urban areas and lessening congestion in the streets and roads and reducing the waste of excessive amounts of streets and roads;
  2. Securing safety from fire and other dangers and lessening or avoiding the hazards to persons and damage to property resulting from the accumulation of runoff or storm or flood waters;
  3. Providing adequate light and air and preventing excessive concentration of population and excessive and wasteful scattering of population or settlement;
  4. Promoting such distribution of population, such classification of land uses and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply and other public requirements;
  5. Protecting the tax base and protecting property against blight and depreciation;
  6. Securing the economy in governmental expenditures;
  7. Fostering the State's agriculture, recreation and other industries;
  8. Encouraging the most appropriate use of land within Valley County, Nebraska, and;
  9. Preserving, protecting and enhancing historic buildings, places and districts.

## ARTICLE 2 APPLICATION OF REGULATIONS

- SECTION 201 GENERAL APPLICATION:** The regulations set forth in this Resolution shall be minimum requirements and, within each zoning district, shall be uniformly applied to each class or kind of structure, building or use, except as hereinafter provided.
- SECTION 202 ZONING AFFECTS EVERY BUILDING AND USE:** With the exception of the provisions of Article 7 of this Resolution, no building, structure or land shall hereafter by used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved or structurally altered except in conformity with the regulations specified in this Resolution. Further, no building or structure shall hereafter be erected, constructed, reconstructed, enlarged, moved or altered to exceed the height or bulk, to occupy a greater percentage of land area, to have a narrower or smaller front, side or rear setback than is herein required, or be in any manner contrary to the requirements of this Resolution, provided that:
1. Non-residential farm buildings, as defined in Section 303.35 of this Resolution, shall be subject to the requirements of this Resolution, but shall be exempt from the zoning permit requirements of this Resolution, but said structures shall comply with the yard, flood hazard and other applicable requirements herein stated for each zoning district. Non-residential farm buildings shall be subject to issuance of a certificate of zoning compliance at no charge to verify compliance with yard, flood hazard or other applicable requirements of this Resolution;

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2. Any farm building containing a use other than an agricultural use, as defined in Section 303.04 of this Resolution, shall be considered a non-farm building and shall be subject to the zoning permit requirements of this Resolution;
  3. Any building located on a lot, tract or parcel of land, which does not qualify as a farm, as defined in Section 303.34 of this Resolution, shall be considered a non-farm building and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements, and;
  4. Any waste handling facility, as defined in Section 303.97 of this Resolution, which may be associated with a farm building shall be considered a non-farm structure and/or use and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements.

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

**SECTION 204 PROVISIONS DECLARED TO BE MINIMUM REQUIREMENTS:** In their interpretation and application, the provisions of this Resolution shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals and/or general welfare.

**SECTION 205 DISCLAIMER OF BUILDING AND OTHER CODES AND COUNTY LIABILITY:** This Resolution is a zoning regulation only and regulates only the use of land. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical, structural or other code or regulation which would regulate the design and construction of any building or structure within the jurisdiction of this Resolution. Any permits or certificates issued in accordance with the requirements set forth in this Resolution are solely for the purpose of assuring compliance with the land usage limitations and requirements set forth in this Resolution and for the purposes described in Section 103 of this Resolution. Valley County, Nebraska assumes no liability and shall not in any manner be held liable for any design or construction problem or defect in any building or structure for which a zoning permit or certificate of zoning compliance or other form of land usage approval may have been issued nor shall Valley County, Nebraska assume any liability whatsoever for non-compliance with any federal, state or other code, regulation or requirement.

## **ARTICLE 3 CONSTRUCTION AND DEFINITIONS**

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

1. **TENSE:** Words used in the present tense include the future tense.
2. **NUMBER:** Words used in the singular include the plural and words used in the plural include the singular.
3. **SHALL AND MAY:** The word "shall" is mandatory and the word "may" is permissive.
4. **GENDER:** The masculine shall include the feminine.
5. **HEADINGS:** In the event that there is any conflict or inconsistency between the heading of an Article, Section, Subsection or Paragraph of this Resolution and the text thereof, the said heading shall not be deemed to affect the scope, meaning or intent of such text.

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

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

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

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

**303.03 ADULT COMPANIONSHIP ESTABLISHMENT:** An establishment which provides the service of engaging 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."

**303.04 ADULT ESTABLISHMENT:** Any business which offers 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, 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.

**303.05 ADULT HOTEL OR MOTEL:** 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."

**303.06 ADULT MASSAGE PARLOR, HEALTH CLUB:** 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."

**303.07 ADULT MINI-MOTION PICTURE THEATER:** 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.

**303.08 ADULT MOTION PICTURE ARCADE:** Any place to which public is permitted or invited wherein coin or slug-operated or electronically, or mechanically controlled still or motion 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."

- 303.09 ADULT MOTION PICTURE THEATER:** 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 or description of “specified sexual activities” or “specified anatomical areas” for observation by patrons therein.
- 303.10 ADULT NOVELTY BUSINESS:** A business which has a principal activity the sale of devices which simulate human genitals or devices, which are designed for sexual stimulation.
- 303.11 ADULT SAUNA:** 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 aid 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.”
- 303.03 AEROBIC DIGESTION PROCESS:** Any process for digestion of waste in which the waste is digested using free oxygen, wherein sufficient oxygen is available to satisfy at least fifty percent (50%) of the daily chemical/ biological oxygen demand inflow.
- 303.13 AGRICULTURAL USE:** The business and science of cultivating the soil, producing crops and or breeding, feeding, pasturing of livestock, raising and management of poultry, fish, bees and other animals, including confined and intensive animal feeding use and associated waste handling facility, as defined in Sections 303.34, 303.55 and 303.110 of this Resolution, truck farming, forestry or orchards, the non-commercial storage and processing of agricultural products produced on the premises and land under the same ownership, and confinement of an unrestricted number of ruminant animals for birthing, weaning or back-grounding purposes for less than one hundred eighty (180) days in any calendar year in lots or pens normally used for crop production or growing of grasses or other vegetation for livestock production.
- 303.14 AGRONOMIC RATES:** The application of plant nutrients, from all sources, to meet, but not exceed, the estimated annual nutrient needs of the crop being produced, based upon past or projected yields, so as to avoid build-up of nutrients. Determination of appropriate agronomic rates in application of animal waste to land shall be as established by the Nebraska Department of Environmental Quality in approving of comprehensive nutrient management plans.
- 303.15 ANAEROBIC DIGESTION:** Any process for digestion of waste in which the waste is digested where free oxygen is not available in sufficient quantities to maintain aerobic digestion.
- 303.16 ANIMAL UNIT:** The relationship of various animals with regard to weight and manure production based upon one thousand pounds of animal(s) regardless of type. For purposes of this Resolution, the following relationship with regard to manure production and equivalent numbers of animals shall be as follows:

<u>Type of Animal</u>	<u>Animal Unit(s)</u>	<u>Equivalent Number of Animals</u>
Beef Animal (500 - 1,200 pounds).....	1.00.....	1
Beef or Dairy Calf (150 - 500 pounds).....	0.50.....	2
Young Dairy Stock (500 - 1,000 pounds)...	0.75.....	1.25
Dairy Cow.....	1.40.....	0.7
Horse.....	1.00.....	1
Swine (55 pounds or heavier).....	0.40.....	2.5
Swine (less than 55 pounds).....	0.10.....	10
Swine (sow and litter).....	0.50.....	2

<u>Type of Animal</u>	<u>Animal Unit(s)</u>	<u>Equivalent Number of Animals</u>
Sheep / Goat.....	0.10.....	10
Chicken/Game Birds (except turkey).....	0.01.....	100
Turkey.....	0.02.....	50
Ostrich.....	0.40.....	2.5
Examples:	2,500	Beef Animals (500 - 1,200 pounds)..... = 2,500 Animal Units
	5,000	Beef or Dairy Calf (150 - 500 pounds)..... = 2,500 " "
	3,125	Young Dairy Stock (500 - 1,000 pounds)... = 2,500 " "
	1,750	Dairy Cows..... = 2,500 " "
	2,500	Horses..... = 2,500 " "
	6,250	Swine (55 pounds or heavier)..... = 2,500 " "
	25,000	Swine (less than 55 pounds)..... = 2,500 " "
	5,000	Swine (Sows with litters)..... = 2,500 " "
	25,000	Sheep..... = 2,500 " "
	250,000	Chickens/ Game Birds (except turkeys)... = 2,500 " "
	125,000	Turkeys..... = 2,500 " "
	6,250	Ostriches..... = 2,500 " "

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

**303.18 ANIMAL WASTEWATER:** Any liquid, including rainfall, which comes into contact with any animal excrement, manure, litter, bedding, or other raw material or intermediate or final matter or product used in or resulting from the production of animals or from products directly or indirectly used in any Waste Handling Facility Use, as defined in Section 303.110 of this Resolution, or any spillage or overflow from animal watering systems, when allowed to mix with animal manure, or any liquid used in washing, cleaning, or flushing pens, barns, or manure pits, or any liquid used in washing or spraying to clean animals, or any liquid used for dust control in a confined or intensive animal feeding use.

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

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

**303.21 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.

**303.22 BUILDING:** A structure having a roof or having a roof and walls used or intended to be used for sheltering of persons, animals or property. When divided or separated by other than common walls, each portion or section of a building shall be considered a separate building. (*Refer to Section 303.44, Farm Building and Section 303.76, Non-Farm Building.*)

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

**303.24 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.

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- 303.25 CAMPING UNIT:** Any vehicle, trailer, tent or movable shelter used for camping purposes.
- 303.26 CERTIFICATE OF ZONING COMPLIANCE:** A written certificate issued by the zoning administrator, stating that the use on a premises and/or location of a farm building, as defined in Section 303.44 of this Resolution, or any irrigation well or irrigation pivot shall be in compliance with the applicable requirements of this Resolution when developed/constructed in accordance with the conditions set forth on such Certificate of Zoning Compliance.
- 303.27 COMMERCIAL USE:** A use, other than an agricultural use, where products are grown or purchased for sale or resale for profit or where services are sold or provided for profit.
- 303.28 COMPATIBLE USE:** A land use of one type that is suitable for direct association or location near a use of a different type because of its consistency with the Intent statement of the zoning district in which said use is located, because of similar or comparable buildings and use activities, and because neither use will diminish the use, value and enjoyment of the other.
- 303.29 COMPOSTING (AEROBIC):** The natural process of decomposing vegetative refuse, manure and other naturally degradable materials using free oxygen which is sufficient in quantity to maintain aerobic digestion.
- 303.30 COMPOSTING (ANAEROBIC):** The natural process of decomposing vegetative refuse, manure and other naturally degradable materials in large piles where free oxygen is not available in sufficient quantities to maintain aerobic digestion.
- 303.31 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 Supervisors.
- 303.32 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.
- 303.33 CONDITIONAL USE PERMIT:** A written zoning permit issued by the Zoning Administrator upon authorization of a conditional use under the terms of this Resolution by the County Board of Supervisors. Such permit shall give permission to the applicant to develop the specified conditional use and shall specify the conditions of approval of such use as established by the County Board of Supervisors.
- 303.34 CONFINED ANIMAL FEEDING USE:** The raising, feeding or management of more than three hundred (300) animal units at any one time in roofed buildings or structures which may be open sided or totally enclosed and which may have hard surfaced, slatted or other type of surfaced floor, and / or on hard surfaced, non-earthen, outdoor pens or lots used for confinement of such animals. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor or, in the event such a permit is not required, such determination shall be by written declaration of the owner of such use of the one-time capacity of such use to the County. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the number of animal units by the Zoning Administrator or other duly appointed official at the time of such dispute. Any waste handling facilities, as defined in Section 303.110 of this Resolution, associated with such confined animal feeding use shall be considered a separate waste handling facility use. For purposes of this Resolution, confined animal feeding uses shall be classified and regulated with regard to 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:

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- Class I - A confined animal feeding use with a one-time capacity of more than three hundred (300) animal units, but less than one thousand one (1,001) animal units.
- Class II - A confined animal feeding use with a one-time capacity of one thousand one (1,001) to two thousand five hundred (2,500) animal units.
- Class III - A confined animal feeding use with a one-time capacity of two thousand five hundred one (2,501) to five thousand (5,000) animal units.
- Class IV - A confined animal feeding use with a one-time capacity of five thousand one (5,001) to ten thousand (10,000) animal units.
- Class V - A confined animal feeding use with a one-time capacity of ten thousand one (10,001) or more animal units.

- 303.35 DWELLING:** Any building or portion thereof, other than a hotel, motel, bed and breakfast, group home or other building used for short-term occupancy by human beings, which is designed and / or used for living purposes on an on-going basis.
- 303.36 DWELLING, MULTI-FAMILY:** A dwelling unit having independent living accommodations for three (3) or more families.
- 303.37 DWELLING, SINGLE-FAMILY:** A dwelling unit having independent living accommodations for, and occupied by, one (1) family.
- 303.38 DWELLING, TWO-FAMILY (DUPLEX):** A dwelling unit having independent living accommodations for and occupied by two (2) families.
- 303.39 DWELLING UNIT:** One room or combination of rooms which constitute a separate and independent housekeeping establishment containing independent cooking, sleeping and restroom facilities.
- 303.40 EASEMENT:** A right or privilege granted by the owner of a defined parcel of land for the use of such defined parcel of land for a specific purpose or purposes by the public, another person, corporation or other legal entity.
- 303.41 FACULTATIVE DIGESTION (LAGOON):** Any process for digestion of waste in which the waste is digested using anaerobic digestion at lower elevations in a lagoon and aerobic digestion at the upper levels and surface of the lagoon which is accomplished through limiting the amount of volatile solids to not more than four (4) pounds per day per one thousand (1,000) cubic feet of water in said lagoon and said lagoon is operated to maintain this volatile solids limitation.
- 303.42 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.
- 303.43 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 crop or meat products are produced each year.
- 303.44 FARM BUILDING:** Any non-residential building located on a farm, as defined in Section 303.43 of this Resolution, which is utilized for agricultural purposes.
- 303.45 FLOOD HAZARD AREA:** Those lands within the zoning jurisdiction of Valley County which are subject to a one percent (1%) or greater chance of flooding in any given year. Determination of flood plains shall be based on historical high water marks and interpolation of such high water marks by the Natural Resource District or other agency capable of determining such flood plains until such time as flood hazard maps are provided by the Federal Flood Insurance Administration.

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- 303.46 FLOOR:** A level or story in a building.
- 303.47 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.
- 303.48 FRONTAGE (LOT):** The length of the real property abutting one (1) side of a road right-of-way, measured along the dividing line between said real property and the road right-of-way.
- 303.49 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.
- 303.50 GROUP HOME:** A facility, licensed or approved by the State of Nebraska or other appropriate agency, in which more than two (2) persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care, for any of the following purposes. 1) adaptation to living with, or rehabilitation from, disabilities; 2) adaptation to living with, or rehabilitation from, emotional or mental disorders, or mental retardation; 3) rehabilitation from the effects of drug or alcohol abuse; or 4) supervision while under a program of alternatives to imprisonment, including, but not limited to pre-release, work release and probation programs.
- 303.51 HOME OCCUPATION / HOME BASED BUSINESS:** An occupation or business enterprise conducted in a dwelling unit or accessory building by members of the family occupying the dwelling unit and a limited number of employees, when in compliance with the standards and restrictions set forth in Section 608 of this Resolution.
- 303.52 IMPACT EASEMENT (DEED RESTRICTION):** An easement or deed restriction, recorded in the office of the Valley County Registrar of Deeds, which runs with the land, which is granted to the owner of an industrial use, a confined or intensive animal feeding use, a waste handling facility use or other use for the period of time that such use shall exist, by the owners of adjoining or neighboring real property in which it is mutually agreed between the grantor and grantee that the grantor shall hold the grantee harmless from odor, smoke, dust, or other legal impacts associated with such use on the grantor's property when such use is operated in accordance with the terms of such easement or deed restriction.
- 303.53 INCOMPATIBLE USE:** A land use of one type that is unsuitable for direct association or location near or abutting a land use of a different type because of its inconsistency with the Intent statement of the zoning district in which such uses are located, because of major differences in building types, building mass, building height and use activities, and because such use would diminish the use, value and enjoyment of the other.
- 303.54 INDUSTRIAL USE:** A use, other than an agricultural or commercial use, in which products or goods are manufactured from raw materials by hand, by machine or both.
- 303.55 INTENSIVE ANIMAL FEEDING USE:** The feeding of more than three hundred (300) animal units at any one time in partial or total earthen pens or lots which are or used for confinement of animals where manure is or may be in contact with the earth. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor or, in the event such a permit is not required, such determination shall be by written declaration of the one-time capacity of such use to the County. In the event of any dispute over the number of animal units, such determination shall be by actual counting of the number of animal units by the Zoning Administrator or other duly appointed official at the time of such dispute. Any waste handling facilities, as defined in Section 303.110 of this Resolution, shall be considered a separate waste handling facility use. For purposes of this Resolution, intensive animal feeding uses, which shall be considered an AN (anaerobic) use, shall be classified and regulated with regard to the number of animal units confined as follows:



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- Class I - An intensive animal feeding use with a one time capacity of more than three hundred (300) animal units, but less than one thousand one (1,001) animal units.
- Class II - An intensive animal feeding use with a one time capacity of one thousand one (1,001) to two thousand five hundred (2,500) animal units.
- Class III - An intensive animal feeding use with a one time capacity of two thousand five hundred one (2,501) to five thousand (5,000) animal units.
- Class IV - An intensive animal feeding use with a one time capacity of five thousand one (5,001) to ten thousand (10,000) animal units.
- Class V - An intensive animal feeding use with a one-time capacity of ten thousand one (10,001) or more animal units.

**303.56 JUNK YARD:** See Salvage Yard (Section 303.95).

**303.57 KENNEL:** A facility where four (4) or more dogs more than six (6) months of age are boarded, bred, sheltered, cared for or kept on any premises or a building where six (6) or more cats and / or other similar animals more than six (6) months of age are boarded, bred, sheltered, cared for and kept on any premises.

**303.58 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 or permitted by said Department.

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

**303.60 LOT AREA:** The total horizontal area of a lot, excluding all street, road rights-of-way or access easement.

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

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

**303.63 LOT OF RECORD:** A lot, which is part of a subdivision plat or lot, plot or parcel described by metes and bounds, recorded in the office of the Registrar of Deeds of Valley County, Nebraska prior to the effective date of this Resolution.

**303.64 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.

**303.65 MANUFACTURED HOME:** A factory-built structure which is to be used for human habitation, which is not constructed or equipped with a permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles, and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F. R. 3280 et seq., promulgated by the United States Department of Housing and Urban Development, or any successor regulations thereto and which complies with the following minimum standards:

1. a minimum floor area of nine hundred (900) square feet,
2. a minimum exterior width of eighteen (18) feet,
3. a minimum roof pitch of two and one-half (2 ½) inches of rise per each twelve (12) inches

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- of horizontal run,
  4. exterior material shall be of a color, material, and scale comparable with existing residential site-built, single-family construction,
  5. a non-reflective roof of material which is or simulates asphalt or wood shingles, tile or rock,
  6. all wheels, axles, transporting lights and removable towing apparatus have been removed
  7. is placed on and permanently attached to a foundation of the same construction as required for site-built homes,
  8. is permanently connected to public utilities in the same manner required for site-built homes.

**303.66 MESSAGE ESTABLISHMENT:** A building, room, place or establishment other than a regularly licensed and established hospital or dispensary where non-medical or non-surgical manipulative exercises or devices are practiced upon the human body manually or otherwise by any person other than a licensed physician, surgeon, dentist, occupational and/or physical therapist, chiropractor, osteopath or licensed massage therapist with or without the use of therapeutic, electrical, mechanical, or bathing device. Said establishment shall comply with all state regulations as per State Statute 7-1278 through 71-1283, Nebraska Revised Statutes, 1943.

**303.67 MESSAGE PARLOR:** (See Adult Uses).

**303.68 MOBILE HOME:** A detached dwelling unit, which was originally designed for long term human habitation and which was constructed and fabricated into a complete unit at a factory and capable of being transported to a location for use on its own chassis and wheels, identified by model number and serial number by its manufacturer, and designed primarily for placement on a non-permanent foundation when used for residential purposes, but not including any structure which meets the definition of Manufactured Home or Modular Home, as herein defined.

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

**303.70 MOBILE HOME PARK:** Any parcel of land area under single ownership and control upon which sites for parking of two (2) or more mobile homes connected to utilities and used by persons for living or sleeping purposes are provided by lease, rent or free of charge.

**303.71 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.

**303.72 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.

**303.73 NON-CONFORMING LOT OF RECORD:** A lot, which is part of a subdivision plat or lot, plot or parcel described by metes and bounds, recorded in the office of the Registrar of Deeds of Valley County, Nebraska as of the effective date of this Resolution which does not comply with the minimum lot area, width and other lot standards established in the various zoning districts created by this Resolution.

**303.74 NON-CONFORMING STRUCTURE:** A lawfully erected structure in existence as of the effective date of this Resolution which does not comply with the lot coverage, height, setback requirements or other standards applicable to new structures in the zoning district in which said structure is located.

**303.75 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.

**303.76 NON-FARM BUILDING:** Any building used for residential purposes, any building containing a use which is not an agricultural use, as defined in Section 303.13 of this Resolution, any building located on a farm, as defined in Section 303.43 of this Resolution, which contains a use other than an agricultural use, as defined in Section 303.13 of this Resolution, any building located on a parcel of land which does not qualify as a farm, as defined in Section 303.43 of this Resolution.

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- 303.77 ODOR:** That characteristics of a substance or gas which makes it offensive to the human sense of smell and would make the average person likely to change what they are doing to lessen the exposure to the substance or gas.
- 303.78 ODOR FOOTPRINT TOOL:** A scientific and statistical analysis tool developed by the Biological Systems Engineering Department of the University of Nebraska that is used to estimate the frequency of odor annoying events around an existing or proposed livestock production facility and uses this information to determine minimum separation distances that should be maintained around such facilities and to help in siting decisions for new facilities so that odor impact conflicts can be minimized.
- 303.79 PARCEL:** A piece of land, one section or less in area, the boundaries of which are properly described in a deed or conveyance.
- 303.80 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.
- 303.81 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.
- 303.82 PREMISES:** The land area containing a land use which is contiguous with and under the same ownership as the land use.
- 303.83 PREVAILING WINDS:** Prevailing winds in Valley County are from the north, and northwest in winter months and south in summer months. Prevailing wind directions, using magnetic north as determined through use of a common compass, are defined as:  
North - from forty-five degrees west of north to forty-five degrees east of north  
South - from forty-five degrees west of south to forty-five degrees east of south  
East - from forty-five degrees east of north to forty-five degrees east of south  
West - from forty-five degrees west of north to forty-five degrees west of south
- 303.84 PRINCIPAL BUILDING:** A building in which the principal use on the lot is situated.
- 303.85 PRIVATE AIRSTRIP:** A privately owned parcel of land used for take-off and landing of small aircraft which is duly registered with the Nebraska Department of Aeronautics.
- 303.86 PRIVATE ROADWAY:** A privately owned, open, unoccupied space other than a public road, reserved as the principal means of access to abutting property.
- 303.87 PUBLIC USE AREA:** An area of land or water, whether publicly or privately owned, which is designed for and used by ten (10) or more unrelated persons on at least a quarterly basis for recreation, education, communication, worship, meetings or other legal purpose, including public parks, public water areas, public game refuges, fish hatcheries, publicly or privately owned meeting halls, historic sites and similar areas, provided that a public use area shall not be construed to include any rights-of-way for streets or roadways, hiking, biking or other trails, or privately owned land used for hunting and/or fishing.
- 303.88 PUBLIC WATER SUPPLY SYSTEM:** A publicly owned water supply system regularly serving twenty five (25) or more persons or has fifteen (15) or more service connections.
- 303.89 QUARTER SECTION:** That portion of a square section of land, as defined by the definitions and requirements of the Survey of Public Lands of the United States, which has approximately equal dimensions on all four (4) sides, has two (2) intersecting sides which coincide with two (2) intersecting section lines and contains approximately one-fourth (1/4) of the land area contained within a square section of land.

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- 303.90 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.
- 303.91 RESIDENTIAL USE:** A dwelling unit located on a lot, parcel or tract of land.
- 303.92 ROAD / ROADWAY:** A public right-of-way, private road or access easement set aside for public travel which affords the principal means of access to abutting property.
- 303.93 ROAD CENTERLINE:** A line extending down the center of a road or street right-of-way, as established by official survey.
- 303.94 ROADSIDE STAND:** A structure or portion thereof used for the shelter, display and sale of craft and similar items, fruit, vegetables and other agricultural crops produced on the premises.
- 303.95 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.
- 303.96 SECTION OF LAND:** A division or parcel of land on the government survey, comprising one (1) square mile of land encompassing six hundred forty (640) acres more or less. Each “township” (six miles square) is divided by straight lines into thirty six (36) sections, and these are again divided into half sections and quarter sections.
- 303.97 SETBACK (YARD):** A horizontal distance, as prescribed in the various zoning districts established in this Resolution, from the centerline of the roadway or the right-of-way line of the roadway on which the lot has frontage and the side or rear lot line of any lot in which a building may not be constructed. Setbacks are further defined as follows:
- A. **SETBACK, FRONT:** An open space extending across the entire width of a lot between the centerline of any County road or the right-of-way line of any state or federal highway on which the lot has frontage and the nearest point of a building. A corner lot has two (2) front setbacks.
  - B. **SETBACK, REAR:** An open space extending across the entire width of the lot between the rear lot line and the nearest point of a building.
  - C. **SETBACK, SIDE:** An open-space extending along the side lot line from the front setback to the rear setback and lying between the side lot line and the nearest point of a building.
  - D. **SETBACK, TRANSITIONAL:** An open space applicable when a non-residential zoning district abuts or is adjacent across a road from a residentially zoned area.
- 303.98 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.
- 303.99 SOLID MANURE:** Waste produced by living cattle, dairy cattle, sheep and other ruminants and horses which contains not less than twelve percent (12%) solids by weight, or waste produced by living swine, poultry or other non-ruminant animals which contains not less than twenty five percent (25%) solids by weight.
- 303.100 SOLID WASTE:** Any garbage, refuse, discarded material including solid, liquid, semi-solid or

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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 303.110 of this Resolution.

**303.101 SPECIFIED ANATOMICAL AREAS:** Anatomical areas consisting of less than completely covered and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**303.102 SPECIFIED SEXUAL ACTIVITIES:** Activities 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, and any of the following sexually-oriented acts of conduct: Anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquierism, sapphism, zoerasty; or
- B. Clearly depicted human genitals in the state of sexual stimulation, arousal, or tumescence; or
- C. Use of human or animal ejaculation, sodomy, oral copulations, coitus, or masturbation; or
- D. Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s)
- E. Situations 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
- F. Erotic or lewd touching, fondling, or other sexually-oriented contact with an animal or human being; or
- G. Human excretion, urination, menstruation, vaginal or anal irrigation.

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

**303.104 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.

**303.105 STREET:** See ROAD

**303.106 STRUCTURE:** Anything constructed or erected with a fixed location on or in the ground or attached to something having a fixed location on the ground.

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

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

**303.109 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.

**303.110 WASTE HANDLING FACILITY:** Any and all structures, combination of structures,

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underfloor pits, holding ponds, debris basins, diversion terraces, liquid manure storage pits, lagoons, pipelines, irrigation devices, ventilation devices or appurtenance thereto, apparatus, equipment, or mechanism, whether on the same or different premises than the industrial, commercial or other type of use, including any confined and intensive animal feeding use generating waste, used to hold, store, process, digest, transport, distribute, control or otherwise dispose of waste materials, other than solid waste, as defined in Section 303.100 of this Resolution. Any facilities, 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 farm building, that occurs as a consequence of the use of that building or structure shall be considered part of a waste handling facility use. Waste handling facilities shall be categorized with regard to the types of such facilities and the methods of operation of such facilities as they relate to the potential for odor production, environmental degradation and compatibility with abutting and neighboring land uses as follows:

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

1. all waste is collected, processed or digested utilizing aerobic digestion facilities and processes, including aerobic lagoons, and/or aerobic composting and in which there is surface application of solid manure or injection of liquid manure, liquid waste or waste water into the soil on crop or other land, and
2. dust, hazardous gases, odor or other air contaminants emitted from any building or facility are collected and processed through a biofilter or other effective means to minimize air contamination, and

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

1. all waste is collected and digested utilizing anaerobic digestion facilities and processes including anaerobic lagoons and holding basins, pits or above ground tanks, which are covered and the gases and odors generated by the digestion of said waste are collected and treated to avoid explosion, fire hazards and the dispersion of odor, and in which there is surface application of solid manure or injection of liquid (non-solid) manure into the soil on crop or other land, and
2. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are collected and processed through a biofilter or other effective means to minimize air contamination, and
3. odors and dust, gases, odor or other air contaminants emitted from any open-sided buildings or open pens are controlled in a reasonable manner in order to minimize blowing of dust and odor onto abutting and neighboring properties.

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

1. all waste is collected and digested utilizing anaerobic digestion lagoon(s) and processes designed to allow introduction of not more than four (4) pounds of volatile solids per day per one thousand (1,000) cubic feet of lagoon capacity and such lagoon(s) shall be operated and maintained to insure such capacity is available at all times and operated to minimize removal of top-water to reduce odor production, and
2. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are not collected and processed to minimize air contamination, but simply exhausted into the air, and
3. odors and dust, gases, odor or other air contaminants emitted from any open-sided buildings or open pens are not controlled in a reasonable manner and do not minimize blowing of dust and odor onto abutting and neighboring properties.

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

1. all or part of the waste produced is collected and digested utilizing anaerobic digestion facilities and processes, including uncovered anaerobic holding ponds or pits, anaerobic lagoons, sludge or settling basins, anaerobic stockpiling of waste as a solid and there is application of liquid (non-solid) manure and waste on the surface of crop or other land, and
3. dust, hazardous gases, odor, or other air contaminants emitted from any building or facility are not collected and processed to minimize air contamination, but simply exhausted into the air, and
4. odors and dust, gases, odor or other air contaminants emitted from any open-sided buildings or open pens are not controlled in a reasonable manner and do not minimize blowing of dust and odor onto abutting and neighboring properties.

**303.111 ZONING ADMINISTRATOR:** The person duly designated by the Valley County Board of Supervisors to administer and enforce the regulations established under this Resolution.

**303.112 ZONING DISTRICT:** One of several sets of zoning regulations designed for a particular class of land uses which established uniform regulations governing the use, building and structure height, area, size, intensity of use and other standards of land use within unincorporated area of the County.

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## ARTICLE 4 ESTABLISHMENT AND DESIGNATION OF DISTRICTS

**SECTION 401 PLANNING COMMISSION RECOMMENDATIONS:** It shall be a purpose of the Planning Commission to recommend the boundaries of the various zoning districts and appropriate regulations to be enforced therein which are consistent with the Comprehensive Plan for Valley County, Nebraska. The Planning Commission shall make a preliminary report and hold one or more public hearing(s) thereon before submitting its final report and recommendation to the County Board of Supervisors. The Board of County Supervisors shall not hold its public hearing or take final action on any zoning regulations until it has received the final report and recommendation of the Planning Commission.

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

AG ..... General Agricultural District  
RCI ..... Rural Commercial / Industrial District  
WPO ..... Wellhead Protection Overlay District  
AHO ..... Airport Hazard Overlay District  
FHO ..... Flood Hazard Overlay District

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

**SECTION 404 OFFICIAL ZONING MAP AMENDMENT:**

- 1. CHANGES ON THE OFFICIAL ZONING MAP:** If, in accordance with the provisions of this Resolution, changes are made in the zoning district boundaries or other explanatory matter portrayed on the Official Zoning Map, such changes shall be promptly entered on said Official Zoning Map after amendment of same has been approved by the County Board together with an entry on the Official Zoning Map as follows: *“On     (date)    , by official action of the County Board of Supervisors, the following change(s) was / were made in the Official Zoning Map: (brief description of the change), which entry shall be signed by the Chairperson of the County Board of Supervisors and attested by the County Clerk. No changes to this Resolution, which involve matter portrayed on the Official Zoning Map, shall become effective until after such change and entries on such Official Zoning Map have been made.*
- 2. CHANGES SHALL BE IN ACCORDANCE WITH REQUIRED PROCEDURES:** No change of any nature shall be made in the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in Article 11 of this Resolution.
- 3. PENALTIES FOR UNAUTHORIZED CHANGES:** Any unauthorized change of any kind by any person or persons shall be considered a violation of this Resolution and punishable in accordance with this Resolution and applicable law.

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4. **FINAL AUTHORITY OF THE OFFICIAL ZONING MAP:** Regardless of the existence of purported copies of the Official Zoning map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the Zoning Administrator or County Clerk, shall be the final authority as to the current zoning status of zoning of land within Valley 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 Supervisors may, by resolution, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior map, but no such correction shall have the effect of amending the original Official Zoning Map, or any subsequent amendment thereof. Each new Official Zoning Map shall be identified by the signature of the chairperson of the County Board of Supervisors and 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 Valley County, Nebraska Board of County Supervisors.*” Unless the prior Official Zoning Map has been lost or has been totally destroyed, the prior map or any significant parts thereof shall be preserved together with all available records pertaining to its adoption and amendment.

**SECTION 406 RULES FOR INTERPRETATION OF ZONING DISTRICT BOUNDARIES:** Where uncertainty exists as to the boundaries of zoning districts indicated on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of roads, streets, or highways shall be construed to follow such centerlines.
2. Boundaries indicated as approximately following platted lot, tract or parcel lines shall be construed as following such lines and boundaries indicated as approximately following the corporate limit boundaries of any municipality shall be construed to follow such corporate limit boundaries.
3. Boundaries indicated as approximately following the boundaries of an extra-territorial zoning jurisdiction area adopted by and depicted on the official zoning map of an incorporated municipality shall be construed to follow such extra-territorial jurisdictional area boundaries.
4. Boundaries indicated as following railroad lines shall be construed to follow a line midway between the tracks of the main railroad track.
5. Boundaries indicated as following shore lines of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such shore line and in the event of change in the shore line shall be construed as moving with the shore line Boundaries indicated as following the centerline of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such centerline.
6. Boundaries indicated as parallel to or extensions of features indicated in Paragraphs 1, 2 and 4 immediately above shall be so construed.
7. Distances of boundaries not specified on the Official Zoning Map shall be determined by measurement according the scale of the Official Zoning Map.
8. Where a district boundary line divides a lot, tract or parcel, which was under single ownership and control as of the effective date of this Resolution, the Board of Zoning Adjustment may, upon application by the owner, permit the extension of either zoning district for either portion of the lot into the remaining portion of the lot.

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9. In circumstances not covered by Paragraphs 1 through 8 immediately above or where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the Board of Adjustment shall interpret the district boundaries to best accomplish the objectives of the Intent statements of the zoning districts involved.

**SECTION 407**    **ANNEXATION RULE:** Annexation of land within Valley County, Nebraska to any incorporated municipality within or adjoining the County shall remove such land from the jurisdiction of this Resolution and any legal extension of any extra-territorial zoning jurisdictional area, resulting from such annexation, by any such incorporated municipality shall, upon amendment of and depiction of the revised extra-territorial jurisdictional area on the official zoning map of such incorporated municipality, remove such land from the jurisdiction of this Resolution.

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## ARTICLE 5            ZONING DISTRICTS

### 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, livestock, poultry and other and new forms of agricultural production which is compatible with existing agricultural uses and the environment.

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

The intent of this district is also to foster the State's agriculture by preserving and protecting, as much as is feasible, land best suited for agricultural crop, livestock and poultry production uses by restricting the development of and, in accordance with Neb. Rev. Stat. §23-114.03, establishing conditions of use of residential uses and other non-agricultural uses to ensure that agricultural production uses, which are in compliance with the regulations and restrictions of this Resolution, shall not be challenged or impeded by non-agricultural uses.

#### **501.02    COUNTY AGRICULTURAL USE IMPACT STANDARDS**

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

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

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

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The Valley County, Nebraska agricultural use standards set forth in this Resolution are standards that the majority of citizens participating in the standards formulation process agree will, in all probability, result in impacts on neighboring properties less than four percent (4%) of the time and that, although a nuisance at the time of occurrence, would be reasonable in terms of intensity and duration with regard to the use and enjoyment of neighboring properties, would not reduce the market value of neighboring properties and should be acceptable to persons residing in and owning property in this General Agricultural zoning district now and in the future.

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

**501.03 OUTRIGHT ALLOWABLE PRINCIPAL USES AND STRUCTURES:** The following uses shall be allowable uses outright and shall not require a written zoning permit, provided that any structure or building, irrigation well or irrigation pivot associated with such uses shall require compliance with the regulations and restrictions of this Resolution and issuance of a certificate of zoning compliance:

1. Agricultural uses, as defined in Section 303.13 of this Resolution, including any farm buildings, as defined in Section 303.44 of this Resolution, but excluding any dwelling unit(s) whether or not associated with an agricultural use and excluding any confined or intensive animal feeding uses and waste handling facilities, as defined in Sections 303.34, 303.55 and 303.110 of this Resolution.
2. Non-commercial grain, hay and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities.
3. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, flood control and erosion control facilities, subject to the limitations and requirements of Sections 609 and 610 of this Resolution. (*Sites where there is surface application of liquid animal waste shall comply with the limitations set forth in Subsection 9, Paragraph D, immediately below.*)
4. Forestry, tree farms, plant nurseries and vineyards with or without facilities for wine making and/or tasting.
5. Signs, including permanent on-site and outdoor advertising signs (billboards) not situated along a State or Federal highway.
6. Day care and child care uses, when conducted in an occupied residential dwelling by the occupants of such dwelling.
7. Cemeteries.
8. Road maintenance equipment storage sheds, fire stations, publicly electric utility substations, electric utility distribution systems and associated uses, above ground and below ground telephone, cable and data transmission systems, excluding towers in excess of forty (40) feet in height, and other transmission systems conveying materials other than gases, petroleum products or other hazardous materials, as defined by the U. S. Environmental Protection Agency.
9. Land application of:
  - A. fully composted animal waste, as defined in Section 303.17 of this Resolution, to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

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- B. solid manure, as defined in Section 303.99 of this Resolution, to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,
  - C. liquid or slurry animal waste injected into the soil at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.
  - D. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to the south, east or west, as defined in the definition of "Prevailing Winds" in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality
10. Stockpiling of animal waste or manure or municipal sewage or other sludge on any parcel of land where such waste is to be applied to the land contained within such parcel, provided such stockpiling shall meet all of the following conditions:
- A. The amount of solid manure stockpiled on any parcel shall not exceed the amount of waste which can be applied on such parcel at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality for a calendar year.
  - B. Any manure or sludge stockpile shall be located at least one-fourth (1/4) mile from the nearest wall of any church, school or residential dwelling unit not of the same ownership as the parcel on which the stockpile is to be placed or to the nearest boundary of any public use area unless the owner of such church, school, residential dwelling or public use area shall grant permission in writing for a stockpile to be located at a closer distance.

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

1. Churches, synagogues and other houses of worship.
2. Fish hatcheries, game farms and commercial hunting and fishing including lodges or other buildings devoted to the support of such hunting and fishing activities, provided that if any such use qualifies as a Public Use Area, as defined in Section 303.87 of this Resolution, such use shall comply with the minimum separation distance from any existing confined or intensive animal feeding use and associated waste handling facility as set forth in Table 501.04 of this Resolution.
3. Signs, including permanent on-site and outdoor advertising signs. (All permanent signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads).

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4. Radio, television, microwave and other types of erected towers, including wind energy towers, which are forty (40) feet or less in height.
  5. Below ground transmission systems and pipelines conveying gases, petroleum products and other materials defined as hazardous materials by the U. S. Environmental Protection Agency.
  6. General welding and agricultural equipment repair businesses, veterinary clinics, seed sales and other agricultural service establishments engaged in providing horticultural, husbandry products or services to area agricultural product producers.
  7. Single-Family dwellings, including manufactured housing, modular housing and mobile homes, provided such dwellings comply with all of the following conditions.
    - A. Such dwellings, if not on the same lot with and not of the same ownership as any kennel, as defined in Section 303.57 of this Resolution, or confined animal feeding use, as defined in Section 303.34 of this Resolution, or any intensive animal feeding use, as defined in Section 303.55 of this Resolution, or any waste handling facility, as defined in Section 303.110 of this Resolution, shall be separated from any kennel by a minimum distance of one-half (1/2) mile, from any confined or intensive animal feeding use or waste handling facility by the minimum distance specified in Table 501.04, of this Resolution, for the class of confined / intensive animal feeding use and category of waste handling facility which such confined or intensive animal feeding use qualifies, and from any tower with a height greater than forty (40) feet by a distance equal to the height of such tower unless the owner of such residential dwelling shall grant an impact easement, as defined in Section 303.52 of this Resolution, to the owner of the kennel, tower or confined or intensive animal feeding use, in which case such residential dwelling may be located closer than the minimum distances herein set forth. *(See exceptions to this minimum separation requirement in Section 705, Paragraphs 3 and 4 of this Resolution.)*
    - B. Such minimum separation distance shall be measured from the nearest point of any land actively used or approved under this Resolution as a confined or intensive animal feeding use or associated waste handling facility, including any site where liquid animal waste is applied to the surface of the land, from the nearest point of any land actively used for a kennel or the base of any tower over forty (40) feet in height to the nearest wall of such dwelling unit. Application of waste which is 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.
    - C. Such dwelling shall be located on a parcel of land with an area of not less than that specified in Section 501.08 of this Resolution, and such parcel shall have a minimum width and frontage not less than that specified in Section 501.09 of this Resolution, provided that a larger lot may be required if the regulations and standards of Title 124 of the Nebraska Department of Environmental Quality, with regard to soil percolation, slope, depth to groundwater or other requirement of said Title 124 shall require a larger the requirements of Title 124 shall govern.
    - D. The maximum number of residential dwellings, farm or non-farm, shall be limited to two (2) per quarter section of land unless a conditional use for a subdivision is authorized by the County Board of Supervisors in accordance with the limitations set forth in Section 501.06, Subsection 15 of this Resolution and the procedures set forth in Article 10 of this Resolution.

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

8. Regardless of the requirements of Subsections 9 and 10 immediately below, any expansion of waste handling facilities associated with confined or intensive animal feeding uses existing as of the effective date of this Resolution or amendment thereto which is mandated and required by the Nebraska Department of Environmental Quality or other State or Federal agency where there is not an increase in the animal unit capacity of the confined or intensive animal feeding use shall not be considered an expansion of said use and any such expansion shall be permitted, provided any such waste handling facilities shall comply with the minimum separation distances from neighboring uses as set forth in Table 501.04 of this Resolution. In the event any such mandated expansion would result in separation distances from neighboring uses which are less than set forth in said Table 501.04 and flood hazard areas, topography or property lines do not allow such waste handling facility to be located in an area which would comply with the separation distances set forth in said Table 501.04 such use shall be considered a conditional use, which upon a finding by the County Board of Supervisors that there is no alternative location for such waste handling facility, SHALL be approved by the County Board of Supervisors in accordance with the requirements of Section 17 of LB 975 of the 99<sup>th</sup> Legislature, 2<sup>nd</sup> Session, 2006, known as the Livestock Waste Management Act.

A. Further, regardless of the requirements of Subsections 9 and 10 immediately below, any expansion of waste handling facilities associated with confined or intensive animal feeding uses existing as of the effective date of this Resolution or amendment thereto which is mandated and required by the Nebraska Department of Environmental Quality or other State or Federal agency where the existing animal unit capacity is five thousand (5,000) or fewer beef cattle, three thousand (3,000) or fewer dairy cattle shall not be considered an expansion of said use and any such expansion shall be permitted, provided any such waste handling facilities shall comply with the minimum separation distances from neighboring uses as set forth in Table 501.04 of this Resolution. In the event any such mandated expansion would result in separation distances from neighboring uses which are less than set forth in said Table 501.04 and flood hazard areas, topography or property lines do not allow such waste handling facility to be located in an area which would comply with the separation distances set forth in said Table 501.04 such use shall be considered a conditional use, which upon a finding by the County Board of Supervisors that there is no alternative location for such waste handling facility, SHALL be approved by the County Board of Supervisors in accordance with the requirements of Section 17 of Legislative Bill 975, known as the Livestock Waste Management Act.

Also in accordance with said Livestock Waste Management Act, where expansion of the waste handling facility is permitted or authorized by conditional use under this Subsection A, such animal feeding use shall be permitted to expand in its animal unit capacity in accordance with Subsections 9 or 10 below or in accordance with the following limitations, whichever is greater, provided that expansion under subparagraphs 1) through 4) immediately below shall comply with the minimum separation distances



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from neighboring uses as set forth in Table 501.04 of this Resolution unless the County Board, in its consideration of the conditional use, shall determine that flood hazard areas, topography or property lines do not allow the use to be expanded in an direction which would comply with the separation distances set forth in said Table 501.04, in which case the County Board of Supervisors SHALL allow such expansion in a direction(s) which would minimize the reduction in separation distances to neighboring uses.

- 1) Five hundred (500) additional beef cattle if the confined or intensive animal feeding use has an existing animal capacity of three thousand (3,000) or fewer head of cattle,
  - 2) Three hundred (300) additional beef cattle if the confined or intensive animal feeding use has an existing animal capacity of more than three thousand (3,000), but no more than five thousand (5,000) head of cattle,
  - 3) Three hundred fifty (350) additional dairy cattle if the confined or intensive animal feeding use has an existing animal capacity of two thousand (2,000) or fewer head of dairy cattle,
  - 4) Two hundred ten (210) additional dairy cattle if the confined or intensive animal feeding use has an existing capacity of more than two thousand (2,000), but no more three thousand five hundred (3,500) head of dairy cattle.
9. An animal feeding use and / or waste handling facility associated with a confined or intensive animal feeding use, existing as of the effective date of this Resolution or applicable amendment thereto, complies with the minimum separation distances from neighboring uses, as set forth in Table 501.04 of this Resolution, such use may be expanded in any direction, provided such use complies with the requirements set forth in Subsection 10, Paragraphs C, D, G and H below and such expansion shall not result in separation distances from any lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use and associated waste handling facility being less than set forth in Table 501.04 for the class of animal feeding use and category of waste handling facility which the animal feeding use would qualify after expansion, provided that:
- A. The separation distances set forth in Table 501.04 of this Resolution shall be tested by applying the Odor Footprint Tool, developed by the Biological Systems Department of the University of Nebraska, for the ninety six percent (96%) annoyance free standard, if such tool is available for application to the animal feeding use, but such Tool has not been officially validated by field tests. Any costs for the application of the Odor Footprint Tool shall be the responsibility of the applicant for such use. If the Odor Footprint Tool indicates a greater separation distance in any direction, such greater distance shall apply. If the Odor Footprint Tool indicates a lesser separation distance in any direction than set forth in said Table 501.04, the minimum separation distance for that direction shall be as set forth in said Table 501.04, or
  - B. If the Odor Footprint Tool is available for application to the use and the Tool has been validated. the minimum separation distances in all directions shall be as determined by application of the Tool using the ninety six percent (96%) annoyance free standard, even if such separation distances are less than set forth in Table 501.04, and
  - C. If the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.52 of this Resolution, such use may be expanded closer to any such lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit from which an impact easement is granted.

**TABLE 501.04**

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

<b>CONFINED AND INTENSIVE FEEDING USES AND WASTE HANDLING FACILITIES by Category and by Class of Use Served:</b>	<b>MINIMUM DISTANCE FROM WASTE HANDLING FACILITY TO A NEIGHBORING LOT OF RECORD, DWELLING UNIT, CHURCH, SCHOOL, OR PUBLIC USE AREA*</b>		
	<b>North **</b>	<b>South **</b>	<b>East / West**</b>
<b>Category A (Aerobic) waste handling facility serving a:</b>			
Class I confined animal feeding use (300 - 1,000 animal units).....	0.125 mile.....	0.125 mile.....	0.125 mile
Class II confined animal feeding use (1,001 - 2,500 animal units).....	0.25 mile.....	0.25 mile.....	0.125 mile
Class III confined animal feeding use (2,501 - 5,000 animal units).....	0.5 mile.....	0.25 mile.....	0.25 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units).....	0.625 mile.....	0.5 mile.....	0.375 mile
Class V confined animal feeding use (10,001 or more animal units).....	0.75 mile.....	0.625 mile.....	0.5 mile
<b>Category ANC (Covered Anaerobic) waste handling facility serving a:</b>			
Class I confined animal feeding use (300 - 1,000 animal units).....	0.25 mile.....	0.25 mile.....	0.125 mile
Class II confined animal feeding use (1,001 - 2,500 animal units).....	0.375 mile.....	0.25 mile.....	0.25 mile
Class III confined animal feeding use (2,501 - 5,000 animal units).....	0.5 mile.....	0.375 mile.....	0.25 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units).....	0.625 mile.....	0.5 mile.....	0.375 mile
Class V confined animal feeding use (10,001 or more animal units).....	0.75 mile.....	0.5 mile.....	0.375 mile
<b>Category FAC (Facultative) waste handling facility serving a:</b>			
Class I confined animal feeding use (300 - 1,000 animal units).....	0.375 mile.....	0.25 mile.....	0.125 mile
Class II confined animal feeding use (1,001 - 2,500 animal units).....	0.5 mile.....	0.375 mile.....	0.25 mile
Class III confined animal feeding use (2,501 - 5,000 animal units).....	0.625 mile.....	0.5 mile.....	0.375 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units).....	0.75 mile.....	0.625 mile.....	0.5 mile
Class V confined animal feeding use (10,001 or more animal units).....	1.0 mile.....	0.75 mile.....	0.625 mile
<b>Category AN (Anaerobic) waste handling facility serving a:</b>			
Class I confined animal feeding use (300 - 1,000 animal units).....	0.5 mile.....	0.375 mile.....	0.25 mile
Class II confined animal feeding use (1,001 - 2,500 animal units).....	0.75 mile.....	0.5 mile.....	0.375 mile
Class III confined animal feeding use (2,501 - 5,000 animal units).....	1.0 mile.....	0.625 mile.....	0.5 mile
Class IV confined animal feeding use (5,001 - 10,000 animal units).....	1.125 miles.....	0.75 mile.....	0.625 mile
Class V confined animal feeding use (10,001 or more animal units).....	1.25 miles.....	1.0 mile.....	0.75 mile
<b>Category AN (Anaerobic) waste handling facility *** serving a:</b>			
Class I intensive animal feeding use (300 - 1,000 animal units).....	0.5 mile.....	0.375 mile.....	0.25 mile
Class II intensive animal feeding use (1,001 - 2,500 animal units).....	0.75 mile.....	0.5 mile.....	0.375 mile
Class III intensive animal feeding use (2,501 - 5,000 animal units).....	1.0 mile.....	0.75 mile.....	0.5 mile
Class IV intensive animal feeding use (5,001 - 10,000 animal units).....	1.25 miles.....	1.0 mile.....	0.625 mile
Class V intensive animal feeding use (10,001 or more animal units).....	1.5 miles.....	1.25 miles.....	0.75 mile
<b>Category A (Aerobic) serving a:</b>			
Municipal or other waste handling facility.....	0.125 mile.....	0.125 mile.....	0.125 mile

Footnotes:

- \* Measurement of this distance shall be from the point of the confined or intensive animal feeding use or associated waste handling facility nearest to a lot of record less than twenty (20) acres in area, church, school, public use area or dwelling not on the same premises and not of the same ownership as the waste handling facility, to the nearest wall of such dwelling, church, school, or nearest boundary of a public use area, provided that if one or more impact easement(s), as defined in Section 303.52 of this Resolution, shall have been granted to the owner of the waste handling facility use, in which case any lot of record, church, school, dwelling unit or public use area associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. A dwelling unit not of the same ownership and on the same premises as the waste handling facility use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and, if vacant and not habitable, would not require more cost than the present assessed valuation of the dwelling structure (excluding the valuation of the land) to make such dwelling habitable.
- \*\* Separation distances are based upon compass directions of prevailing winds and shall be applied as defined in Section 303.83 of this Resolution.
- \*\*\* By definition in this Resolution, all waste handling facilities serving intensive animal feeding uses, shall be categorized as AN (Anaerobic) unless a conditional use exception is authorized in accordance with the requirements and procedures of this Resolution where it is clearly demonstrated that a different category of waste handling facility is appropriate.

D. Minimum separation distances shall not apply to any site where;

- 1) fully composted animal waste is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,

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- 2) solid manure, as defined in Section 303.99 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,
  - 3) liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.
  - 4) liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to the south, east or west, as defined in the definition of "Prevailing Winds" in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality
10. If the confined or intensive animal feeding use or associated waste handling facility is located closer than the minimum separation distances from neighboring uses, as set forth Table 501.04 of this Resolution for the class of animal feeding use and category of waste handling facility for which the existing use qualifies, such use may be expanded, provided any expansion complies with all of the following restrictions:
- A. A confined or intensive animal feeding use or any associated waste handling facility may not be expanded closer to any lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use to which the feeding use is already less than the minimum separation distance set forth in Table 501.04 of this Resolution for the class of use and category of waste handling facility of the existing facility unless the owner of any lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use shall grant to the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.52 of this Resolution, in which case such use may be expanded in the direction from which such impact easement is granted.
  - B. Expansion in any other direction shall be permitted, provided that such expansion shall not result in separation distances to any lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit not of the same premises with and not of the same ownership as the animal feeding use and waste handling facility being less than the distances set forth in Table 501.04 of this Resolution for the class of use and category of waste handling facility for which the use would qualify after expansion, provided that:
    - 1) The separation distances set forth in Table 501.04 of this Resolution shall be tested by applying the Odor Footprint Tool, developed by the Biological Systems Department of the University of Nebraska, for the ninety six percent (96%) annoyance free standard, if such tool is available for application to the animal feeding use, but such Tool has not been officially validated by field tests. Any costs for the application of the Odor Footprint Tool shall be the responsibility of the

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applicant for such use. If the Odor Footprint Tool indicates a greater separation distance in any direction, such greater distance shall apply. If the Odor Footprint Tool indicates a lesser separation distance in any direction than set forth in said Table 501.04, the minimum separation distance for that direction shall be as set forth in said Table 501.04, or

- 2) If the Odor Footprint Tool is available for application to the use and the Tool has been validated, the minimum separation distances in all directions shall be as determined by application of the Tool using the ninety six percent (96%) annoyance free standard, even if such separation distances are less than set forth in Table 501.04, and
  - 3) If the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.52 of this Resolution, such use may be expanded closer to any such lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit from which an impact easement is granted.
- C. Any physical expansion of the animal feeding use or associated waste handling facility shall be immediately contiguous with (abut) the existing feeding use or associated waste handling facilities.
- D. Any such expansion shall not extend into any legally established wellhead protection area of any public water supply system, which is based on the twenty year time travel of groundwater, as determined by the Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 503.03 of this Resolution.
- E. Such expansion may occur in phases over time, but such expansion(s) shall be limited to a total of not more than fifty percent (50%) greater numbers of animal units than the one time animal unit capacity which existed as of the effective date of this Resolution or amendment thereto. Expansion beyond this limit may only be authorized as a conditional use in accordance with the requirements of Section 501.06, Subsection 1 and the procedures set forth in Article 10 of this Resolution.
- F. Minimum separation distances shall not apply to any site where;
- 1) fully composted animal waste is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,
  - 2) solid manure, as defined in Section 303.99 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,
  - 3) liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.
  - 4) liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to the south, east or west, as

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defined in the definition of “Prevailing Winds” in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality

- G. Additional animals shall not be added to the use until any new permit required by the Nebraska Department of Environmental Quality or its successor agency shall have been issued and such use shall be operated in a manner consistent with the requirements of any such permit and the requirements of this Resolution.
  - H. Exceptions to the minimum separation distance specified in Paragraphs A and B above may be granted by conditional use where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies or a combination thereof for mitigation of odor, dust or flies is proposed and it is determined by the County Board of Supervisors, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.
11. Development of new Class I and Class II confined and intensive animal feeding uses, as defined in Sections 303.34 and 303.55 and waste handling facilities, as defined in Section 303.110 of this Resolution, when in compliance with all of the following requirements:
- A. An animal feeding use shall not be located closer than the distances for the category of animal feeding use and type of waste handling facility, as specified in Table 501.04 of this Resolution, to 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. 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, if vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable. Further, the following shall be considered:
    - 1) The separation distances set forth in Table 501.04 of this Resolution shall be tested by applying the Odor Footprint Tool, developed by the Biological Systems Department of the University of Nebraska, for the ninety six percent (96%) annoyance free standard, if such tool is available for application to the animal feeding use, but such Tool has not been officially validated by field tests. Any costs for the application of the Odor Footprint Tool shall be the responsibility of the applicant for such use. If the Odor Footprint Tool indicates a greater separation distance in any direction, such greater distance shall apply. If the Odor Footprint Tool indicates a lesser separation distance in any direction than set forth in said Table 501.04, the minimum separation distance for that direction shall be as set forth in said Table 501.04, or
    - 2) If the Odor Footprint Tool is available for application to the use and the Tool has been validated. the minimum separation distances in all directions shall be as determined by application of the Tool using the ninety six percent (96%) annoyance free standard, even if such separation distances are less than set forth in Table 501.04, and

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- 3) If the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.52 of this Resolution, such use may be expanded closer to any such lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit from which an impact easement is granted.
  - 4) Minimum separation distances shall not apply to any site where;
    - a. composted animal waste is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,
    - b. solid manure, as defined in Section 303.99 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,
    - c. liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.
    - d. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to the south, east or west, as defined in the definition of "Prevailing Winds" in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality.
  - B. Any confined or intensive animal feeding use and associated waste handling facility use for which it is proposed that animal waste is to be applied to crop or other land shall indicate in writing that the owner(s) of such feeding use and associated waste handling facility has, either through ownership, lease or tenant of land in an adequate amount to permit application of the animal waste at agronomic rates as specified in the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality and the owner(s) shall certify that such waste shall be applied at agronomic rates.
  - C. Any confined or intensive animal feeding use and associated waste handling facility shall not be located in areas of the County which are subject to flooding on a one-hundred (100) year basis or in areas which are designated as wetlands.
  - D. Confined or intensive animal feeding uses shall not be located closer than one thousand (1,000) feet to any public water well and not closer than one-hundred (100) feet to any private domestic well nor shall any confined or intensive animal feeding use or waste handling facility use be located in any legally established wellhead protection area, which is based upon the twenty (20) year time travel of groundwater as determined by the

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- E. Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 504.03 of this Resolution.
  - F. Waste handling facilities and catch basins shall be located at least sixty three (63) feet from the centerline of any county road and at least thirty (30) feet from the right-of-way line of any state or federal highway.
  - G. Any groundwater monitoring wells required by the Nebraska Department of Environmental Quality shall be installed and maintained by the owner of such wells and all testing of groundwater shall be in accordance with the requirements of said Nebraska Department of Environmental Quality.
  - H. 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. 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.
  - I. 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. Any such Nebraska Department of Environmental Quality permit shall not need to have been issued prior to the issuance of a zoning permit, but obtaining such a permit shall be a condition of such zoning permit.
  - I. Exceptions to the minimum separation distance specified in Table 501.04 of this Resolution may be granted by conditional use where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies or a combination thereof for mitigation of odor, dust or flies is proposed and it is determined by the County Board of Supervisors, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.
  - J. The owner/operator of any confined or intensive animal feeding use and associated waste handling facility shall agree to permit access to the use to allow inspection of the premises by the Zoning Administrator or other person(s) designated by the County Board of Supervisors to assure compliance with all conditions of this Resolution in accordance with Section 501.06, Subsection 1, Paragraph H of this Resolution.

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

1. Accessory uses, buildings and structures normally and commonly appurtenant to the permitted principal uses and structures. Such uses, buildings or structures, if not a farm building, shall require the issuance of a zoning permit. Farm buildings shall require only a certificate of zoning compliance.
2. Home occupations, in accordance with Section 608 of this Resolution.
3. Roadside stands for the temporary sale of produce grown or crafts produced on the premises. No zoning permit shall be required.

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

1. Expansion of Class I, II, III, IV and V confined and intensive animal feeding uses and associated waste handling facilities existing as of the effective date of this Resolution or amendment thereto beyond the limits set forth in Section 501.04 above and development of new Class III, IV and V confined or intensive animal feeding uses and associated waste handling facilities, as defined and classified in Sections 303.34, 303.55 and 303.110 of this Resolution, provided each such confined or intensive animal feeding use and associated waste handling facility shall meet all of the following requirements:
  - A. Such confined or intensive animal feeding uses and associated waste handling facilities shall meet or exceed the separation distances set forth in Table 501.04 of this Resolution for the class of the confined or intensive animal feeding use and the category of waste handling facility use, provided that:
    - 1) The separation distances set forth in Table 501.04 of this Resolution shall be tested by applying the Odor Footprint Tool, developed by the Biological Systems Department of the University of Nebraska, for the ninety six percent (96%) annoyance free standard, if such tool is available for application to the animal feeding use, but such Tool has not been officially validated by field tests. Any costs for the application of the Odor Footprint Tool shall be the responsibility of the applicant for such use. If the Odor Footprint Tool indicates a greater separation distance in any direction, such greater distance shall apply. If the Odor Footprint Tool indicates a lesser separation distance in any direction than set forth in said Table 501.04, the minimum separation distance for that direction shall be as set forth in said Table 501.04, or
    - 2) If the Odor Footprint Tool is available for application to the use and the Tool has been validated, the minimum separation distances in all directions shall be as determined by application of the Tool using the ninety six percent (96%) annoyance free standard, even if such separation distances are less than set forth in Table 501.04, and
    - 3) If the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility an impact easement, as defined in Section 303.52 of this Resolution, such use may be expanded closer to any such lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit from which an impact easement is granted.
    - 4) Minimum separation distances shall not apply to any site where;
      - a. composted animal waste is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,
      - b. solid manure, as defined in Section 303.99 of this Resolution, is applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,
      - c. liquid or slurry animal waste is injected into the soil at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.



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- d. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to the south, east or west, as defined in the definition of "Prevailing Winds" in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality.
- B. For all classes of confined and intensive animal feeding uses and categories of waste handling facilities, 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. Compliance with this requirement shall consist of the owner(s) written certification that such use shall be constructed and operated in accordance with the requirements set forth in a permit issued by the Nebraska Department of Environmental Quality.
- C. Any confined or intensive animal feeding use or associated waste handling facility shall be located only in areas of the County which are not subject to flooding on a one hundred (100) year basis or in areas designated as wetlands.
- D. Confined or intensive animal feeding uses and waste handling facilities shall not be located closer than one thousand (1,000) feet to any public water well and not closer than one-hundred (100) feet to any private domestic well nor shall any confined or intensive animal feeding use or waste handling facility use be located in any legally established wetland or wellhead protection area, which is based on the twenty year time travel of groundwater, as determined by the Nebraska Department of Environmental Quality, provided that the boundaries of such wellhead protection area shall be as limited in Section 503.03 of this Resolution.
- E. Waste handling facilities, lagoons and catch basins shall be located at least sixty three (63) feet from the centerline of any county road and at least thirty (30) feet from the right-of-way line of any state or federal highway.
- F. Any confined or intensive animal feeding use and associated waste handling facility use for which it is proposed that animal waste is to be applied to crop or other land shall indicate in writing that the owner(s) of such feeding use and associated waste handling facility has, either through ownership, or tenant of land in an adequate amount to permit application of the animal waste at agronomic rates as is or will be specified in the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality and the owner(s) shall certify that such waste shall be applied at agronomic rates.
- G. The determination of a need for groundwater monitoring wells shall be made by the Nebraska Department of Environmental Quality. Any groundwater monitoring wells required by the Nebraska Department of Environmental Quality shall be installed and maintained by the owner of such wells and all testing of such groundwater shall be in accordance with the requirements of the Nebraska Department of Environmental Quality.

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In the event of a complaint, the County Board of Supervisors shall reserve the right to require copies of all groundwater testing results. In the event that testing identifies contaminants in the groundwater, the County Board of Supervisors shall be notified of such contamination and said Board shall seek remediation of such contamination in accordance with the procedures of the Nebraska Department of Environmental Quality.

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

Upon a finding by the Zoning Administrator that a confined or intensive animal feeding use or associated waste handling facility use is not in compliance with the approved conditions of use, he/she shall report same to the County Board of Supervisors and shall notify the owner / operator of the confined or intensive animal feeding use and associated waste handling facility use involved, in writing, that the use is in violation of the approved conditions of use and shall state the specific violation(s). The owner / operator of such uses shall have thirty (30) calendar days to correct such violation. If the violation is not corrected within such time period, as verified through additional inspection(s) by the Zoning Administrator, the Zoning Administrator shall initiate all actions authorized under this Resolution to require compliance with the conditions of use approved by the County Board of Supervisors, including the possible requirements of reducing the waste produced by reduction in the activities generating such waste or in the case of confined or intensive animal feeding uses, reducing the number of animal units on the premises or removal of all animals until such violation(s) have been corrected.

A condition of authorization of any confined or intensive animal feeding use and associated waste handling facility use shall be that the owner(s) / operator of each such use authorized under this Resolution shall agree to comply with any written order of the County Board of Supervisors, 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 Supervisors that additional time to comply with any order of the Zoning Administrator is needed, the County Board of Supervisors may authorize an extension of time up to, but not exceeding one hundred twenty (120) days. Failure to comply with the order for compliance within the time specified shall result in a further order to cease all activities which result in the generation of waste or in the case of confined or intensive animal feeding uses, the removal of all

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animals from the premises until such time as compliance with these regulations can be achieved.

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

- I. Animals shall not be introduced into any expanded or new 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 all applicable regulations of this Resolution. Any such Nebraska Department of Environmental Quality permit shall not need to have been issued prior to the issuance of a zoning permit, but obtaining such a permit shall be a condition of such zoning permit.
  - J. Exceptions to the minimum separation distance specified in Paragraph A immediately above may be granted as a part of any conditional use authorization where special types of waste handling facilities, special provisions for odor control, dust control and fly control, application of new technologies for mitigation of odor, dust or flies or a combination thereof is proposed and it is determined by the County Board of Supervisors, after review and recommendation by the Planning Commission, that reduction in said minimum separation distance will not unreasonably interfere with the use and enjoyment of neighboring properties or reduce the value of such neighboring properties.
  - K. The process for review and authorization of any conditional use application for a confined or intensive animal feeding use and associated waste handling facility use shall be limited to determination of the application's compliance with Paragraphs A through J immediately above. Any such application that is determined by the County Board of Supervisors to meet the standards and requirements of Paragraphs A through J immediately above SHALL be authorized by the County Board of Supervisors.
3. Application of liquid (non-solid) animal waste from confined or intensive animal feeding uses or associated waste handling facility uses or other commercial, industrial, public or semi-public uses located outside the boundaries of Valley County, Nebraska, to the surface of land within Valley County, subject to the following limitations:
    - A. Where surface application of liquid waste shall exceed the 360 hours per calendar year per site application time limitation set forth in Section 501.03, Subsection 5, Paragraph D of this Resolution, the site(s) for such application shall be separated from any undeveloped lot of record less than twenty (20) acres in area, residential dwelling, church, school or public use area in Valley County or any adjoining county which is located to the north of such site by the minimum distance of one-fourth (1/4) mile and to the south of such site by a minimum distance of one-eighth (1/8) mile, unless the owner of any neighboring lot of record less than twenty (20) acres in area, church, school, public use area or dwelling unit shall grant the owner of the animal feeding use and associated waste handling facility or other use an impact easement, as defined in Section 303.52 of this Resolution, in which case such use may be closer to any such lot or record, church, school, public use area or dwelling unit from which an impact easement is granted.

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- B. Any animal waste applied shall be applied at agronomic rates set forth in a Comprehensive Nutrient Management Plan as approved by the Nebraska Department of Environmental Quality. The County Board of Supervisors, in the event of a written complaint, may request copies of soil test to verify compliance with the Comprehensive Nutrient Management Plan approved by the Nebraska Department of Environmental Quality. Any other types of waste shall be applied at agronomic rates.
4. Public and semi-public sewage treatment facilities, sanitary landfills and commercial solid waste transfer, recycling and composting centers.
  5. Livestock auction barns and yards.
  6. Crop dusting businesses and related aircraft landing strips and airports.
  7. Commercial grain elevators and grain storage facilities, ethanol production plants, livestock auction barns and livestock buying stations, fuel and fertilizer bulk plants, provided that such any such uses which produce noticeable odor and/or have explosion or release of hazardous chemicals and gas potential shall not be located closer than one-fourth (1/4) mile to any residential dwelling, church or school.
  8. 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 and that all outdoor storage of salvage material shall be screened from view from all adjoining public roadways and neighboring residential dwelling units by evergreen trees, opaque fences or combination thereof.
  9. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, golf courses, driving ranges, shooting ranges, 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.
  10. Rock, sand, gravel or other mineral extraction facilities and operations sites, provided any application for such use shall include an acceptable and closure plan for phased and closure of each portion of the extraction area when extraction is completed and written indication by the owner(s) of such use that failure to completely implement such plan within one (1) year of closure of the use shall be deemed a violation of this Resolution.
  11. Public service facilities not allowable or permitted principal uses in Sections 501.03 and 501.04 of this Resolution.
  12. Radio, television, and other types of erected towers, excluding wind energy towers in excess of forty (40) feet in height, provided such towers shall comply with the requirements and limitations set forth in Sections 504 and 614 of this Resolution.
  13. Small Wind Energy towers, as defined in Section 612.02 or this Resolution which are in excess of forty (40) in height and Commercial Wind Energy Systems and installations, as defined in Section 612.05, Paragraph 2 of this Resolution, both in accordance with the requirements of Section 612 of this Resolution.
  14. Kennels, as defined in Section 303.57 of this Resolution, subject to the following limitations and requirements:
    - A. Any kennel shall be located at least one-half (1/2) mile from any undeveloped lot of record less than twenty (20) acres in area, school, church, public use area or dwelling unit not of the same ownership and on the same premises as the kennel unless an impact easement, as defined in Section 303.43 is negotiated with the owner(s) of any such lot of record, school, church, dwelling unit or public use area, , in which case such kennel may

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be located closer than one-half (1/2) mile to any such lot of record, school, church, public use area or dwelling unit from which the impact easement is granted. Measurement of this distance shall be from the point of the kennel or kennel runs nearest such school, church, public use area or dwelling unit to the nearest wall of a school, church, or dwelling unit or the nearest boundary of a lot or record less than twenty (20) acres in area or public use area. Exceptions to the minimum separation distance may be authorized by conditional use where the type of animals kenneled will present no or very limited noise or other impacts on adjoining properties.

- B. Disposal of dead animals, animal waste, bedding and other kennel waste material shall be in accordance with the requirements of the Nebraska Department of Agriculture and applicable requirements of Title 124 of the Nebraska Department of Environmental Quality.
  - C. The owner of any kennel shall have a license / permit for a kennel as required by the Nebraska Department of Agriculture.
  - D. In authorizing any kennel, the Board of Supervisors may, to avoid or limit impacts on neighboring properties, establish a limit regarding the total number of animals which may be kenneled at any one time and establish any other condition appropriate to protecting neighboring properties from undue impacts.
15. Residential subdivisions, in excess of the number of dwellings per quarter section set forth in Section 501.04, Subsection 7 of this Resolution, provided that:
- A. Such residential subdivisions shall be surveyed and engineered and a plat prepared for consideration and approval in accordance with the Valley County, Nebraska Subdivision Regulations as part of the conditional use authorization. Such plat shall conform with the requirements and standards of said Subdivision Regulations.
  - B. Any new roadways and drainage structures created as part of such subdivision shall be dedicated to the owners of lots within such subdivision and shall be privately maintained through the creation of a homeowner's association with assessment capabilities. Any such new roads shall not be dedicated to the public or the County nor shall any such roadway be accepted for maintenance by the County. Further, any such new roadways shall not be subject to flooding on a one hundred (100) year basis.
16. Other uses and structures determined by the Board of Supervisors to be comparable with the above stated conditional uses, compatible with the uses permitted in this zoning district and consistent with the Intent statement of this zoning district.

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

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

- 1. The minimum lot area for a single-family dwelling unit, manufactured home, mobile home or other allowable or permitted use where on-site sewage disposal is proposed shall be one (1) acre, provided that a larger lot area may be required by the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.

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2. The minimum lot area for any lot on which sewage disposal facilities are not needed shall be one-half (1/2) acre.
  4. The minimum lot area for uses identified as conditional uses in this District shall be the lot area appropriate for such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that:
    - A. Any lot on which there is to be an on-site sewage disposal system shall not be less than one (1) acre in area, provided that a larger lot may be required if the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.
    - B. Any lot on which sewage disposal facilities are not needed shall not be less than one-half (1/2) acre in area.

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

1. For lots utilizing on-site sewage disposal systems, the minimum lot width shall be one hundred (100) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred (100) feet and a minimum frontage less than fifty (50) feet.
2. For lots on which sewage disposal systems are not needed, the minimum lot width shall be eighty (80) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than eighty (80) feet and a minimum frontage less than fifty (50) feet.

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

1. Front Yard Setback - Sixty Three (63) feet from the centerline of a county road, private roadway or access easement, provided that for lots which front on a Federal or State Highway the front setback shall be thirty (30) feet from the right-of-way line of such highway.

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

2. Side Yard Setback - Ten (10) feet

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3. Rear Yard Setback - Ten (10) feet

**501.11 MAXIMUM HEIGHT:** No limitation, except for buildings designed for human habitation which shall have a maximum height of forty five (45) feet.

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## SECTION 502 RCI RURAL COMMERCIAL / INDUSTRIAL DISTRICT

**502.01 INTENT:** The intent of this district is to allow for the development of commercial and industrial uses along portions of the state highways serving Valley County and to allow the development of off-premise advertising signs (billboards) along such highways in appropriate areas in which this district is applied.

**502.02 OUTRIGHT ALLOWABLE PRINCIPAL USES AND STRUCTURES:** The following uses shall be allowable uses outright and shall not require a written zoning permit, provided that any structure or building, irrigation well or irrigation pivot associated with such uses shall require compliance with the regulations and restrictions of this Resolution and issuance of a certificate of zoning compliance: (*Refer to Section 202 of this Resolution*)

1. Agricultural uses, as defined in Section 303.13 of this Resolution, including any farm buildings, as defined in Section 303.44 of this Resolution, but excluding any dwelling unit(s) whether or not associated with an agricultural use and excluding confined and intensive animal feeding uses, as defined in Sections 303.34 and 303.55 of this Resolution and any associated waste handling facilities, as defined in Section 303.110 of this Resolution.
2. Irrigation facilities, including wells, center pivots, re-use pits, well houses and related structures, and control and erosion control facilities, subject to the limitations and requirements of Sections 609 and 610 of this Resolution. (Sites where there is surface application of liquid animal waste shall comply with the limitations set forth in Subsection 8, Paragraph D below.
3. Forestry, tree farms and plant nurseries and vineyards with or without wine making or tasting facilities.
4. Non-commercial grain, hay and produce storage including non-commercial storage warehouses and plant seed sales and storage facilities.
5. Day care and child care uses, when conducted in an occupied residential dwelling by the occupants of such dwelling.
6. Cemeteries.
7. Road maintenance equipment storage sheds, fire stations, publicly electric utility substations, electric utility distribution systems and associated uses, above ground and below ground telephone, cable and data transmission systems, excluding towers in excess of forty (40) feet in height, and other transmission systems conveying materials other than gases, petroleum products or other hazardous materials, as defined by the U. S. Environmental Protection Agency.
8. Land application of:
  - A. fully composted animal waste, as defined in Section 303.17 of this Resolution, to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality,
  - B. solid manure, as defined in Section 303.99 of this Resolution, to the surface of the land at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality when there is no stockpiling of such manure on any premises where such manure is to be applied,



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- C. liquid or slurry animal waste injected into the soil at rates at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality.
  - D. liquid animal waste applied to the surface of the land at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality, provided that when a dwelling unit not of the same ownership as the land on which such waste is to be applied or a church or school is located within one-fourth (1/4) mile to the north or one-eighth (1/8) mile to south, east or west, as defined in the definition of "Prevailing Winds" in Section 303.83 of this Resolution, the total time such application occurs shall not exceed 360 hours in a calendar year per parcel, unless an impact easement or an annual permission statement has been granted in writing from the owner(s) or unless the generator of the waste can document that no other options exist with regard to alternative parcels or timing with which the generator of the waste can comply with the discharge requirements established by the Nebraska Department of Environmental Quality, in which case, the Zoning Administrator may approve a permit for such additional time for application to the subject parcel as is estimated to be required to comply with the discharge requirements of the Nebraska Department of Environmental Quality
9. Stockpiling of animal waste or manure or municipal sewage or other sludge on any parcel of land where such waste is to be applied to the land contained within such parcel, provided such stockpiling shall meet all of the following conditions:
- A. The amount of solid manure stockpiled on any parcel shall not exceed the amount of waste which can be applied on such parcel at agronomic rates in compliance with the requirements of the Nebraska Department of Environmental Quality for a calendar year.
  - B. Any manure or sludge stockpile shall be located at least one-fourth (1/4) mile from the nearest wall of any church, school or residential dwelling unit not of the same ownership as the parcel on which the stockpile is to be placed or to the nearest boundary of any public use area unless the owner of such church, school or residential dwelling shall grant permission in writing for a stockpile to be located at a closer distance.

**502.03 PERMITTED PRINCIPAL USES AND STRUCTURES:**

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

- 1. Churches, synagogues and other houses of worship.
- 2. Public schools, private schools and schools affiliated with a church or religion.
- 3. Game farms and commercial hunting and fishing including development of lodges or other buildings to the support of such hunting and fishing activities, provided that if such uses qualify as a Public Use Area, as defined in Section 303.87 of this Resolution, such uses shall comply with the minimum separation distances from any existing confined or intensive animal feeding use as set forth in Table 501.04 of this Resolution.
- 4. Fish hatcheries, wild life management areas, wildlife conservation areas, and other semi-public or public use areas, provided that if such uses qualify as a Public Use Area, as defined in Section 303.87 of this Resolution, such uses shall comply with the minimum separation distances from any existing confined or intensive animal feeding use as set forth in Table 501.04 of this Resolution.

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5. Radio, television, microwave and other types of erected towers, including wind energy towers, which are forty (40) feet or less in height.
  6. Grain elevators, commercial grain storage or processing facilities, bulk fertilizer and fuel plants, livestock auction barns and buying stations, veterinary clinics, agricultural equipment sales and repair businesses and other agricultural service establishments engaged in providing horticultural, husbandry products or services to area agricultural product producers, excluding meat processing uses, provided such uses shall be separated from any residential use by at least three hundred (300) feet and further provided that uses such as bulk fuel and fertilizer plants and other similar uses which produce noticeable odors and/or have explosion or release of hazardous chemical potential shall not be located closer than one-eighth (1/8) mile to any residential dwelling or one-fourth (1/4) mile to any church or school.
  7. Parks, playgrounds, campgrounds and similar recreational uses.
  8. Signs, including permanent (non-portable) business identification signs and off-premise advertising signs (billboards) in accordance with the following restrictions:
    - A. Non-portable business identification signs:
      - 1) The total number of permanent business identification signs, excluding off-premise advertising signs (billboards), shall not exceed three (3) per premises,
      - 2) The minimum setback from the front lot line and the right-of-way line of any State or Federal Highway for any monument or free-standing sign shall be ten (10) feet, the maximum height shall not exceed twenty (20) feet and the maximum sign face area shall not exceed one hundred (100) square feet, provided that for each additional foot that such sign is set back from the front lot line, the sign height may be increased by one (1) foot and the maximum sign face area may be increased by three (3) square feet and further provided that the maximum height shall be fifty (50) feet and the maximum sign face area shall be three hundred (300) square feet. Signs with a setback from the front lot line and right-of-way line of any State or Federal Highway greater than fifty (50) feet shall have a maximum sign surface area of four hundred (400) square feet and a maximum height of thirty five (35) feet.
      - 3) The total sign face area of all signs on the premises, including free-standing, wall-mounted or wall-projection signs, excluding off-premise advertising signs (billboards), shall not exceed five hundred (500) square feet, except on any premise where a sign with a setback from the front lot line and right-of-way line of any State or Federal Highway greater than fifty (50) feet is proposed the total sign surface area of all on-premise signs, excluding off-premise advertising signs (billboards) shall be one thousand seven hundred (700) square feet.
      - 4) No sign shall be located closer than three hundred (300) feet to any residential dwelling.
    - B. Off-premise advertising signs (billboards):
      - 1) The minimum setback from the front lot line and the right-of-way line of any State or Federal Highway shall be ten (10) feet, the maximum height shall not exceed thirty five (35) feet and the maximum sign face area for each sign face shall not exceed three hundred (300) square feet,

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- 2) Regardless of the location of commercial or industrial premises, any off-premise advertising sign (billboard) shall be located a minimum distance of one-fourth (1/4) mile from any other off-premise advertising sign (billboard) on either side of the roadway to which such sign is oriented, measured from the nearest point of one such sign to the nearest point of another such sign. Further any off-premise advertising sign (billboard) shall be located a minimum distance of three hundred (300) feet from the nearest wall of any neighboring residential dwelling, church, school or the nearest boundary of any public use area.
  - 3) Double-deck off-premise advertising signs (billboards) shall be prohibited.
  - 4) Lighting of any such off-premise advertising sign (billboard) shall be so directed and / or shielded to prevent any direct lighting of adjoining property or any roadway right-of-way.
  - 5) No off-premise advertising sign (billboard) shall be constructed on any premises in this District until the commercial or industrial use permitted on or approved for such premises shall have first been constructed and be in operation.
  - 6) All on and off-premise advertising signs (billboards) oriented to any State or Federal Highway shall also be subject to the requirements and limitations imposed by the Nebraska Department of Roads and where any such requirements or limitations impose a greater restriction, requirement or limitation, such shall apply.
  - 7) No off-premise advertising sign (billboard) shall be located closer than three hundred (300) feet to any residential dwelling.
9. Single-Family dwellings, including manufactured housing, modular homes and mobile homes, provided such dwellings comply with all of the following conditions:
- A. Such dwellings, if not on the same lot with and not of the same ownership as any kennel, as defined in Section 303.57 of this Resolution, or confined animal feeding use, as defined in Section 303.34 of this Resolution, or any intensive animal feeding use, as defined in Section 303.55 of this Resolution, or any waste handling facility, as defined in Section 303.110 of this Resolution, shall be separated from any kennel by a minimum distance of one-half (1/2) mile, from any confined or intensive animal feeding use or waste handling facility by the minimum distance specified in Table 501.04, of this Resolution, for the class of confined / intensive animal feeding use and category of waste handling facility which such confined or intensive animal feeding use qualifies, and from any tower with a height greater than forty (40) feet by a distance equal to the height of such tower unless the owner of such residential dwelling shall grant an impact easement, as defined in Section 303.52 of this Resolution, to the owner of the kennel, tower or confined or intensive animal feeding use, in which case such residential dwelling may be located closer than the minimum distances herein set forth. (*See exceptions to this minimum separation requirement in Section 705, Paragraphs 3 and 4 of this Resolution.*)
  - A. Such minimum separation distance shall be measured from the nearest point of any land actively used or approved under this Resolution as a confined or intensive animal feeding use or associated waste handling facility, including any site where liquid animal waste is applied to the surface of the land, from the nearest point of any land actively used for a kennel or the base of any tower not on the same premises that is over forty (40) feet in height to the nearest wall of such dwelling unit. Application of waste which is 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.

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- B. Such dwelling shall be located on a parcel of land with an area of not less than that specified in Section 502.08 of this Resolution, and such parcel shall have a minimum width and frontage not less than that specified in Section 502.09 of this Resolution, provided that a larger lot may be required if the regulations and standards of Title 124 of the Nebraska Department of Environmental Quality, with regard to soil percolation, slope, depth to groundwater or other requirement of said Title 124 shall require a larger the requirements of Title 124 shall govern.
  - C. The parcel on which such dwelling is located shall front on or have access to an existing public roadway other than a roadway classified by the County Board of Supervisors as a minimum maintenance road or other unimproved roadway, provided that if such dwelling is located on a minimum maintenance road or other unimproved roadway, the owner of such parcel shall be responsible for the cost of improving such roadway to County standards before the County shall agree to accept maintenance by the County of such roadway and further provided that if such parcel is located on any other unimproved roadway, the owner of such parcel shall be responsible for the costs of improving such roadway to County standards and shall be responsible for the maintenance of such roadway unless the Valley County Board of Supervisors shall agree to accept such roadway for County maintenance. Valley County shall not, however, be committed to accepting such roadway even if such roadway is improved to County standards by the owner(s) of such roadway.
9. Below ground transmission systems and pipelines conveying gases, petroleum products and other materials defined as hazardous materials by the U. S. Environmental Protection Agency.

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

- 1. Accessory uses, buildings and structures normally and commonly appurtenant to the permitted principal uses and structures. Such uses, buildings or structures, if not a farm building, shall require the issuance of a zoning permit. Farm buildings shall require only a certificate of zoning compliance.
- 2. Home occupations and home based businesses, in accordance with Section 608 of this Resolution. When established in accordance with Section 608 of this Resolution, issuance of a zoning permit or certificate of zoning compliance shall not be required.
- 3. Roadside stands for the temporary sale of produce grown or crafts produced on the premises. No zoning permit shall be required.

**502.05 CONDITIONAL USES:** After the provisions of this Resolution relating to conditional uses have been fulfilled, the Board of Supervisors may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in the RCI, Rural Commercial / Industrial District:

- 1. Other commercial and industrial uses not listed in Section 502.03, Subsection 6 above, except adult business establishments, provided that such uses comply with the following limitations and requirements:
  - A. Such uses shall be separated from any residential use by at least three hundred (300) feet and further provided that uses such as bulk fuel and fertilizer plants and other similar uses which produce noticeable odors and/or have explosion or release of hazardous chemical potential shall not be located closer than one-eighth (1/8) mile to any residential dwelling or one-fourth (1/4) mile to any church or school.

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- B. activities involving the salvaging of automobiles, trucks, agricultural or other equipment and similar operations shall be screened from view from all adjoining streets and all abutting properties by an opaque fence or evergreen tree landscape screen and said screen shall be maintained in good repair at all times.
  - C. Such uses shall comply with all other applicable federal and state laws and regulations.
2. Adult business establishments, as defined in Section 303.04 of this Resolution, subject to the following limitations and requirements:
- A. No adult establishment shall be located closer than one thousand three hundred twenty (1,320) feet to any similar use and not closer than one thousand three hundred twenty (1,320) feet to any residential dwelling or any type, any church, synagogue or other religious use, any school or any park or public use area, as defined in Section 303.87 of this Resolution. Measurement of this minimum distance shall be made in a straight line, without regard to intervening structures or objects, from the nearest well of the building housing an adult establishment to the nearest wall of any residential dwelling, the nearest wall of any church, synagogue or other religious building, the nearest wall of any school or the nearest property line of any park or public use area or the nearest wall of any other adult establishment.
  - B. An adult establishment shall front on and have vehicular access to a hard surfaced county road and shall not be more than one thousand three hundred twenty (1,320) feet from a State or Federal Highway.
  - C. An adult establishment shall be screened to a height of six (6) feet along all adjoining property lines, except for the vehicular entrance to said establishment to prevent direct visibility of the adult establishment from adjoining properties.
  - D. Doors, curtains and any other means of obstruction to the opening or all booths and other preview areas, including but not limited to adult novelty businesses, adult motion picture arcades, adult mini-motion picture theaters and adult motion picture theaters shall be prohibited at all times.
  - E. An adult establishment shall not diminish or impair established property values or adjoining properties.
  - F. An adult establishment shall be in accord with the intent, purpose and spirit of this Resolution and the Comprehensive Plan of Valley County, Nebraska.
  - G. Applications for any adult establishment shall be accompanied by evidence concerning the feasibility of the proposed request and its effect on adjoining properties and shall include a site plan defining the areas to be developed for buildings and structures, the areas to be developed for vehicle parking, driveways and points of ingress and egress, the location and height of walls or fences, the types and location of landscaping, the size, height and number of signs and the manner of providing water supply and sewage treatment.
  - H. An adult establishment shall post a sign at the entrance of the premises which shall state the nature of the business and that no person under the age of eighteen (18) is allowed on the premises. This section shall not be construed to prohibit the owner of such establishment from setting an older age limitation for access to the premises.
  - I. The following activities shall be prohibited in any adult establishment:
    - 1) No adult establishment shall employ any person under the age of eighteen (18).

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- 2) No adult establishment shall furnish any merchandise or services to any person who is under the age of eighteen (18).
  - 3) No adult establishment 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, as defined in Sections 303.101 and 303.102 of this Resolution by display, decoration, sign, show window or other opening from any public way or from any property not approved as an adult establishment.
  - 4) No owner / operator of any adult establishment or any officer, associate, member, representative, agent, or employee of such establishment 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 of Nebraska.
  - 5) No part of the interior of any adult establishment shall be visible from the pedestrian sidewalk, walkway or vehicle parking area.
- J. Any adult establishment shall comply with all conditions established by the Board of Commissioners in granting any conditional use as set forth in Article 10 of this Resolution.
3. Radio, television, and other types of erected towers, excluding wind energy towers, in excess of forty (40) feet in height, provided such towers shall comply with the requirements and limitations set forth in Sections 504 and 614 of this Resolution.
  4. Small Wind Energy towers, as defined in Section 612.02 or this Resolution which are in excess of forty (40) in height and Commercial Wind Energy Systems and installations, as defined in Section 612.05, Paragraph 2 of this Resolution, both in accordance with the requirements of Section 612 of this Resolution.
  5. Kennels, as defined in Section 303.57 of this Resolution, subject to the following limitations and requirements:
    - A. Any kennel shall be located at least one-half (1/2) mile from any undeveloped lot of record less than twenty (20) acres in area, school, church, public use area or dwelling unit not of the same ownership and on the same premises as the kennel unless an impact easement, as defined in Section 303.52 is negotiated with the owner(s) of any such lot of record, school, church, dwelling unit or public use area, , in which case such kennel may be located closer than one-half (1/2) mile to any such lot of record, school, church, public use area or dwelling unit from which the impact easement is granted. Measurement of this distance shall be from the point of the kennel or kennel runs nearest such school, church, public use area or dwelling unit to the nearest wall of a school, church, or dwelling unit or the nearest boundary of a lot or record less than twenty (20) acres in area or public use area. Exceptions to the minimum separation distance may be authorized by conditional use where the type of animals kenneled will present no or very limited noise or other impacts on adjoining properties.
    - B. Disposal of dead animals, animal waste, bedding and other kennel waste material shall be in accordance with the requirements of the Nebraska Department of Agriculture and applicable requirements of Title 124 of the Nebraska Department of Environmental Quality.
    - C. The owner of any kennel shall have a license / permit for a kennel as required by the Nebraska Department of Agriculture.

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- D. In authorizing any kennel, the Board of Supervisors may, to avoid or limit impacts on neighboring properties, establish a limit regarding the total number of animals which may be kenneled at any one time and establish any other condition appropriate to protecting neighboring properties from undue impacts.
6. Residential subdivisions, in excess of two (2) lots subdivided from the parent property of record as of the effective date of this Resolution, provided that:
    - A. Such residential subdivisions shall be surveyed and engineered and a plat prepared for consideration and approval in accordance with the Valley County, Nebraska Subdivision Regulations as part of the conditional use authorization. Such plat shall conform with the requirements and standards of said Subdivision Regulations.
    - B. Any new roadways and drainage structures created as part of such subdivision shall be dedicated to the owners of lots within such subdivision and shall be privately maintained through the creation of a homeowner's association with assessment capabilities. Any such new roads shall not be dedicated to the public or the County nor shall any such roadway be accepted for maintenance by the County. Further, any such new roadways shall not be subject to flooding on a one hundred (100) year basis.
  7. Other uses and structures, determined by the Board of Supervisors to be comparable with the above listed conditional uses, compatible with surrounding land uses and consistent with the Intent statement of this District.

**502.06 PROHIBITED USE AND STRUCTURES:** All other uses and structures which are not permitted in this District either as an allowable use, a permitted use, an accessory use or conditional use is prohibited.

**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, mobile home or other allowable or permitted use where on-site sewage disposal is proposed shall be one (1) acre, provided that a larger lot area may be required by the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.
2. The minimum lot area for any lot on which sewage disposal facilities are not needed or where a lot is served by a public or semi-public sewage collection and treatment system and any building developed on a lot is connected to such public or semi-public sewage collection and treatment system shall be one-half (1/2) acre.
3. The minimum lot area for uses identified as conditional uses in this District shall be the lot area appropriate for such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that:
  - A. Any lot on which there is to be an on-site sewage disposal system shall not be less than one (1) acre in area, provided that a larger lot may be required if the standards and regulations of Title 124 of the Nebraska Department of Environmental Quality with regard to soil percolation rates, slope, depth to water table or other requirement of said Title 124 requires the use of a lagoon or other type of waste disposal facility, in which case the lot shall be sized to comply with the requirements of said Title 124.

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- B. Any lot on which sewage disposal facilities are not needed shall not be less than one-half (1/2) acre.

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

1. For lots utilizing on-site sewage disposal systems, the minimum lot width shall be one hundred (100) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred (100) feet and a minimum frontage less than fifty (50) feet.
2. For lots on which sewage disposal systems are not needed or where a lot is served by a public or semi-public sewage collection and treatment system and any building developed on a lot is connected to such public or semi-public sewage collection and treatment system, the minimum lot width shall be seventy five (75) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet.
3. The minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that:
  - A. For lots utilizing on-site sewage disposal systems, the minimum lot width shall be one hundred (100) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Supervisors in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than one hundred (100) feet and a minimum frontage less than fifty (50) feet.
  - B. For lots on which sewage disposal systems are not needed or where a lot is served by a public or semi-public sewage collection and treatment system and any building developed on a lot is connected to such public or semi-public sewage collection and treatment system, the minimum lot width shall be seventy five (75) feet, provided that the lot width to lot depth ratio shall not exceed one (1) to four (4). The minimum lot frontage, including any deeded access or access easement shall be fifty (50) feet.

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

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

1. Front Yard Setback - Fifty eight (58) feet from the centerline of any county road or other private roadway or access road or easement, provided that for lots which front on a Federal or State Highway the front setback shall be twenty five (25) feet from the right-of-way line of such highway.

For a grain bin or building used for grain storage which requires filling by use of a portable auger, elevator or conveyor or requires



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

2. Side Yard Setback - Fifteen (15) feet
3. Rear Yard Setback - Fifteen (15) feet

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

1. Front Yard Setback - Fifty eight (58) feet from the centerline of any county road or other private roadway or access road or easement, provided that for lots which front on a Federal or State Highway the front setback shall be twenty five (25) feet from the right-of-way line of such highway.

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

2. Side Yard Setback - Five (5) feet
3. Rear Yard Setback - Fifteen (15) feet

**502.10 MAXIMUM HEIGHT:** No limitation, except for buildings designed for human habitation which shall have a maximum height of forty five (45) feet.

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## SECTION 503 WPO WELLHEAD PROTECTION OVERLAY DISTRICT

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

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

1. Delineation of the wellhead protection area(s) based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality.
2. Approval of such wellhead protection area(s) by the Nebraska Department of Environmental Quality. (*Refer to limitation in Section 503.03 below.*)
3. Completion and mapping of an inventory of potential contamination sources within the wellhead protection area(s), including identification of abandoned wells.
4. Formulation, adoption and enforcement of land use control regulations for those portions of the wellhead area within the corporate limits and zoning jurisdiction area of the municipality which are appropriated to minimize the potential for contamination to the water supply of the municipality.
5. Formulation of emergency / contingency / long-range plans in the event of disruption of the supply of water from wells in the wellhead protection area(s).
6. Formulation and implementation of an on-going public involvement / education program to permit public comment in the establishment of a wellhead protection program and a plan to provide public information regarding the program and voluntary cooperation with the same.
7. Development of a program to install and maintain Wellhead Protection Area signs on roadways around the wellhead protection area(s).
8. The municipality or other public water supply system shall execute an interlocal agreement with Valley County for the administration of the regulations within the land areas to be included in this Wellhead Protection Overlay District. In such agreement, the municipality or other public water supply system shall agree to accept the wellhead protection regulations set forth in this overlay district, agree to pay to the County any fees negotiated between such entity and the County for the administration of these regulations in those land areas under the County's zoning jurisdiction, agree to pay all legal costs associated with any legal challenge

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to the requirements of this overlay district, and agree to hold the County harmless from any liability related to the requirements of this district, except for proper administration and enforcement of the requirements of this district by the County, together with other terms and conditions which are acceptable to the parties involved in any such interlocal agreement.

- 503.03 LIMITATION ON APPLICATION OF THIS OVERLAY DISTRICT:** This district may only be applied to lands within wellhead protection areas based upon a twenty (20) year time of travel recharge zone, as defined by the Nebraska Department of Environmental Quality. In the event the boundaries of any such wellhead protection area(s) do not follow easily identifiable boundaries such as roads, rivers, creeks, section, quarter section or quarter-quarter section lines, the boundaries of such areas shall be expanded to, but not beyond, the nearest such lines to avoid confusion and added administrative costs associated with in-the-field determination of such boundaries.
- 503.04 AMENDMENT OF OFFICIAL COUNTY ZONING MAP:** Whenever the requirements of Section 503.02 of this Resolution have been complied with, and the County Planning Commission and County Board of Supervisors have conducted public hearings regarding application of this overlay zoning district in accordance with Article 11 of this Resolution and the County Board of Supervisors has acted to approve the application of a wellhead protection overlay district, the boundaries of such wellhead protection area (overlay zoning district), defined in accordance with Section 503.03 above, shall be indicated on the Valley County, Nebraska Official Zoning Map and such map shall be signed in accordance with the requirements of Section 1104 of this Resolution.
- 503.05 ALLOWABLE, PERMITTED AND ACCESSORY USES AND STRUCTURES:** Any use or structure indicated as an allowable use, permitted use or accessory use in the primary zoning district(s) on which this wellhead protection overlay district is overlain, shall be allowed or permitted in accordance with the zoning permit requirements set forth in such primary zoning district(s), except when specifically prohibited in Section 503.07 of this Resolution and except when an otherwise allowable, permitted or accessory use is listed as a conditional use in Section 503.06 of this Resolution. All such allowable, permitted and accessory uses shall comply with the additional wellhead protection restrictions set forth in Section 503.08 of this Resolution.
- 503.06 CONDITIONAL USES:** Any use listed as a conditional use in the primary zoning district(s) on which this wellhead protection overlay district is overlain, except the uses specifically prohibited in Section 503.07 of this Resolution, may be authorized as a conditional use in accordance with the requirements and procedures specified in Article 10 of this Resolution, provided the authorization of any conditional use
- 503.07 PROHIBITED USES AND STRUCTURES:** Uses and structures, which are prohibited in the primary zoning district(s) on which this district is overlain, shall be prohibited and, regardless of whether prohibited in the primary zoning district(s), the following uses and structures shall be specifically prohibited on any land area on which this wellhead protection overlay district is applied:
1. Confined or intensive animal feeding uses and associated waste handling facility uses,
  2. Landfills and refuse recycling centers.
- 503.08 WELLHEAD AREA PROTECTION REQUIREMENTS:** The following restrictions shall apply to all uses within any land areas on which this Wellhead Protection Overlay District is applied:
1. Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or in association with another land use, shall comply with the rules and regulations of Titles 126 and 159, administered by the Nebraska Department of Environmental Quality or other responsible agency or department. Storage of gasoline, diesel fuel, fuel oil or other similar fuels, whether on a farm or ranch or other land area, in excess of one thousand one hundred

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(1,100) gallons shall be prohibited, except when a conditional uses for a commercial or industrial uses is authorized. In any such authorization, a condition of approval shall be compliance with the rules and regulations of such Titles 126 and 129.

2. Fuel storage associated with any irrigation well engine shall be equipped with a containment area in accordance with the National Fire Protection Association Code 30 and with Title 126, administered by the Nebraska Department of Environmental Quality, in the event of a fuel release.
3. Fuel storage, except when associated with a commercial or industrial use authorized as a conditional use (Item 1 above) and except for any fuel storage associated with any irrigation well engines (Item 2 above) shall not be permitted within one thousand (1,000) feet of any well protected under this wellhead protection overlay district.
4. Bulk storage of fertilizers, herbicides, pesticides and other materials, determined by the United States Environmental Protection Agency to be hazardous materials, shall be prohibited, except when a conditional use for such use is authorized and such authorization includes a condition that all such uses shall comply with the applicable rules and regulations of Title 118, 121, 126, 128, 159 and 198, administered by the Nebraska Department of Environmental Quality and other agencies.
5. No septic tank, tile field or other on-site sewage disposal system, associated with any residential, commercial, industrial or other type of land use, shall be located within one thousand (1,000) feet of any well protected under this wellhead protection overlay district, provided that if a lot of record, as defined in Section 303.63 of this Resolution, exists as of the effective date of application of this wellhead protection overlay district, and the entirety of said lot of record lies within the land area on which this wellhead protection overlay district is applied, one septic tank and tile field or other on-site sewage disposal system may be established, provided such tank, tile field or other system complies with the requirements of Title 124 of the Nebraska Department of Environmental Quality.
6. Domestic, irrigation and any other water wells shall not be located closer than one thousand (1,000) feet of any well protected under this wellhead protection overlay district, provided that if a lot of record, as defined in Section 303.63 of this Resolution, exists as of the effective date of application of this wellhead protection overlay district, and the entirety of said lot of record lies within the land area on which this wellhead protection overlay district is applied, one (1) well may be established, provided such well shall be constructed in accordance with the rules and requirements of Title 178.
7. Any application of fertilizers, pesticides, or herbicides to the land or crops through an irrigation system (chemigation) shall comply with the rules and requirements of Title 195.
8. If any land area contained within a wellhead protection overlay zoning district is also part of a special protection area or ground water management area, established under the Groundwater Management Protection Act, all uses within such areas, including agricultural uses, shall comply with the action plan and best management practices established for such areas by the local Natural Resource District(s).

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

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

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- 503.11 MINIMUM BUILDING SETBACK REQUIREMENTS:** The minimum setback for all regulated structures and buildings in this overlay district shall be as set forth in the primary zoning district(s) on which this district is overlain, provided that the minimum setback requirements from protected wells, as set forth in Section 503.08 of this Resolution, shall also be complied with.
- 503.12 MAXIMUM HEIGHT:** The maximum height of any building or structure shall be as set forth in the primary zoning district on which this district is overlain.

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## SECTION 504 AHO AIRPORT HAZARD OVERLAY DISTRICT

**504.01 INTENT:** This district is established as an overlay district for application over any primary zoning district in all directions from the adjacent boundaries of the Evelyn Sharp Field Airport any other qualifying airport for which an airport hazard approach zone extends into the planning and zoning jurisdiction area of the Valley County, Nebraska and is intended to prevent airport hazards and protect the public investment and utility of the airport.

### **504.02 DEFINITIONS:**

1. **AIRPORT:** Any area of land or water designated and set aside that is used or intended to be used for landing and takeoff of aircraft, including any related buildings and facilities. Airport includes only public use airports with state or federally approved airport layout plans and military airports with military service approved military layout plans.
2. **AIRPORT HAZARD:** Any structure, tree or use of land which penetrates any approach, operation, transition or turning zone.
3. **AIRPORT HAZARD AREA:** The airport hazard area is any area of land or water upon which an airport hazard might be established if not prevented as provided in the Airport Zoning Act, but such shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition and turning zones.
4. **AIRPORT LAYOUT PLAN:** A scaled drawing of existing and proposed land, buildings and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines.
5. **APPROACH ZONE:** A zone that extends from the end of each operation zone and is centered along the extended runway centerlines, described as follows:
  - A. **FOR AN INSTRUMENT RUNWAY (EXISTING OR PROPOSED):**
    - 1) An approach zone extends ten (10) miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand (1,000) feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty (16,840) feet wide at the farthest end of the zone, and
    - 2) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every fifty (50) feet horizontally, except that the height limit shall not exceed one hundred fifty (150) feet above the nearest or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end. At three (3) miles from such operation zone, the height limit resumes sloping one (1) foot vertically for every fifty (50) feet horizontally and continues to the ten-mile limit, and
  - B. **FOR A VISUAL RUNWAY (EXISTING OR PROPOSED):**
    - 1) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred (500) feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three (3)

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miles from the operation zone, the approach zone is three thousand seven hundred (3,700) feet wide, and

- 2) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one (1) foot vertically for every forty (40) feet horizontally, except that the height limit shall not exceed one hundred fifty (150) feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end.
6. **ELECTRIC UTILITY:** An electric utility means an overhead electric line, including poles or other supporting structures, owned or operated by an electric supplier for the transmission or distribution of electrical power to the electric supplier's customers.
7. **EXISTING RUNWAY:** An instrument or visual runway that is paved or made of turf that has been in constructed or is under construction.
8. **INSTRUMENT RUNWAY:** An existing runway with precision or non-precision instrument approaches as developed by the Federal Aviation Administration or an existing or proposed runway with future precision or non-precision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after public hearing on such designation.
9. **OPERATION ZONE:** A zone that is longitudinally centered on each existing or proposed runway. Operation zones are as follows:
  - A. For existing and proposed paved runways, the operation zone extends two hundred (200) feet beyond the ends of the runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends.
  - B. For existing and proposed instrument runways, the operation zone is one thousand (1,000) feet wide, with five hundred (500) feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred (500) feet wide, with two hundred fifty (250) feet on either side of the centerline.
  - C. The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or surface of the ground, whichever is higher.
10. **PERSON:** Any individual, firm, partnership, limited liability company, corporation, company, association, joint stock association or body politic and includes trustee, receiver, assignee or other similar representation thereof.
11. **POLITICAL SUBDIVISION:** Any municipality, city, village or county.
12. **PROPOSED RUNWAY:** An instrument runway or visual runway that has not been constructed and is not under construction, but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval, to the Federal Aviation Administration.
13. **RUNWAY:** A defined area at an airport that is prepared for the landing and takeoff of aircraft along its length.

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14. **STRUCTURE:** Any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission or distribution lines.
  15. **TRANSITION ZONE:** A zone that extends outward at a right angle to the runway centerline and upward at a rate of one (1) foot vertically for every seven (7) feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty (150) feet above the highest elevation on the existing or proposed runway.
  16. **TREE:** Any object of natural growth.
  17. **TURNING ZONE OUTER LIMIT:** The area located at a distance of three (3) miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone or transition zone. The height limit of the turning zone is one hundred fifty (150) feet above the highest elevation on the existing or proposed runway.
  18. **VISUAL RUNWAY:** A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service approved layout plan or any planning documents submitted to the Federal Aviation Administration by a competent authority.

**504.03 HEIGHT RESTRICTIONS:** No building, transmission line, pole, tower, chimney, wires or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired or established nor shall any tree or other object of natural growth be allowed to grow above the heights described in Section 504.02, Subsections 5, 9, 15 and 17 immediately above.

**504.04 AIRPORT ZONING MAP:** The boundaries, operation zones, approach zones, transition zones and turning zones are indicated on the Airport Zoning Map for the Evelyn Sharp Field Airport and Cram Field Airport in Garfield County, prepared by the Nebraska Department of Aeronautics as Map No's. ZN-ODX-15 and ZN-BUB-15. Said Airport Zoning Map(s) are hereby made part of this Resolution by reference.

**504.05 ZONING PERMIT AND CERTIFICATES OF ZONING COMPLIANCE REQUIREMENTS:**

1. A zoning permit or certificate of zoning compliance shall be required to erect, construct, reconstruct, repair or establish any building, transmission line, communication line, pole, tower, smokestack, chimney, wires or other structure or appurtenance thereto of any kind or character or to plant or replant any tree or other object of natural growth which, when mature, would violate the height limitations of Section 504.03 above.
2. Application for a zoning permit / certificate of zoning compliance shall be as required under Sections 804 and 808 of this Resolution.

**504.06 NON-CONFORMING STRUCTURES:** Unless otherwise limited by other any other section(s) of this Resolution, within the zoned airport hazard area, any non-conforming building, transmission line, communication line, pole, tree, smokestack, chimney, wires, tower or other structure or appurtenance thereto of any kind or character or object of natural growth may hereafter be replaced, substantially reconstructed, repaired, altered, replanted or allowed to grow, as the case may be, provided that any such non-conforming use, structure or natural growth shall not increase in height or create a greater hazard to air navigation than existed on the effective date of this Resolution or applicable amendment thereto. In accordance with Section 707, Subsections 5 and 7 any non-conforming use which has been voluntarily abandoned or which has been involuntary removed or damaged fire, wind or act of God, may be re-established or reconstructed provided



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such replacement use or structure shall not exceed the height limitations set forth in Section 504.03 above.

- 504.07 MARKING OF NON-CONFORMING STRUCTURES:** Whenever the Zoning Administrator shall determine, or shall be notified that a specific non-conforming structure or object exists and has existed prior to the effective date of these regulations and within the airport hazard zoned area herein before described at such a height or in such a position as to constitute a hazard to the safe operation of aircraft landing at or taking off from said airport, the owner or owners and the lessor or lessors of the premises on which such structure or object is located shall be notified in writing by the Zoning Administrator and shall, within a reasonable time, permit the marking thereof by suitable lights or other signals as recommended by the Nebraska Department of Aeronautics. The cost of such marking shall not be assessed against the owner or lesser of said premise, but may be paid by the local airport board, municipality, county or other governmental entity or department.
- 504.08 LAND USES:** Any use listed as an allowable, permitted, accessory or any use authorized as a conditional use in the primary zoning district over which this AHO, Airport Hazard Overlay district is applied shall be allowed in this overlay district, provided that all buildings, structures and other obstacles shall comply with the height limitations of Section 504.03 of this district.
- 504.09 ADMINISTRATION AND ENFORCEMENT:** The Zoning Administrator of Valley County, Nebraska shall administer and enforce these regulations, and shall be the administrative agency provided for in Section 3-319, R.R.S. 1943, and shall have all the powers and perform all the duties of the administrative agency as provided by the Airport Zoning Act.
- 504.10 BOARD OF ADJUSTMENT:** The Board of Adjustment of Valley County, Nebraska shall be the Board of Adjustment with respect to these regulations, to have and to exercise the powers conferred by Section 3-320, R.R.S. 1943, and such other powers and duties as are conferred or imposed by law.
- 504.11 VARIANCES:** In accordance with the procedures, requirements and limitations of Article 9, Subsection 907, Paragraph 3 of this Resolution, a variance to the height limitations established in this overlay district may be requested. Where the Board of Adjustment finds that the proposed variance will not require any modification or revision to any approach or approach procedure as approved the Federal Aviation Administration and it is documented that the proposed structure or alteration of the structure will not require any modification of any airport minimum standards, the Board may find that a hardship exists in the form of peculiar and exceptional practical difficulties and, if so found, may grant a variance from the height restrictions of this Section 504.
- 504.12 CONFLICTS:** In the event of any conflict between these airport hazard regulations and any other regulations established by this or other ordinances, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, the more stringent or restrictive limitation shall govern and prevail.

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## SECTION 505 FHO FLOOD HAZARD OVERLAY DISTRICT

**505.01 INTENT:** In accordance with Sections 31-1001 to 31- 1022 Nebraska Revised Statutes 1943, as amended, it is the intent of this overlay district to promote the public health, safety and general welfare and to minimize loss of life and property, health and safety hazards, disruption of commerce and governmental services and public expenditures for flood protection and relief and impairment of the tax base 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.

**505.02 DEFINITIONS:** The following definitions shall apply to this Section (Section 505) and when the following definitions are inconsistent with the definitions set forth in Section 303 of this Resolution, the following definitions shall govern with regard to administration of these flood hazard area regulations:

1. **Agricultural Commodities:** Agricultural products and livestock,
2. **Agricultural Structure:** Any structure used exclusively in connection with production, harvesting, storage, drying, or raising of agricultural commodities,
3. **Base Flood:** A flood having a one (1) percent chance of being equaled or exceeded in any given year.
4. **Basement:** Any area of a building having its floor subgrade below ground level on all sides,
5. **Development:** Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials,
6. **Existing Manufactured Home Park or Subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is complete before the effective date of these floodplain management regulations,
7. **Expansion of Existing Manufactured Home Park or Subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the placement of pads),

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8. **Flood:** A general or temporary condition of parcel or complete inundation of normally dry land areas from; 1) the overflow of inland or tidal waters or 2) the unusual and rapid accumulation of runoff or surface waters from any source,
  9. **Flood Insurance Rate Map (FIRM):** An official map of the County, on which the Administrator has delineated both the special flood hazard areas and the risk premium applicable to the County,
  10. **Floodplain:** Any land area susceptible to being inundated by water from any source (see Item 8 above),
  11. **Floodproofing:** Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents,
  12. **Floodway:** The channel of the river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height,
  13. **Historic Structure:** Any structure that is; 1) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register, 2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as registered historic district, 3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or 4) individually listed on a local inventory of historic places in communities / counties with historic preservation programs that have been certified either by an approved state program, as determined by the Secretary of the Interior or directly by the Secretary of the Interior in states without approved programs.
  14. **Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Resolution,
  15. **Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle",
  16. **Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale,
  17. **New Construction:** For floodplain management purposes, "new construction" shall mean structures for which the "start of construction" commenced on or after the effective date of these floodplain management regulations adopted by the County and shall include any subsequent improvements to such structures,
  18. **New Manufactured Home Park or Subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the placement of pads) is completed on or after the effective date of these floodplain management regulations,

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19. **100 Year Flood:** The condition of flooding having a one (1) percent chance or annual occurrence,
  20. **Principally Above Ground:** At least fifty-one (51) percent of the actual cash value of the structure is above ground,
  21. **Recreational Vehicle:** A vehicle which; 1) is built on a single chassis, 2) contains four hundred (400) square feet or less when measured at the largest horizontal projection, 3) is designed to be self-propelled or permanently towable by a light duty truck, and 4) is designed primarily not for use as a permanent dwelling, but as a temporary living quarters for recreational, camping, travel, or seasonal use,
  22. **Regulatory Flood Elevation:** The water surface elevation of the 100 year flood,
  23. **Special Flood Hazard Area:** The land in the floodplain with a county subject to a one (1) percent or greater chance of flooding in any given year,
  24. **Start of Construction:** Including substantial improvement and shall mean the date the zoning permit is issued, provided the actual construction, repair, reconstruction, rehabilitation, addition, placement or other improvement occurs within one hundred eighty (180) days of such permit issuance. The actual start means the first placement or permanent construction of a structure on the site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction shall not include land preparation, such as clearing and filling, nor shall it include the installation of streets and/or other walkways, nor shall it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms, nor shall it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building,
  25. **Structure:** A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.
  26. **Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to it before-damage condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.
  27. **Substantial Improvement:** Any reconstruction, rehabilitation, addition, or other improvement of structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before "start of construction" of the improvement. This shall include structures which have incurred "substantial damage" regardless of the actual repair work performed. The term shall not, however, include either 1) any project for improvement of a structure to correct existing violations of state or local health, safety, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or 2) any alteration of a "historic place", provided that the alteration shall not preclude the structure's continued designation as a "historic structure",
  28. **Variance:** A grant of relief to a person from the terms of this floodplain management regulation,
  29. **Violation:** The failure of a structure or other development to be fully compliant with the Valley County's floodplain management regulations.

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**505.03 COUNTY ADMINISTRATION:** The Valley 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 Valley County Board of Supervisors now in force or hereafter adopted, related to zoning and subdivision regulation. 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 Supervisors shall designate an acting administrator to administer these regulations.

**505.04 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 or certificate of zoning compliance shall not be issued except in compliance with these flood hazard regulations. In determining those areas such as 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 and is hereby adopted as an overlay of the Official Zoning Map of Valley County, Nebraska by reference.

**505.05 ZONING PERMITS / CERTIFICATES OF ZONING COMPLIANCE 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 / certificate of zoning compliance for development as defined in this Resolution. Within flood hazard areas, zoning permits / certificates of zoning compliance are required for all new construction, substantial improvements and other developments, including the placement of any farm building or manufactured home.

**505.06 ZONING PERMIT / CERTIFICATE OF ZONING COMPLIANCE APPLICATION:** To obtain a zoning permit / certificate of zoning compliance, the applicant shall first file an application therefore in writing on a form furnished by Valley County. 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 accompanied by a statement that the applicant has applied for and received any other permits required by Federal or State Law or regulation. Where such other permits are required, a copy of such permit(s) shall be attached.
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.

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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.)

**505.07 ZONING PERMIT / CERTIFICATE OF ZONING COMPLIANCE APPLICATIONS REVIEW:** The Zoning Administrator shall review all zoning permit / certificate of zoning compliance applications to determine if the site of the proposed development is reasonably safe from flooding. 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:

1. 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:
  - A. 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.
  - B. 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.
  - C. 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 bouyancy. 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.
  - D. New construction or substantial improvements of any type shall be such that fully enclosed areas below the lowest floor that area 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.
2. Require the use of construction materials that are resistant to flood damage.
3. Require the use of construction methods and practices that will minimize flood damage.

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4. 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.
  5. 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 flooding.
  6. 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:
    - A. 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.
    - B. 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.
    - C. All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.
    - D. Any additions to manufactured homes shall be similarly anchored.
  7. Assure that all manufactured homes that are placed or substantially improved within a flood hazard areas on sites:
    - A. Outside of a manufactured home park or subdivision,
    - B. In a new manufactured home park or subdivision,
    - C. In an expansion to an existing manufactured home park or subdivision, or
    - D. 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 6, immediately above.
  8. 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 D, immediately above, be elevated so that either:
    - A. The lowest floor of the manufactured home is at least one (1) foot above the base flood elevation, or
    - B. 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 6, immediately above.

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9. 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.

**505.08 SUBDIVISION REVIEW:** The Valley County Board of Supervisors 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:

1. All proposed developments are consistent with the need to minimize flood damage.
2. Subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) greater than five (5) acres or fifty (50) lots, whichever is lesser, shall include within such proposals the regulatory flood elevation data when in special flood hazard areas.
3. Adequate drainage is provided so as to reduce exposure to flood hazards.
4. All public utilities and facilities are located so as to minimize or eliminate flood damage.

In its review of such subdivisions, the Board of Supervisors 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.

**505.09 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.

**505.10 STORAGE OF MATERIAL AND EQUIPMENT:** The storage or processing of materials that are, in time of flooding, bouyant, 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.

**505.11 FLOOD CARRYING CAPACITY WITHIN ANY WATERCOURSE:** The Board of Supervisors of Valley County, Nebraska shall ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained. The County Board of Supervisors 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 Supervisors 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.

**505.12 VARIANCE PROCEDURES:** The Valley County Board of Adjustment, as established by the Valley County Board of Supervisors 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 any 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.



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1. VARIANCES FROM FLOOD HAZARD REQUIREMENTS:

- A. 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 A through E 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.
- B. 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
- C. Variances shall only be authorized upon:
- 1) a showing of good and sufficient cause;
  - 2) a determination that failure to authorize a variance would result in exceptional hardship to the applicant;
  - 3) 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.
- D. The applicant shall be given written notice over the signature of the Zoning Administrator that:
- 1). 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
  - 2) 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.
- E. In reviewing any request for a variance to these flood hazard regulations, the Board of Adjustment shall consider all technical data and all relevant factors and standards specified in this Section 505 of the Resolution, including:
- 1) the danger that materials may be swept onto other lands to the injury of others;
  - 2) the danger to life and property due to flooding or erosion damage;
  - 3) the susceptibility of any proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - 4) the importance of services provided by the proposed facility to the County;
  - 5) the necessity to any facility of a waterfront location, where applicable;
  - 6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - 7) the compatibility of the proposed use with existing and anticipated development;

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- 8) the relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
  - 9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - 10) 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
  - 11) 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.

F. CONDITIONS FOR APPROVING VARIANCES FOR AGRICULTURAL STRUCTURES:

- 1) An agricultural structure shall mean any structure used solely for agricultural purposes in connection with the production, harvesting, storage, drying or raising of agricultural commodities, including the raising of livestock and shall include only pole frame buildings which open or closed sides used exclusively for storage of farm machinery or equipment, steel grain bins and steel frame corn cribs, general purpose barns for the temporary feeding of livestock that are open on at least one side and detached garages and storage sheds used solely for parking and limited storage that are no larger than four hundred (400) square feet in floor area.
- 2) A variance may be granted for an agricultural structure constructed at grade and wet-floodproofed provided that a variance from the floodplain management requirements is authorized in accordance with the following requirements and limitations and a certificate of zoning compliance has subsequently been issued:
  - a. The applicant has a good and sufficient cause for requesting a variance;
  - b. The applicant will suffer exceptional hardship should a variance be denied,
  - c. 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.
  - d. The variance is the minimum necessary, considering the flood hazard, to afford relief, and
- 3) A determination is made that the proposed structure is a candidate for wet-proofing as follows:
  - a. The use of the structure must be limited to agricultural purposes only in zones A, A-30, AE, AO or AH of the County's flood insurance rate map (FIRM).
  - b. The agricultural structure must be built or in the case of an existing structure that is substantially damaged, with flood-resistant materials for exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation (BFE) in accordance with 44 CFR 60.3(a) (3) of the NFIP regulations (Refer to Technical Bulletin 2, Flood-Resistant Material Requirements).

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- c. The agricultural structure must be adequately anchored to prevent floatation, collapse or lateral movement in accordance with 44 CFR 60.3(a) (3) of the NFIP regulations. All structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, hydrodynamic and debris impact forces. (Refer to Technical Bulletin 1, Openings in Foundation Walls and Technical Bulletin 3, Non-Residential Floodproofing).
  - d. The agricultural structure must meet the NFIP opening requirement by having enclosure or foundation walls have openings that will permit the automatic entry and exit of floodwaters in accordance with CFR 60.3(c) (5). (Refer to Technical Bulletin 1, Openings in Foundation Walls).
  - e. Any mechanical, electrical or other utility equipment must be located above the base flood elevation or be floodproofed so that such equipment is contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions.
  - f. The agricultural structure shall not be located in designated floodway.
  - g. Major equipment, machinery or other contents must be protected. Such protection may include a determination that the applicant shall have sufficient warning of flooding conditions to provide time to relocate any such equipment or the elevation of such equipment on hoists, pedestals or shelves.
- 4) If a determination is made that the proposed structure meets the wet-proofing requirements set forth in Items "a" through "g" immediately above, a variance granted for an agricultural structure shall be decided individually, based on a case by case analysis of the building's unique circumstances. In order to minimize flood damages during a 100 year flood and the threat to public health and safety, the following factors shall be considered in deciding any variance issued for agricultural structures that are constructed at grade and wet-floodproofed:
- a. A determination is made that the use fill instead of wet-proofing is not feasible and that such filling would not increase flood hazard elevations.
  - b. The agricultural structure is the minimum size necessary for the use proposed.
  - c. All agricultural structures considered for a variance from these floodplain management regulations shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternative location outside of the flood hazard areas exists for such structure.
- 5) The County shall notify the applicant in writing over the signature of the Zoning Administrator that 1) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance and 2) such construction below the base flood level increases risk to life and property. Further, the County shall notify the applicant that no disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structure(s). Such notifications shall be maintained with the record of all variance actions as required by this Resolution.

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**505.13 NON-CONFORMING USES**

In accordance with Article 7 of this Resolution, a building or structure, use of a building or structure or premises which was lawful before the passage or amendment of this Resolution, but which is not in conformity with the provisions of this Resolution, may be continued subject to the following limitations and conditions:

1. In accordance with Section 707, Paragraph 6 of this Resolution, if the use of a non-conforming building, structure or premises is discontinued for 12 consecutive months, any future use of the building, structure or premises shall conform to the requirements of this Section 505.
2. Regardless of the regulations set forth in Section 707, Subsection 7 of this Resolution, if any nonconforming building or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost of reconstruction is more than fifty percent (50%) of the market value of the building or structure before damage occurred, unless such building or structure is reconstructed in conformity with the provisions of this Resolution. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building or other safety codes or regulations or the cost of any alteration of the building or structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**505.14 INTERPRETATION:** In their interpretation and application, the flood hazard provisions of this 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.

**505.15 PENALTIES FOR VIOLATION:** The penalties for violation of these flood hazard regulations shall be the same as set forth in Section 1202 of this Resolution.

**505.16 ABROGATION AND GREATER RESTRICTION:** It is not intended by these flood hazard regulations to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations impose greater restrictions, the restrictions of these regulations shall prevail. All other resolutions inconsistent with these regulations are hereby repealed to the extent of the inconsistency only.

**505.17 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. The Resolution does not imply that areas outside floodplain district boundaries or land uses permitted within such districts will be free from flooding or flood damage. This Resolution shall not create any liability on the part of Valley 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.

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## 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, private roadways and access easements as set forth in the district regulations. An open space abutting a roadway shall be deemed a front setback for purposes of determining setback depth requirements. Setbacks equal to or exceeding the minimum setback requirements of each district shall be provided with the following qualifications:

1. Any setback so placed or oriented that none of the specific setback definitions contained in this Resolution are applicable shall necessitate a determination by the Zoning Administrator of a suitable setback dimension which will be consistent with the intent of the setback requirements within the applicable zoning district.
2. No structure shall project into a required front, side or rear setback. All parts of a structure shall be in compliance with the required setbacks including any eave, cornice, overhang, awning, balcony, or bay window, projection of belt courses, sills, lintels, chimneys and other similar ornamental or architectural features, but excluding unenclosed, uncovered steps, entrance platforms, ramps, terraces or landings which are at or below grade level.

**SECTION 603 SETBACK EXCEPTIONS:** Such appurtenant features as sidewalks, walkways, driveways, curbs, at grade patios, drainage and erosion control installations, mail boxes, lamp posts, bird baths, and similar installations are permitted accessory uses on any lot.

**SECTION 604 FENCES AND WALLS:** Nothing in this Resolution shall be deemed to prohibit the erection and maintenance of any fence in connection with agricultural uses or any retaining wall in association with any use in any zoning district and any ornamental fence, wall or structural screen fence shall be permitted in any yard. Nothing in this Resolution shall be deemed to prohibit the installation of living screens consisting of trees, shrubs or other plant material.

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

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

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

1. Any accessory use shall be incidental to, subordinate to and commonly associated with the primary use of the lot.
2. Any accessory use shall be operated and maintained under the same ownership and control and on the same lot as the primary use of the lot.

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**SECTION 608 HOME OCCUPATIONS AND RESIDENCE BASED BUSINESSES**

A home occupation or residence based business may be permitted in a residential building only after the issuance of an zoning permit by the Zoning Administrator and such permit shall be issued only if the home occupation or home based business complies in all respects to the requirements of this Section.

1. A home occupation or residence based business shall be of a personal, professional service or business nature and such home occupations or residence based business shall not change the residential character of the premises or the structures thereon or interfere with the residential use of neighboring residential uses. No provision for additional off-street parking or loading facilities other than those which would normally be accessory to the residential use shall be permitted.
2. The owner / operator of the home occupation or home based business shall not employ more than two (2) employees other than members of the immediate family of the owner / operator.
3. No exterior alteration which would change the residential appearance of the residential dwelling structure or any accessory building shall be permitted.
4. A home occupation or residence based business may be conducted in an accessory building, provided such building is clearly a building that is accessory to the residential use.
5. No additional or separate entrance which is inconsistent with the use of the residential dwelling structure shall be constructed solely for the purpose of conducting such home occupation or residence based business.
6. No exterior display of goods or other exterior evidence of the home occupation or residence based business shall be permitted, except for one (1) non-animated, non-illuminated, non-flashing sign which identifies the occupation business. Said sign shall not exceed a total of sixteen (16) square feet in area and shall be attached flat against a wall of the residential dwelling structure or accessory structure in which the occupation or business is conducted or such sign may be a free-standing sign located in the front yard, provided such sign does not exceed sixteen (16) square feet in area and is not taller than forty-two inches to its highest point. No temporary or movable signs of any type shall be used in conjunction with any such occupation or business.
7. No equipment of process shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference detectable off the premises of such home occupation or home based business.

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

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

1. The closest point of any irrigation well, well house, fuel tank or pivot pad shall be located at least ten (10) feet to any road right-of-way line, except:
  - A. At the intersection of any public roadways, the closest points of any such irrigation wells or pivot pads shall be located at least ten (10) feet from any road right-of-way line, provided that any related well houses or fuel tanks and shall be located at least twenty (20) feet from any road right-of-way line.

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

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

612.01 **SMALL WIND ENERGY SYSTEMS – INTENT OF REGULATIONS:** It is the intent of this regulation to promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of utility supplied electricity.

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

1. **SMALL WIND ENERGY SYSTEM:** A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of not more than one hundred (100) kW and which is intended to primarily reduce on-site consumption of utility supplied power.
2. **TOWER HEIGHT:** The height above grade of the tower, excluding the rotor blades.

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

1. **Tower Height:** For property sizes less than one (1) acre the maximum tower height shall be eighty (80) feet. For property sizes greater than one (1) acre the maximum tower height shall be unrestricted, except as imposed by the limitations set forth in the Section 506 of this Resolution.
2. **Setbacks:** No wind generation tower shall be located closer to a neighboring residential dwelling not on the same premises as the tower than a distance equal to the height of the tower. No part of the wind energy system structure, including guy-wire anchors, may extend closer than five (5) feet to the property lines of the installation site.
3. **Noise:** Any noise produced by small wind energy systems shall not exceed sixty (60) dBA, as measured at the closest inhabited residential dwelling not on the same premises as the small wind energy system. The noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
4. **Compliance with Codes:** All applications for small wind energy systems shall include standard drawings of the wind turbine structure, including the tower base and footings, as well as an engineering analysis of the tower showing compliance with state and any other applicable building codes of the local governing body having jurisdiction, certified by a professional engineer licensed and certified in the State of Nebraska. Such certification of code compliance may be supplied by the manufacturer.
5. **Compliance with airport hazard restrictions set forth in Section 504 of this Resolution.** Small wind energy systems shall comply with all applicable FAA regulations, including any necessary approvals for installations near any airport.
6. **Compliance with Electrical Codes:** All applications for a small wind energy system shall include a line drawing of the electrical components in sufficient detail to allow for determination of compliance with any electrical codes of the local governing body having jurisdiction and /or the National Electrical Code. Such certification of compliance may be supplied by the manufacturer.

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- 612.04 COMMERCIAL / UTILITY GRADE WIND ENERGY SYSTEMS: It is the intent of this regulation to promote the safe, effective and efficient use of commercial / utility grade wind energy systems within Valley County, Nebraska.
- 612.05 DEFINITIONS: The following are defined for the specific application in this Section:
1. AGGREGATE PROJECT: A project or projects that is / are developed and operated in a coordinated fashion, but which have multiple entities separately owning one (1) or more of the individual wind energy conversion system (WECS) within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregate project.
  2. COMMERCIAL WIND ENERGY CONVERSION SYSTEM: A wind energy conversion system of equal to or greater than one-hundred (100) kW in total name plate generating capacity.
  3. FALL ZONE: The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of structural failure. This area is less than the total height of the tower.
  4. FEEDER LINE: Any power line that carries electrical power from one (1) or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the project distribution system, in the case of interconnection with the high voltage transmission systems, the point of interconnection shall be the substation serving the wind energy conversion system.
  5. METEOROLOGICAL TOWER: A tower which is erected primarily to measure wind speed and direction plus other data relevant to siting a wind energy conversion system. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads or other applications to monitor weather conditions.
  6. PUBLIC CONSERVATION LANDS: Land owned in fee title by State or Federal Government agencies and managed specifically for conservation purposes, including but not limited to wildlife management areas, parks, wildlife refuges and waterfowl production areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations and private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.
  7. ROTOR DIAMETER: The diameter of the circle described by the moving rotor blades.
  8. SUBSTATION: Any electrical facility to convert electricity produced by wind turbines to a voltage greater than thirty-five thousand volts (35kV) for interconnection with high voltage transmission lines.
  9. TOTAL HEIGHT: The highest point, above ground level, reached by a rotor tip or any other part of the wind energy conversion system.
  10. TOWER: The vertical structure that support the electrical, rotor blades or meteorological equipment.
  11. TOWER HEIGHT: The total height of the wind energy conservation system exclusive of the rotor blades.
  12. TRANSMISSION LINE: The electrical power lines that carry voltages of at least sixty-nine thousand volts (69kV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supply electrical energy to retail customers.



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

14. WIND TURBINE: Any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

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

1. The name(s) , address(es) and telephone number(s) of the project applicant(s)
2. The name, address and telephone number of the project owner
3. The legal description and address of the project
4. A description of the project, including the number, type, name plate generating capacity, tower height, rotor diameter and total height of all wind turbines and means of interconnecting with the feeder lines.
5. Site layout including the location of property lines, wind turbines, electrical grid and all related accessory structures drawn to scale and indicating distances.
6. Certification by an Engineer competent in disciplines of wind energy conversion systems
7. Documentation of land ownership or legal control of the property included in the application
8. The latitude and longitude of individual wind turbines and an area or zone in close proximity indicating compliance with setback requirements.
9. A United States Geological Survey (USGS) topographical map or map with similar data, of the property and surrounding area, including any wind energy conversion system not owned by the applicant within ten (10) rotor distances of the proposed wind energy conversion system.
10. A scaled map indicating the locations of any wetlands, scenic and natural areas (including bluffs) within one thousand three hundred twenty feet (1,320') of the boundaries of the proposed wind energy conversion system.
11. An acoustical analysis that certifies that the noise limitations of the regulations will be complied with.
12. Written evidence that there will be no interference with any commercial and / or public communication towers or systems.
13. A written decommissioning plan meeting the requirements of this regulation.

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

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

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

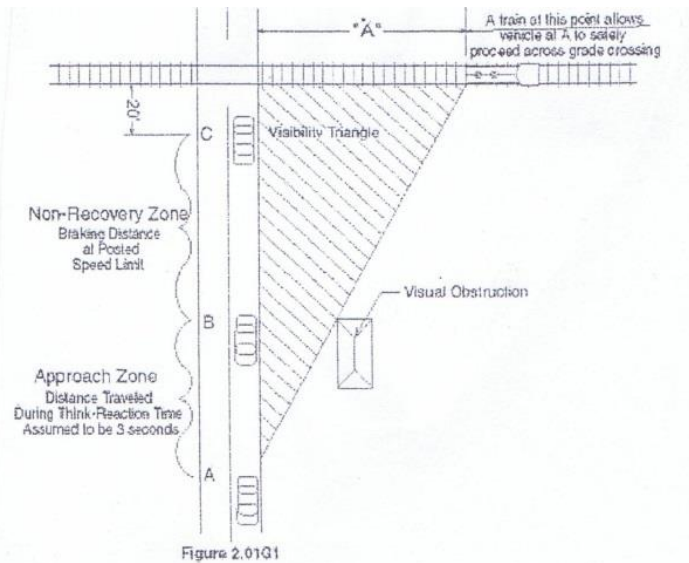
\* The setback shall be measured from any future rights-of-way, if planned change or expanded right-of-way is known.

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

- A. Clearance of rotor blades or airfoils must maintain a minimum of twelve (12) feet of clearance between the lowest point and the ground.
- B. All commercial / utility grade WECS shall have a sign or signs posted on each tower, transformer and substation warning of high voltage. Other signs shall be posted on the premises with emergency contact information.
- C. All wind turbines which are part of a commercial / utility WECS shall be installed with a tubular, monopole type tower.
- D. All wind turbines and towers that are part of a commercial / utility WECS shall be white, grey or another non-obtrusive color. Rotor blades or airfoils may be black to facilitate deicing. All finishes shall be matte or non-reflective.
- E. Lighting, including intensity and frequency of strobe, shall adhere to, but not exceed requirements established by the FAA permits and regulations. Red lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds.
- F. All communications and feeder lines associated with a commercial / utility WECS shall be buried. Where obstacles to buried lines create a need to go above ground, such lines shall be placed above ground only to avoid the obstacle. All distribution and / or transmission lines outside of the project distribution system may be above ground.
- G. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as oil and lubricants, shall be removed from the project site and disposed of in accordance with all applicable local, state and federal regulations.

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- H. A WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Valley County Board of Supervisors outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to four (4) feet below ground level within one hundred eighty (180) days of discontinuation of use, provided that the County Board of Supervisors may grant an extension of time if proof of weather related delays is presented and accepted.
  - I. Each commercial / utility WECS shall prepare a decommissioning plan outlining the anticipated means and costs of removing the WECS at the end of their serviceable life or upon being a discontinued use. The cost estimates shall be made by a professional engineer or contractor capable of decommissioning or a person with suitable expertise or experience with decommissioning such uses. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.
  - J. No commercial / utility WECS shall exceed a noise level exceeding fifty (50) dBA at the nearest structure or use occupied by human beings.
  - K. The WECS shall minimize or mitigate interference with electromagnetic communications such as radio, telephone, microwaves or television signals caused by an WECS. The project owner shall notify all communication tower owners / operators within five (5) miles of the proposed WECS location upon application for a conditional use.
  - L. The applicant shall, in coordination with representatives from Valley County and other appropriate jurisdictions, conduct a pre-construction survey of road and bridge conditions which shall include photographs and written agreement documenting the condition of the public roads, to determine all county, township or municipal roads or streets to be used for the purposes of transporting WECS, substation parts, concrete and /or equipment for construction, operation and maintenance of the WECS and to determine all applicable weight and size permits from the impacted jurisdictions prior to construction. The owner of the WECS shall be responsible for restoring the roads, streets and bridges to pre-construction conditions.
  - M. The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation and maintenance of the WECS.
  - N. The applicant shall submit evidence that any applicable permit application has been filed with the Federal Aviation Administration and the Federal Communications Commission where applicable.

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



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

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

**SECTION 614 TOWERS**

The Communications Act of 1934, as amended by the Telecommunications Act of 1996 prohibits local governments from prohibiting or tending to prohibit any person from providing wireless telecommunications service. In compliance with this Act, erected telecommunications towers and other erected towers in excess of forty (40) feet in height shall be approved as conditional uses in the zoning districts in which said towers are allowable, provided such towers comply with or exceed the following minimum requirements:

- 614.01** The applicant proposing to construct any such tower shall submit an affidavit attesting to the fact that the applicant has made diligent, but unsuccessful efforts to obtain permission to share or co-locate the applicant's telecommunications facilities on a tower or usable antenna support or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or co-located on an existing tower or usable antenna support structure.
- 614.02** Any tower shall be set back from the right-of-way line of any public roadway or from the nearest wall of any neighboring church, school, or residential dwelling by a distance equal to or exceeding the height of the tower.

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- 614.03** The base of any tower shall be enclosed within a security fence or wall to preclude unauthorized access to the tower.
- 614.04** A condition of conditional use authorization of any tower shall be that the applicant shall agree to allow sharing or co-location by other telecommunications entities whenever possible.
- 614.05** Any tower shall not be artificially lighted, except as required by the Federal Aviation Administration. In cases where lighting is required such tower shall be equipped with dual mode lighting.

**SECTION 615 CONSERVATION / PRESERVATION EASEMENTS:** In accordance with Nebraska Revised Statute 76-2111 a conservation easement shall mean a right, covenant or condition of any deed, will, agreement or other instrument executed by or on behalf of the owner of an interest in real property imposing a limitation upon the rights of the owner or an affirmative obligation upon the owner appropriate to the purpose of retaining or protecting the property in its natural, scenic or open condition, assuring its availability for agricultural, horticultural, forest, recreational, wildlife habitat or open space, protecting air or other natural resources or for such other conservation purpose as may qualify as a charitable contribution under the Internal Revenue Code.

**615.01 COUNTY APPROVAL REQUIRED:** In accordance with Nebraska Revised Statutes §76-2112 in order to minimize conflicts with land use planning, each conservation / preservation easement shall be approved by the County Board of Commissioners. The County Board of Commissioners shall first refer the proposed easement to the County Planning Commission which shall, within sixty (60) days of the referral, provide comments regarding the conformity of the proposed easement to the Valley County, Nebraska Comprehensive Plan. If such comments are not received within said sixty (60) days, the proposed easement shall be deemed approved by the Planning Commission.

**615.02 APPLICATION FOR APPROVAL:** The owner or agent of the owner of real property on which a conservation / preservation easement is proposed shall submit a copy of the proposed easement to the Zoning Administrator for referral to the Planning Commission and County Board of Commissioners. Said application shall be without an application fee. The Zoning Administrator shall request a meeting of the Planning Commission and shall place consideration of the proposed easement as an agenda item.

**615.03 PLANNING COMMISSION CONSIDERATION :** In accordance with Nebraska Revised Statutes §76-2112, the Planning Commission shall review the proposed easement for consistency with the Valley County, Nebraska Comprehensive Plan of current adoption, and specifically review the proposed easement for compliance with the definition of such easements as set forth in Section 612 above and for consistency with the Future Land Use Plan set out in such Comprehensive Plan. If such proposed easement complies with said definition and the Comprehensive Plan, a recommendation of approval shall be forwarded to the County Board of Commissioners, provided that a recommendation of denial of such proposed easement may be forwarded if:

- A. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with the Comprehensive Plan, or
- B. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with any national, state, regional or local program furthering conservation or preservation, or
- B. The proposed easement is found to be not in the public interest because the proposed easement is inconsistent with any known proposal by a governmental body for use of the land on which the easement is proposed.

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**615.04 COUNTY BOARD OF COMMISSIONERS CONSIDERATION:** After receiving a recommendation with regard to any proposed conservation / preservation easement, the County Board of Commissioners shall review the recommendation of the Planning Commission and shall approve or deny such easement based upon the same factors set forth in Section 615.03 above. The County Board shall provide written notification to the application regarding the Board's decision on the proposed easement within ten (10) calendar days of the decision of the Board.

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## ARTICLE 7      NON-CONFORMING USES

**SECTION 701      INTENT:** Within the zoning districts established by this Resolution or future amendments to such districts, there exist 1) lots, 2) buildings or structures, 3) uses of land and buildings or structures, and 4) characteristics of use which were lawful prior to the adoption or future amendment of this Resolution, but which would be prohibited, regulated or restricted under the terms of this Resolution or future amendment. It is the intent of this Resolution to permit these non-conformities to continue until they are discontinued, but not to encourage their survival. It is further the intent of this Resolution that, with the exception of existing residential structures, non-conformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other buildings, structures or uses prohibited in the zoning district in which such non-conformities are located, except as specifically authorized in this Resolution.

**SECTION 702      LIMITATIONS ON EXPANSION:** Non-conforming buildings, structures and uses are declared by this Resolution to be incompatible with the intent of the zoning districts and the permitted uses in the zoning districts. A non-conforming use of a building or structure, a non-conforming use of land, or a non-conforming use of a building or structure and land in combination, except existing residential structures, shall not be extended or enlarged after adoption of this Resolution or amendment thereto, except as specifically authorized in this Resolution.

**SECTION 703      HARDSHIP:** To avoid any undue hardship, nothing in this Resolution shall be deemed to require a change in the plans, construction or designated use of any building or structure for which actual construction has been lawfully initiated in good faith prior to the effective date of the Resolution or amendment thereto where actual construction activity has been carried on diligently. Actual construction is defined to be the placing of substantial construction materials, other than earth, in a permanent position and fastened in a permanent manner. "Carried on diligently" shall be defined to mean that construction has been on-going except through the winter months, defined as being November 1 through April 1 of the following year.

**SECTION 704      EXCEPTIONS:** Notwithstanding other requirements of this Section, a lawfully established residential use rendered non-conforming by adoption of this Resolution or amendment thereto, may be enlarged, altered, or reconstructed, subject to the following restrictions:

**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** 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 Section 501.04 of 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** 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 Section 501.04 of this Resolution from any confined or intensive animal feeding use or waste handling facility.

Further, in accordance with Section 501.04, Subsections 8, 9 and 10 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 said Sections of this Resolution.

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

**SECTION 705** **NON-CONFORMING LOTS OF RECORD:** In any zoning district, primary and customary accessory buildings of the type permitted in each zoning district may be erected on any single lot of record after the effective date of this Resolution or amendment thereto notwithstanding limitations imposed by this Resolution or amendment thereto, subject to the following conditions:

1. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are applicable to the zoning district in which such lot is located, provided that erection of any building or structure shall comply with all setback (yard) requirements of the zoning district in which said lot is located. Variance of said minimum setback requirements shall be obtained only through action of the Board of Adjustment.
2. If two (2) or more lots or combination of lots and portions of lots with continuous frontage in the same ownership are of record on the effective date of this Resolution or amendment thereto and if all or part of the lots do not meet the requirements established for lot width and area, the land involved shall be considered to be an undivided parcel for the purposes of this Resolution and no portion of said parcel shall be used or sold in any manner which diminishes compliance with the minimum lot width and area requirements of the zoning district in which said parcel is located nor shall any division of any parcel be made which creates a lot with width or area which is less than the requirements set forth in the zoning district in which said parcel is located.
3. Where a lawfully established lot, tract or parcel, less than twenty (20) acres in area, was in existence and under separate ownership as of the effective date of this Resolution and the entirety of such lot, tract or parcel lies within the minimum separation distances set forth in this Resolution for any confined or intensive animal feeding use or associated waste handling facility, a residential use may be established on said lot, tract or parcel.
4. Where a lawfully established lot, tract or parcel, less than twenty (20) acres in area, was in existence and under separate ownership as of the effective date of this Resolution and a portion of such lot, tract or parcel lies within the minimum separation distances set forth in this Resolution for any confined or intensive animal feeding use or associated waste handling facility, a residential use may be established on said lot, tract or parcel, provided such residential use is located on that portion of said lot, tract or parcel which is beyond the minimum separation distances specified in this Resolution from any such confined or intensive animal feeding use or associated waste handling facility.

**SECTION 706** **NON-CONFORMING USE OF LAND:** Where on the effective date of this Resolution or amendment thereto, a lawful use of land exists which would not be permitted under the requirements of this Resolution or amendment thereto and where such use involves no buildings or structures with a replacement cost exceeding two hundred fifty dollars (\$250), the use may be continued so long as it remains otherwise lawful in accordance with the following conditions:

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



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2. No additional building or structure not conforming to the use restrictions and other regulations of the Resolution or amendment thereto shall be erected in connection with such non-conforming use.
  3. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel of land on which it is located that has not been used in connection with such non-conforming use.
  4. No such non-conforming use shall be enlarged or expanded to occupy a greater area of the lot or parcel of land on which it is located than was used in association with such use on the effective date of this Resolution or amendment thereto.

**SECTION 707 NON-CONFORMING USE OF BUILDINGS / STRUCTURES AND LAND IN COMBINATION:** If a lawful use involving individual buildings or structures and land in combinations, exists at the effective date of this Resolution or amendment thereto that would not be permitted in the zoning district in which said non-conforming use of building or structures and land in combination is located, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. With the exceptions set forth in Section 704 of this Resolution and Paragraph 7 below, no existing building or structure devoted to a use not permitted in the zoning district in which it is located shall be enlarged, extended, constructed, moved or structurally altered, except in changing the use to a use permitted in the zoning district as an allowable use, a permitted use, an accessory use or a conditional use.
2. With the exceptions set forth in Section 704 of this Resolution, any non-conforming use may be extended throughout any parts of a building or structure which were arranged or designed for such use as of the effective date of this Resolution or amendment thereto, but no such use shall be extended to occupy any land outside such building or structure which was not in use as of the effective date of this Resolution or amendment thereto.
3. If no structural alterations are made, any non-conforming use of a building or structure and land in combination, may through authorization of a conditional use in accordance with the procedures and requirements of this Resolution, be changed to another non-conforming use provided that the County Board of Supervisors, in authorizing said conditional use, shall find that the proposed use is equally appropriate or more appropriate to the intent of the zoning district than is the existing use. In authorizing such conditional use, the Board of Supervisors may set conditions for such proposed use to assure that such use will remain appropriate for location in the zoning district.
4. Any building or structure or building or structure and land in combination in or on which a non-conforming use is superseded by a permitted use shall thereafter conform to the requirements of this Resolution and the non-conforming use shall not thereafter be resumed.
5. Lawfully existing confined or intensive animal feeding uses and associated waste handling facility uses rendered non-conforming by these regulations may be expanded, but only in accordance with all restrictions set forth in Sections 501.04, Subsections 8, 9 and 10 of this Resolution.
6. When a non-conforming use of a building or structure or building or structure and land in combination is voluntarily discontinued or abandoned for twelve (12) consecutive months, except when governmental action impedes access to the premises, the building(s), structure(s) and land shall not thereafter be used for any use that is not in compliance with this Resolution or amendment thereto. In the event a confined or intensive animal feeding use and associated waste handling facility use, as defined in this Resolution, is discontinued or abandoned for a period of twelve (12) consecutive months, such use may be re-established within the confines of the area in which the previous feeding operation was conducted, but such use shall be

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considered permanently abandoned and shall not be re-established if its use is discontinued for a period of thirty six (36) consecutive months or longer.

7. Except for the limitations set forth in Sections 503.07, 503.08, 504.06, 505.13 of this Resolution, where non-conforming use status applies to a building(s) or structure(s), such building(s) or structure(s) and land in combination, if all or part of any such building(s) or structure(s) are involuntarily removed or destroyed through fire, tornado, earthquake or other event, such building(s) or structure(s) and the may be reconstructed and the use which existed in such building(s) or structure(s) at the time of such involuntary removal or destruction may be re-established, even though such building(s) or structure(s) or the use thereof is non-conforming with the requirements of this Resolution, provided that such re-establishment shall not involve any expansion of such building(s) or structure(s) or expansion of change of use, except to a use that would be in compliance with the requirements of this Resolution. Zoning permits shall be required for reconstruction of any non-farm building, as defined in Section 303.65 of this Resolution. Certificates of Zoning Compliance shall be required for reconstruction of any farm building, as defined in Section 303.35 of this Resolution.

**SECTION 708 REPAIRS AND MAINTENANCE:** Maintenance and ordinary repairs, replacement of walls or members, fixtures, heating and cooling equipment, wiring or plumbing within any non-conforming building or structure may be performed notwithstanding any other requirements of this Resolution or amendment thereto. Such repairs and maintenance shall not require any zoning permit.

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

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## ARTICLE 8 ADMINISTRATION AND ENFORCEMENT

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

**SECTION 802 AUTHORITIES:**

**802.01 Planning Commission:**

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

1. Hear and recommend action to the Board of Supervisors regarding all applications for amendments to the text of this Resolution and / or changes (rezoning) to the Valley County Official Zoning Map.
2. Hear and recommend action to the Board of Supervisors regarding all applications for conditional uses, as set forth in this Resolution.
3. Prescribe uniform rules of procedure pertaining to applications, public hearings and issuance of permits.
4. Periodically review the effectiveness of this Resolution and initiate amendments or make recommendations in conjunction therewith.
5. Invoke any authorized remedy for the enforcement of this Resolution.

**802.02 Board of Adjustment:**

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

1. Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator when such order, requirement, decision, or determination is appealed by the person(s) affected by such order, requirement, decision or determination.
2. Hear and authorize specific appeals at variance with the requirements of this Resolution that would not be contrary to the public interest, where owing to special conditions demonstrated and after written findings of legitimate hardship, as defined and specified in Section 907, Paragraph 3, Subparagraph A of this Resolution, a literal enforcement of the provisions of this Resolution would result in a legitimate and unnecessary hardship and not merely an inconvenience.
3. Hear and decide appeals regarding interpretation of zoning district boundaries, as indicated on the Official Zoning Map, in accordance with the requirements and limitations of this Resolution.
4. Prescribe uniform rules of procedure pertaining to investigations, findings of fact, applications, appeals and public hearings.

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

**802.03 Board of Supervisors:**

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

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

**802.04 Zoning Administrator:**

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

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

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

1. It is the intent of this Resolution that all questions of interpretation and enforcement regarding this Resolution shall first be presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from a decision of the Zoning Administrator and that recourse from the decisions of the Board of Adjustment shall be to the courts, as prescribed by law.
2. It is further the intent of this Resolution that the duties of the Board of Supervisors relative to this Resolution shall be limited to those specified in Section 802.03 of this Resolution and shall not include the hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this Resolution.
3. If the Zoning Administrator shall find that any of the provisions of this Resolution are being violated, he / she shall notify the person(s) responsible for such violation in writing, indicating the nature of the violation and ordering the action or actions necessary to correct and eliminate such violation. The Zoning Administrator shall have the full authority to order discontinuance of prohibited or unauthorized uses of land, buildings or structures, removal of prohibited or unauthorized buildings or structures or prohibited or unauthorized additions thereto, discontinuance of any work being done in violation of the requirements of the Resolution, and the taking of any other legal action necessary to ensure compliance with or prevent violation of the provisions of this Resolution.
4. The Zoning Administrator, operating through the County or other designated Attorney, shall have express authority to initiate and carry out any and all legal actions appropriate and necessary to enforce the provisions of this Resolution and any orders of the Board of Adjustment, without further authorization by the Board of Supervisors. Adoption of this provision by the Valley County Board of Supervisors is expressly intended to authorize the Zoning Administrator and County or other designated Attorney to initiate and carry out all legal actions appropriate and necessary to enforce the provisions of this Resolution that is or may be applicable under the laws of the State of Nebraska.

**SECTION 804**    **ZONING PERMITS REQUIRED:** No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, enlarged, moved or structurally altered without a zoning permit / certificate of zoning compliance first being issued by the Zoning Administrator, provided:

1. Non-residential farm buildings, as defined in Section 303.44 of this Resolution, shall be subject to the requirements of this Resolution, but shall be exempt from the zoning permit requirements of this Resolution, but shall require issuance of a certificate of zoning compliance;
2. Any farm building containing a use other than an agricultural use, as defined in Section 303.13 of this Resolution, shall be considered a non-farm building and shall be subject to the zoning permit requirements of this Resolution;
3. Any farm building located on a lot, tract or parcel of land, which does not qualify as a farm, as defined in Section 303.43 of this Resolution, shall be considered a non-farm building and shall be subject to all applicable requirements of this Resolution, including zoning permit requirements, and;
4. Any waste handling facility, as defined in Section 303.110 of this Resolution, which may be associated with a farm building shall be considered a non-farm structure use and shall be subject to all applicable requirements of this Resolution, including requiring a zoning permit.

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5. Public entities and political subdivisions shall not be required to obtain zoning permits for the construction, repair, and/or erection of road signs, bridges, culverts and any other structures upon and within public rights-of-way or easements of record.
  6. No zoning permit or certificate of zoning compliance shall be issued by the Zoning Administrator except in conformity with all provisions of this Resolution unless the Zoning Administrator shall receive written authorization from the Board of Adjustment in the form of an administrative appeal, or receive written authorization from the Board of Adjustment in the form of an approved variance or a written authorization from the Board of Supervisors in the form of an approved conditional use, as provided for in this Resolution.

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

1. All applications for a zoning permit shall be made on forms prescribed for such application by the Board of Supervisors. Such forms shall have incorporated a place for drawing of a plot plan showing the actual dimensions and shape of the lot to be built upon, the sizes and locations of all existing and proposed parking areas, water supply and sewage disposal facility locations, and such other information as may be pertinent to said application.
2. The application shall include, the name(s), address(es) and telephone number(s) of the applicant and such other information as may be lawfully required by the Zoning Administrator, including existing and proposed uses of land, buildings and structures, existing or proposed building or structure alterations, the number of families, housekeeping units on the premises, conditions existing on the premises, provisions for water supply, sewage disposal and erosion control, soil conditions and permeability and such other information as may be necessary to determine conformance with the requirements of the Resolution and enforcement thereof.
3. Upon receipt of a complete zoning permit application and receipt of any applicable application fee, the Zoning Administrator shall make two (2) copies of the zoning permit application and return one (1) copy to the applicant after he / she has marked the copy of the permit as approved or disapproved and attested to same by his / her dated signature. If a zoning permit application is denied, the Zoning Administrator shall state the reason(s) for such denial in writing and attach the same to the applicant's copy of the application. The Zoning Administrator shall mark the original of the zoning permit application as approved or disapproved in the same manner as the copy and shall maintain said original together with written reason(s) for denial of said application in the permanent files of the County.
4. When the Zoning Administrator approves a zoning permit for erection of any building or structure or erection of any addition to or alteration thereof, he / she shall issue one (1) copy of such approved zoning permit to the Valley County Assessor.
5. Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such plot plan and permit and no other use, arrangement or construction. If the Zoning Administrator determines that the use, arrangement or construction developed under any approved permit is not proceeding according to the approved permit and applicable regulations or conditions, the Zoning Administrator shall revoke said permit and issue a written stop work order and require that such use, arrangement or construction be brought into conformance with the approved permit.

**SECTION 806 LIMITATIONS ON ISSUANCE OF ZONING PERMITS:** The following limitations shall apply to the issuance of all applicable zoning permits:

1. Regardless of any other provisions of this Resolution, in the event a conditional use application has been duly filed with the zoning administrator and the use and/or location of

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

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

**SECTION 807 EXPIRATION OF ZONING PERMITS:** If the work described in any approved zoning permit has not been initiated within one (1) year of the date of approval of such permit or if work described in any approved permit has not been completed within two (2) years of the date of approval of such permit, the said permit shall expire and be canceled by the Zoning Administrator and written notice of such cancellation shall be provided to the person(s) affected together with written notice that further work, as described in the canceled permit is prohibited, unless the applicant can qualify for a new zoning permit.

**SECTION 808 CERTIFICATES OF ZONING COMPLIANCE FOR FARM USES AND BUILDINGS:** The following requirements shall apply to the issuance of all certificates of zoning compliance (occupancy permits):

1. It shall be unlawful to use or occupy or permit the construction or use of any farm building or premises or both or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use until a Certificate of Zoning Compliance shall have been applied for and issued therefore by the Zoning Administrator
2. No Certificate of Zoning Compliance shall be issued by the Zoning Administrator except in conformity with all provisions of this Resolution unless the Zoning Administrator shall receive written authorization from the Board of Zoning Adjustment in the form of an administrative appeal review or approved variance or a written authorization from the Board of Supervisors in the form of an approved conditional use, as provided for in this Resolution.
3. Certificates of Zoning Compliance, 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

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Administrator shall not issue a Certificate of Zoning Compliance, but shall instead inform the applicant in writing of the violations and specify the actions necessary to bring such use, arrangement or construction into compliance with the approved zoning permit.

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

**SECTION 809**     **FAILURE TO OBTAIN ZONING PERMIT / CERTIFICATE OF ZONING COMPLIANCE:** Failure to obtain required Zoning Permits and Certificates of Zoning Compliance prior to establishment of a regulated use or initiation of construction of a building, structure, irrigation well, grain bin or any farm building shall result in a LATE FEE being charged to obtain a zoning permit or certificate of zoning compliance as set forth in the schedule of fees as established by the County Board of Supervisors in accordance with Section 13 of this Resolution and failure to obtain a LATE PERMIT OR CERTIFICATE or to comply with the plans and application information under which such permits or certificates were issued shall be a violation of this Resolution and be punishable as provided in Section 1202 if this Resolution.



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## ARTICLE 9 BOARD OF ADJUSTMENT

- SECTION 901 ESTABLISHMENT AND PROCEDURE:** A Board of Adjustment is hereby created and shall be known as the Valley County Board of Adjustment. The Board of Adjustment shall be appointed by the Board of Supervisors and shall consist of five (5) members, plus one (1) additional member designated as an alternate member who shall attend meetings and serve only when one of the regular members is unable to attend for any reason. One (1) member of the Board of Adjustment shall be appointed from the membership of the Valley County Planning Commission by the Board of Supervisors 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 Supervisors. No member of the Board of Supervisors shall be a member of the Board of Adjustment.
- SECTION 902 TERMS OF OFFICE:** The members appointed to the Board of Adjustment shall be appointed for a term of three (3) years and be removable for cause by the Board of Supervisors upon written charges and after public hearing to consider and decide on such charges. Vacancies shall be filled by appointment for the unexpired terms of member whose term becomes vacant.
- SECTION 903 ELECTION OF OFFICERS:** The Board of Adjustment shall annually elect one (1) of its members as Chairperson and another as Vice Chairperson, who shall act as Chairperson in the elected Chairperson's absence. Each member shall serve until a successor has been selected.
- SECTION 904 SECRETARY OF THE BOARD OF ADJUSTMENT:** The Board of Adjustment shall annually elect one (1) of its members as Secretary / Treasurer or shall appoint the Zoning Administrator to serve as Secretary / Treasurer to the Board of Adjustment.
- SECTION 905 RECORDS OF THE BOARD OF ADJUSTMENT:** The Board of Adjustment shall adopt bylaws and rules of procedure in accordance with the provisions of this Resolution necessary to conduct its affairs. Meetings of the Board of Adjustment shall be held at the call of the Chairperson and at such other times as a majority of the Board shall determine. The Chairperson, or in his / her absence, the Vice Chairperson may administer oaths and compel attendance of witnesses. All meetings of the Board of Adjustment shall be open to the public. The Board shall keep written minutes of its proceedings, indicating evidence presented, findings of fact made by the Board, decisions of the Board, the attendance of members, and the vote of each member upon each question. Records of all actions of the Board shall be kept in the office of the County Clerk and/or Zoning Administrator and shall be open to public inspection.
- SECTION 906 QUORUM AND VOTING:** A quorum for the Board of Adjustment shall be three (3) members. Action by the Board on any question other than an appeal from the decision of the Zoning Administrator or a variance application shall require a concurring vote of three (3) members of the Board. **Action by the Board on an appeal to overturn a decision of the Zoning Administrator or for approval or denial of a variance application shall require the concurring vote of four (4) members.**
- SECTION 907 POWERS AND DUTIES:** The Board of Adjustment shall have the following powers and **ONLY** the following powers:
1. **Administrative Review:** To hear and decide appeals where it is alleged by the appellant that there is an error in order, requirement, decision or refusal made by the Zoning Administrator or official based on or made in the enforcement of this Resolution or any regulation relating to the location of structures.
  2. **Zoning Map Interpretation:** To hear and decide, in accordance with the provisions of this Resolution, requests for interpretation of Official Zoning Map of the County.

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3. Variances: To hear applications for and authorize, in specific cases, a variance from the specific terms of this Resolution which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Resolution would result in unnecessary hardship, and provided that the spirit of this Resolution shall be observed, public safety and welfare secured and substantial justice done. A variance shall not be granted by the Board of Adjustment unless and until the Board shall have made written findings that all of the following conditions exist or have been met:
- A. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of adoption of this Resolution, or by reason of exceptional topography conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of particular requirements of this Resolution would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship on the owner of such property, the Board of Adjustment, upon an appeal relating to such property, shall have the power to authorize a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Resolution, but no variance shall be authorized by the Board of Adjustment unless the Board finds that:
    - 1) The strict application of the regulations would produce undue hardship;
    - 2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
    - 3) The authorization of such variance shall not be of substantial detriment to adjacent properties and the character of the district will not be changed by the granting of such variance;
    - 4) The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of the owner's convenience, profit or caprice.
  - B. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this Resolution.
  - C. Requirement for Written Application and Conditions: A variance from the terms of this Resolution shall not be granted by the Board of Adjustment unless and until a written application for a variance is submitted to the Zoning Administrator on an application form prescribed by the Board of Adjustment and payment of an applicable fee and such application shall demonstrate that special conditions and circumstances exist which are peculiar to the land, building or structure involved and that said special conditions and circumstances are not applicable to other lands, building, or structures in the same zoning district and vicinity, that the literal enforcement of the provisions of this Resolution would deprive the applicant, and that granting of the variance requested will not confer on the applicant any special privilege that is denied by this Resolution to other lands, buildings or structures in the same zoning district and vicinity.
  - D. Effect of Non-Conformance: Non-conformance use of lands, buildings or structures in the same zoning district and vicinity and permitted or non-conforming use of lands, buildings or structures in other zoning districts shall not be considered grounds for a determination that the applicant would be deprived of rights enjoyed by other properties and shall not be grounds for granting a variance.

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- E. Findings of the Board of Adjustment on Variances: Prior to taking any action to authorize or deny a variance application, the Board of Adjustment shall:
- 1) Make a finding that the application for a variance is complete and in compliance with the requirements of this Resolution. Such finding shall be recorded in the minutes of the Board;
  - 2) Make findings that the particular reasons set forth in the application for a variance justify the granting of the variance in accordance with the limitations for granting such variance as described in Section 907, Subsection 3, Paragraph A of this Resolution and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structures involved and such findings shall be recorded in the minutes of the Board;
  - 3) Make a finding that the granting of the variance will be in harmony with the purpose and intent of the Resolution and will not be injurious to adjacent lands or otherwise detrimental to the public welfare. Such finding shall be recorded in the minutes of the Board.
- F. Conditions of Approval Imposed: In authorizing any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Resolution to assure continued acceptability of variance. Violations of such conditions or safeguards when made part of written terms under which the variance is authorized shall be deemed a violation of this Resolution and punishable as set forth in Section 1202 of this Resolution and any other applicable laws. In addition, the Board of Adjustment shall attach a condition to any variance authorized by the Board that such authorization shall be acted upon by the applicant within one (1) year from the date of authorization of such variance and that if such authorized variance has not been acted upon by the applicant within this time limitation such authorization shall automatically be revoked.
- G. Use Variances: Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible in the zoning district involved or grant a variance for any use expressly or by implication prohibited by terms of this Resolution in the zoning district involved.

**SECTION 908 PUBLIC HEARING REQUIRED:** Prior to acting on any powers granted to it under this Resolution, the Board of Adjustment shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property effected by the petition or in the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

**SECTION 909 BOARD HAS POWERS OF ADMINISTRATIVE OFFICIAL ON APPEAL:** In exercising the above mentioned powers, the Board of Adjustment may reverse or affirm, wholly or partially, or modify the order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the administrative official from whom the appeal is taken. **The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Resolution or to effect any variance under this Resolution.**

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**SECTION 910 APPEALS OF BOARD OF ADJUSTMENT DECISIONS:** Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board or bureau of the County, may present to the district court for the County a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen (15) days after the filing of the decision in the office of the Board of Adjustment. Upon the filing of such a petition a summons shall be issued and be served upon the Board of Adjustment together with a copy of the petition, and return of service shall be made within four (4) days after the issuance of the summons. Within ten (10) days after the return day of the summons, the County Board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the Board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the State regulating appeals in actions at law.

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## ARTICLE 10      CONDITIONAL USES

**SECTION 1001   GENERAL POWERS:** The Valley County Board of Supervisors may grant conditional uses to property owners for the use of their property in conformance and compliance with the limitations and procedures set forth herein. Granting of a conditional use shall only allow property owners to put their property to a conditional use if such use is listed among those uses specifically identified in the zoning district in which the subject property is located as a conditional use. The power to grant conditional uses shall be the exclusive authority of the Board of Supervisors and the Board of Supervisors has formally adopted and shall comply with the following standards and procedures:

**SECTION 1002   APPLICATION REQUIREMENTS:** A written application and site plan for a conditional use shall be initiated by a property owner or authorized agent of such owner(s) and shall be submitted to the Zoning Administrator on forms prescribed by the Board of Supervisors. Said application shall be signed by the applicant or the applicant’s authorized agent and the applicant shall pay any applicable application fee. Such application shall indicate the Section of this Resolution under which the conditional use is being sought and, at a minimum, shall indicate the following: (*For conditional use applications for wind energy towers and systems, refer to application requirements listed in Section 612 of this Resolution.*)

1. A legal description of the property on which the proposed conditional use is requested, including the specific size and dimension of the area on which the proposed conditional use would be located if less than the total property owned by the applicant;
2. The size and locations of all existing and proposed buildings and structures;
3. A detailed description of the use proposed and the activities involved in such use;
4. The location(s) of access to public roadway(s);
5. The type and locations of easements affecting the property;
6. A description of the provisions made for adequate water supply, sewage disposal, public utilities and erosion control;
7. The extent and location of parking, loading and refuse disposal and collection facilities;
8. The locations of residential dwellings and other non-agricultural land uses within two (2) miles of the property in question;
9. An indication of surface water drainage onto, through and off of the subject property which would occur after development of the proposed conditional use;
10. For industrial uses, confined or intensive animal feeding uses, and waste handling facilities, a description of how the use or uses proposed will address the compatibility issues of traffic generation, noise, odor, dust, radiation or potential air, water or soil pollution or explosion hazards; (*For confined and intensive animal feeding uses and waste handling facilities, refer to requirements in Sections 501.04 and 501.06 of the this Resolution.*)
11. Any areas on the property subject to flooding or considered to be a wetland.

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

**SECTION 1004 PLANNING COMMISSION PUBLIC HEARING NOTICE:** Prior to consideration of a conditional use application by the Planning Commission, the Zoning Administrator shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property affected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

**SECTION 1005 PUBLIC HEARING, CONSIDERATION AND PROCEDURES:** At public hearing, the Planning Commission, shall hear the applicant's petition and all comments by the public in attendance and shall review the conditional use request in accordance with the requirements set forth in Section 1008 of this Resolution. The Planning Commission, after review and research of the application, shall act to recommend approval or disapproval the application, provided that if the Commission recommends approval of such application it shall specify conditions and limitations which it recommends to assure compliance with the requirements set forth in Section 1008 of this Resolution. If the Commission recommends disapproval of an application, it shall state the reason(s) for such disapproval. The recommendations of the Planning Commission, together with recommended conditions of approval or recommended reasons for disapproval shall immediately be forwarded in writing by the Zoning Administrator to the County Board of Supervisors for consideration and the Zoning Administrator shall provide the same written statement to the applicant within seven (7) calendar days of the date of action by the Planning Commission.

**SECTION 1006 COUNTY BOARD OF SUPERVISORS PUBLIC HEARING NOTICE:** Prior to consideration of a conditional use application by the Board of Supervisors, the Zoning Administrator or County Clerk shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property affected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. A copy of such notice shall be mailed to the applicant and, in addition, a copy of said notice shall be mailed by first class mail to all property owners of record who own property adjacent to the property effected by such action at least ten (10) days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

**SECTION 1007 PUBLIC HEARING, CONSIDERATION AND PROCEDURES:** At public hearing, the Board of Supervisors, shall hear the applicant's petition, shall review and consider the recommendations of the Planning Commission and all comments by the public in attendance and shall review the conditional request in accordance with the requirements set forth in Section 1008 of this Resolution. The Board of Supervisors shall act to approve or disapprove the request, provided that if the Board approves such request it shall specify conditions and limitations to assure compliance with the requirements set forth in Section 1008 of this Resolution. Upon approval of a conditional use, notice of the approval, including all conditions of approval shall be mailed to the applicant within seven (7) calendar days of the date of such approval. If the Board disapproves a

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request, it shall state the reason(s) that such use does not comply with one (1) or more of the requirements of this Resolution and shall provide a written statement specifying the reason(s) for the disapproval to the applicant within seven (7) calendar days of the date of such disapproval.

**SECTION 1008 REQUIREMENTS GOVERNING REVIEW AND AUTHORIZATION OF CONDITIONAL USES:** In reviewing any conditional use application, the Planning Commission and Board of Supervisors shall consider all aspects of the proposed use including, at a minimum, those aspects of use listed below to determine the acceptability of the proposed use and its location. At the option of the Planning Commission and/or the Board of Supervisors, the Planning Commission and/or Board of Supervisors may request technical support from any public or private agency or entity in the review of any conditional use application. Such technical support may take any form including, but not limited to technical data and advice, comments or recommendations. In authorizing any conditional use, the Board of Supervisors shall attach specific conditions, requirements or limitations regarding each aspect of use listed below to assure continued acceptability of the conditional use. Such conditions shall be made either by reference to a site plan for the proposed use or by attaching specific written statements. At a minimum, the aspects of acceptability include:

1. Both ingress and egress to the property and conditional use thereon and the existing and proposed buildings and structures thereon is appropriate with particular reference to automobile and truck safety, traffic flow, site distance, roadway and bridge capacities, convenience and access in case of fire or catastrophe;
2. Off-street parking, including spaces for handicapped persons, is adequate for the use proposed and will not create any safety hazards relative to public roadways;
3. Refuse disposal or manure collection and disposal facilities and operations and other service facilities are appropriate relative to location, capacity and safety;
4. Water supply, sewage disposal facilities or manure collection, storage, treatment and land application methods are appropriate relative to size, capacity, topography, soil conditions, water table, flood hazard, location, surface water drainage and, where applicable, are located at least an acceptable distance from the ordinary high water mark of any river, stream or water course to avoid any potential surface water contamination;
5. The number, location, size and use of buildings and structures proposed is appropriate relative to the size of the site and protection of adjoining properties and scenic views.
6. Front, side and rear setbacks meet or exceed the minimum setback requirements of the zoning district in which the conditional use is located.
7. Provisions to avoid development within any area subject to flooding and / or to avoid modification of any wetlands.
8. For proposed commercial and industrial uses, the types of operations to be conducted on the site will not result in inappropriate levels of traffic, noise, dust, odor, or undue potentials for air, or surface or groundwater contamination or explosion hazards.
9. For confined and intensive animal feeding uses and waste handling facilities, the use proposed shall comply with each requirement of Section 501.06, Subsection 1 of this Resolution.
10. For wind energy towers and wind energy conversion systems, the use proposed shall comply with the requirements of Section 612 of this Resolution.

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**SECTION 1009** **CONDITIONS, SAFEGUARDS AND LIMITATIONS OF USE:** In considering any conditional use application, the Board of Supervisors may prescribe any additional conditions or limitations appropriate to assure the compatibility of the conditional use with adjacent lands, the intent of the zoning district in which such use is to be located, and with the purpose of this Resolution, provided that in considering any conditional use for a confined or intensive animal feeding use and associated waste handling facilities, the Board of Supervisors shall only determine if an application for such use meets the requirements and standards of Section 501.06, Subsection 1, Paragraphs A through K and may only prescribe any additional condition or limitation associated with limiting impacts on neighboring properties in accordance with Section 501.06, Subsection 1, Paragraph L of this Resolution.

**SECTION 1010** **EXPIRATION OF CONDITIONAL USE AUTHORIZATIONS:** Development of any authorized conditional use shall be commenced within one (1) year of the date of approval of such conditional use by the Board of Supervisors and development of said authorized conditional use shall be completed within two (2) years from the date of approval of such conditional use by the Board of Supervisors or such authorization 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 Supervisors, in the manner herein described.



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## ARTICLE 11      AMENDMENTS

**SECTION 1101    AUTHORITY TO AMEND:** The County Board of Supervisors may from time to time amend, supplement, modify the zoning district boundaries or repeal the regulations contained in this Resolution, provided no such amendment, supplement, modification, change of boundaries or repeal shall become effective until such proposed modification shall have been submitted to the Planning Commission for recommendation and report and after public notice has been provided and public hearing have been held by both the Planning Commission and Board of Supervisors. A proposal for modification or repeal may be initiated by the Planning Commission, the Board of Supervisors or upon application of any owner of property under the jurisdiction of this Resolution. A filing fee, as established by the County Board of Supervisors shall be paid for each application to modify this Resolution prior to action on such application by the Planning Commission and Board of Supervisors, provided that such fee shall be waived where the proposed modifications is initiated by the Planning Commission or the Board of Supervisors.

**SECTION 1102    PUBLIC NOTICE AND PUBLIC HEARINGS REQUIRED:** Prior to consideration of amending, supplementing, changing, modifying or repealing of all or part of this Resolution, notice of public hearings by the Planning Commission and Board of Supervisors shall each be provided by the Zoning Administrator or County Clerk as follows:

1. Such notice shall be published in the legal newspaper of general circulation in the County one (1) time at least ten (10) calendar days prior to such public hearing and such notice shall fix the date, time, place and subject of the public hearing. In addition, a copy of such notice shall also be given to the Chairperson of any municipal, county or any joint planning commission, having jurisdiction over land within three (3) miles of the property affected by the petition. In the absence of a planning commission, such notice shall be given to the clerks of units of local governments having jurisdiction over land within three (3) miles of the property affected by such action. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.
2. If such proposed modification is not a general revision of an existing provision of this Resolution and will affect only a specific property, the public notice shall include the general location and a legal description of such specific property and, in addition, notice of the public hearing(s) shall be mailed by first class mail to the applicant and the owners of record of real estate that is located adjacent to or immediately across a road from the property affected by such modification at least ten (10) calendar days prior to such public hearings.
3. The provisions of this Section regarding notification by first class mail shall not apply to:
  - A. A proposed modification of this Resolution where such modification will apply throughout the County or throughout an existing zoning district;
  - B. Additional or different types of zoning districts are proposed, whether or not such additional or different zoning districts are made applicable to areas or parts of areas already within a zoning district of the County;
  - C. In these instances only the publication of public notice in the newspaper, and notice to other planning commissions having jurisdiction over lands within three (3) miles of lands which will be affected by such modification and notification of local units of government, as set forth in Section 1102, Subsection 2 immediately above, shall be required.

**SECTION 1103    AMENDMENT CONSIDERATION AND ADOPTION OF AMENDMENTS:**

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1. Planning Commission: The procedure for the consideration and adoption of any proposed amendment to this Resolution shall be in like manner as that required for consideration and adoption of this Resolution. For action on amendments to the text of this Resolution or the zoning district boundaries indicated on the Official Zoning Map, **a quorum of the Planning Commission must be present at the required public hearing to approve or disapprove a proposed amendment and action on any proposed amendment shall require an affirmative vote of a majority of all members of the Commission.** The Commission's action on any proposed amendment shall constitute a recommendation of approval or disapproval to the Board of Supervisors.
  2. Board of Supervisors: After public notice and public hearing as described above, may act to agree or disagree with said Planning Commission recommendation and shall act to approve or disapprove said amendment. Passage of a motion to adopt a resolution approving an amendment or passage of motion to disapprove an amendment, regardless of the recommendation of the Planning Commission shall require a simple majority vote of the Board of Supervisors, except for the provisions set forth in Section 1105 of this Resolution.

**SECTION 1104 AMENDING VALLEY COUNTY OFFICIAL ZONING MAP:** Should any amendment adopted by resolution of the Board of Supervisors serve to modify the location of zoning district boundaries as set forth on the Valley County Official Zoning Map, the Board of Supervisors shall cause the Official Zoning Map to immediately be modified to reflect the adopted amendment and such change shall be witnessed by the signature of the Chairperson of the Board of Supervisors. Adoption of any resolution to amend the Official Zoning Map shall become effective only after such amendment is reflected on such Official Zoning Map and such change has been witnessed by the signature of the Chairperson of the County Board of Supervisors and attested to by the County Clerk.

**SECTION 1105 PROTESTS REGARDING AMENDMENTS:** Regardless of whether or not the Planning Commission approves or disapproves a proposed amendment, if a protest against any amendment, signed by the owners of twenty percent (20%) or more of the area of lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, is filed, such amendment shall not become effective except by the favorable vote of two-thirds majority of the County Board of Supervisors.

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## ARTICLE 12 COMPLAINTS, VIOLATIONS, REMEDIES AND PENALTIES

**SECTION 1201 COMPLAINTS REGARDING VIOLATIONS:** Whenever a violation of this Resolution occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating the cause and basis of the complaint, shall be filed with the Zoning Administrator. The Zoning Administrator shall properly record receipt of such complaint, immediately investigate the complaint and take appropriate action thereon in accordance with the regulations and requirements of this Resolution.

**SECTION 1202 PENALTIES FOR VIOLATION OF THIS RESOLUTION:** Violation of the provisions of this Resolution or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with approval of variance and conditional uses, shall constitute a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating this Resolution or fails to comply with any of its requirements or conditions and safeguards established in connection with approvals of variances and conditional uses shall be guilty of Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the County Board or other proper local authority of the County, as well as any owner(s) of property within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, business or use in or about the premises. Any taxpayer or taxpayers in the County may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections of this Resolution. Nothing contained herein shall prevent the County from taking such other lawful action as is necessary to prevent or remedy any violation of this Resolution.

**SECTION 1203 REMEDIES:** In case any building or structure is erected, constructed, reconstructed, altered, repaired, moved, converted or maintained, or any building, structure or land is used in violation of this Resolution or the conditions and safeguards established in connection with approval of any variance or conditional use, the Zoning Administrator, County Attorney or other duly appointed official shall institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, movement, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

## ARTICLE 13 SCHEDULE OF FEES

**SECTION 1301 AUTHORITY:** The County Board of Supervisors shall establish a schedule of fees for Zoning Permits, Certificates of Zoning Compliance, Appeals, Rezoning Applications, Conditional Use Applications, Variance Applications and other matters pertaining to the effective administration of this Resolution. The schedule of fees shall be posted in the office of the Zoning Administrator and County Clerk at all times. Said schedule of fees may be altered or amended from time to time by action of the Board of Supervisors without public hearing.

**SECTION 1302 NON-PAYMENT OF FEES:** Until all applicable fees have been paid in full by the applicant, no action shall be taken on any application or permit.

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## **ARTICLE 14      LEGAL STATUS PROVISIONS**

**SECTION 1401    SEVERABILITY:** Should any Article, Section or provision of this Resolution be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Resolution as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

**SECTION 1402    PURPOSE OF CATCH HEADS:** The catch head titles appearing in connection with the Articles and Sections contained within this Resolution are inserted simply for convenience to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing and interpreting the terms and provisions of this Resolution.

**SECTION 1403    REPEAL OF CONFLICTING RESOLUTIONS:** All resolutions and regulations in conflict with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

**SECTION 1404    EFFECTIVE DATE:** This Resolution shall take effect and be in force from and after its passage and publication according to law.

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**APPENDIX 1 - Application and Permit Forms**

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**APPENDIX 2 - Schedule of Fees**