
ZONING REGULATIONS

of

Cherry County, Nebraska

Adopted December 30, 2008

Cherry County Zoning Administration

365 North Main P.O. Box 120

| Valentine, NE 69201

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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 Cherry County, Nebraska.

SECTION 102 - AUTHORITY

Preparation, adoption and administration of this Resolution is authorized by Neb. Rev. Stat. 23.114, which gives Nebraska counties the power to adopt and implement zoning resolutions.

SECTION 103 - JURISDICTION

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

SECTION 104 - PURPOSE

In pursuance of and in compliance with the authority conferred to Nebraska counties by Section 23.114.03 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 Cherry County and for implementation of the duly adopted Cherry County Comprehensive Plan. This Resolution is also enacted to preserve and protect the customs and culture of the people of Cherry County and the following specific purposes:

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

ARTICLE 2 - APPLICATION OF REGULATIONS

SECTION 201 -GENERAL

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

SECTION 202 - ZONING AFFECTS EVERY BUILDING AND USE

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

SECTION 203 - SETBACK AND LOT SIZE REDUCTION PROHIBITED

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

SECTION 204 - NO EFFECT ON PRIVATE AGREEMENTS/COVENANCES

This Resolution shall not in any way nullify any easement, covenant or other similar private agreement, provided that where the requirements of this Resolution imposes a higher standard, the requirements of this Resolution shall govern.

SECTION 205 - PROVISIONS OF THIS RESOLUTION DECLARED TO BE MINIMUM

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

SECTION 206 - DISCLAIMER OF BUILDING AND OTHER CODES AND COUNTY LIABILITY

This Resolution is a zoning regulation only and regulates only land usage. This Resolution does not in any manner whatsoever include, imply or otherwise create any type or form of building, plumbing, electrical or other code which would regulate the design and construction of any building or structure within the jurisdiction of this Resolution. Any permits or certificates issued in accordance with the requirements of this Resolution are solely for the purpose of assuring compliance with the land usage regulations set forth in this Resolution for the purposes set forth in Section 104 of this Resolution. Cherry County assumes no liability and shall not in any manner be held liable for any design or construction problem or defect in any building or structure for which a zoning permit, or other form of land usage approval may have been issued nor shall Cherry County assume any liability for any non-compliance with any Federal, State or other code, regulation or requirement.

ARTICLE 3 – CONSTRUCTION AND DEFINITIONS

SECTION 301- CONSTRUCTION

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

301.01 TENSE: Words used in the present tense include the future tense,

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

301.03 SHALL AND MAY: The word "shall" is mandatory, the word "may" is permissive.

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

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

SECTION 302 - GENERAL TERMINOLOGY

The word "County" shall mean the County of Cherry, Nebraska. The words "County Board" shall mean the Cherry County Board of Commissioners. The words "Planning Commission" shall mean the Cherry County Planning Commission duly appointed by the Cherry County Board of Commissioners. The words "Board of Adjustment" and Board shall mean the Cherry County Board of Adjustment duly constituted in accordance with this Resolution. The words "Zoning Administrator" shall mean that person or persons duly appointed by the Cherry County Board of Commissioners to administer and enforce these zoning regulations.

SECTION 303 - DEFINITIONS

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

303.01 ABUT: Any situation where a lot or parcel borders directly on another lot or parcel or is separated from an adjoining lot or parcel by only a public or private easement, by a public or private road right-of-way, or by a rail line, utility line or canal.

303.02 ACCESSORY USE/BUILDING: An accessory building includes garages, sheds or other structures that are used for storage of households goods and vehicles other than those used in the operation of a farm or ranch. Farm and ranching structures used for agricultural equipment, livestock, and/or storage of crops shall not be considered an accessory building or use.

303.03 ADDITION: Any construction which increases the size of a building or structure.

303.04 ADJACENT- (see abut)

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

303.06 **AGRICULTURAL USE:** The business and science of cultivating the soil, producing crops and or breeding, feeding, pasturing of livestock, pasturing of buffalo, elk and other animals, dairying, raising and management of poultry, fish, bees and other animals, truck farming, forestry or orchards and the non-commercial storage and processing of agricultural products produced on the premises, including accessory uses customarily associated with these activities in Cherry County, provided that such use shall not include any confined animal feeding operation, as defined in Section 303.23 of this Resolution, or intensive animal feeding operation, as defined in Section 303.43 of this Resolution. A confined or intensive animal feeding use, as defined in Sections 303.23 and 303.43 respectively, shall not be considered an agricultural use, but shall be considered a commercial use. The confinement of an unrestricted number of ruminant animals in lots or pens normally used for growing crops or vegetation for birthing, weaning or backgrounding purposes for less than 210 days in any calendar year shall not be considered a confined or intensive animal feeding use.

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

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

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

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

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

303.11 **BLUFFS (Bluff Lands):** Generally, the steep slopes along the Niobrara River Corridor. More specifically, the land included in the following soils mapping units as identified on the field sheets of the Cherry County Soil Survey, 1996: McF/McP - McKelvie Loamy Sand 9-30% slopes; MeG/MuG - McKelvie-Fishberry Rock Outcrop complex, 11-60%

slopes; MfG/MtG - McKelvie-Rock Outcrop complex, 20-60% slopes; and, MsF/MtF - McKelvie-Fishberry complex, 9-30% slopes.

- 303.12 **BUILDABLE AREA:** The portion of a lot or tract of land remaining after the front, side and rear setbacks, as herein defined, have been provided.
- 303.13 **BUILDING:** A structure having a roof or having a roof and walls used, or intended to be used, for sheltering of persons, animals or property. When divided or separated by other than common walls, each portion or section of a building shall be considered a separate building.
- 303.14 **BUILDING HEIGHT:** The vertical distance, measured from the average ground level at the front of a building or structure to the highest point of the building roof, excluding cupolas, gables and chimneys not exceeding 20% of the total roof area, antennas or other similar appurtenances or the highest point of a non-building structure.
- 303.15 **CAMPGROUND:** Any premises where two or more camping units are parked or placed for camping purposes, or any premises used to set apart for supplying camping space for two or more camping units for camping purposes to the public. Campground shall include any buildings, structures, vehicles or enclosures used, or intended to be used, wholly or in part for the accommodation of campers.
- 303.16 **CAMPING UNIT:** Any vehicle, trailer, tent or other movable shelter used for camping purposes.
- 303.17 **CATTLE COUNTRY EASEMENT:** A perpetual, non-exclusive, easement which runs with the land, granted by the purchaser of any property for development of any non-farm or non-ranch building or use to all adjacent property owners, which acknowledges that said property is located in an agricultural area and may be subjected to impacts from agricultural operations including noise, dust, odors, heavy truck traffic and other conditions which are normal and necessary for cultivation, application of chemicals, irrigation and harvesting of crops, for raising of livestock, and for other normal and customary agricultural activities and holding the owners of all adjacent properties harmless from objection to all such agricultural activities when legally conducted regardless of any conflict with the grantor's property.
- 303.18 **COMMERCIAL USE:** A use, other than an agricultural use, where products are grown or purchased for sale or resale for profit or where services are sold or provided for profit, including confined and intensive animal feeding uses as defined in this resolution.
- 303.19 **COMPATIBLE USE:** A land use of one type that is suitable for direct association or location near a use of a different type because of its consistency with the Intent statement of the zoning district in which said uses are located, because of similar or comparable buildings and use activities, and because neither use will diminish the use, value and enjoyment of the other.
- 303.20 **COMPREHENSIVE DEVELOPMENT PLAN:** The plan or series of plans for the future development of the County, recommended by the Planning Commission and the County Board of Commissioners.

303.21 **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.

303.22 **CONDITIONAL USE PERMIT:** A written permit issued by the Zoning Administrator upon authorization of a conditional use under the terms of this Resolution by the County Board of Commissioners. Such permit shall give permission to the applicant to develop the specified conditional use and shall specify the conditions of approval of such use as established by the County Board of Commissioners.

303.23 **CONFINED ANIMAL FEEDING USE:** The raising, feeding or management of more than 300 animal units at any one time in roofed buildings 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 which are not normally used for growing of crops or vegetation, where, manure, bedding and other waste can be completely collected, controlled and processed. A confined animal feeding use shall include any land where untreated or partially treated manure is applied to the surface of the land, but not where such manure is spread on the surface of the land as a solid or injected into the soil as a liquid. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor or, in the event such a use existed prior to regulation by the Department of Environmental Quality and a permit is not required, such determination shall be by written declaration of the owner of such use of the one-time capacity of such use to the 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. For purposes of this Resolution, confined animal feeding uses shall be classified and regulated with regard to design and capacities of the various types of facilities used in handling manure and others wastes and methods of operation of waste handling facilities as they relate to the potential for odor production, environmental degradation and other negative impacts on abutting properties as follows:

Class A (aerobic): A confined animal feeding use in which all manure is collected and digested utilizing aerobic digestion processes, including aerobic lagoons, and/or aerobic composting and/or surface application of solid manure or injection of liquid or slurry manure into the soil on crop or other land and dust generated within any buildings or pens is controlled to prevent blowing of dust and odor onto adjoining and neighboring properties.

Class ANC (covered anaerobic): A confined animal feeding use in which all or part of the manure is collected and digested utilizing anaerobic digestion processes, including anaerobic lagoons and holding basins, pits or above ground tanks which are covered and the gases generated by the digestion of said manure are collected and treated to avoid explosion, fire hazards and the generation of odor, which apply any undigested waste to land by injecting said liquid or slurry waste into the soil on crop or other land, and dust generated within any buildings or pens is controlled to prevent blowing of dust and odor onto adjoining and neighboring properties.

Class AN (anaerobic): A confined animal use in which all or part of the manure produced is collected and digested utilizing anaerobic digestion processes, including uncovered anaerobic holding ponds or pits, anaerobic lagoons, anaerobic stockpiling of waste as a solid and/or application of raw or partially digested liquid or slurry manure on the surface of crop or other land, and there are no effective provisions made for the collection and elimination of dust and odor from any buildings associated with such use.

303.24 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.

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

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

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

303.28 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.

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

303.30 FARM: A crop production, livestock production or other similar enterprise containing 20 acres or more of land from which \$1,000 or more of crop or meat products are produced each year.

303.31 FARM BUILDING: Any non-residential building or structure located on a farm, provided that the use within and around any nonresidential building or structure on a farm which is defined in Sections 303.23 and 303.43 of this Resolution as a confined or intensive animal feeding use shall not be considered an agricultural use, but rather a commercial use and shall be subject to the regulations of this Resolution although the buildings and structures associated with such use may be considered farm building(s) or structure[s].

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

303.33 FLOOR: A level or story in a building.

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- 303.34 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.
- 303.35 FORESTRY: The growing, harvesting or processing of forest tree species used for commercial or related purposes.
- 303.36 FRONTAGE (LOT): The length of the real property abutting one side of a road right-of-way, measured along the dividing line between said real property and the road right-of-way.
- 303.37 GROUP DAY CARE CENTER / NURSERY SCHOOL: An establishment other than public, private non-religious or parochial school, which provides day care, playground, nursery school or education for five or more unrelated children.
- 303.38 GROUP HOME: A facility, licensed or approved by the State of Nebraska or other appropriate agency, in which more than two persons who are unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not nursing care, for any of the following purposes.
- A. Adaptation to living with, or rehabilitation from, disabilities;
 - B. Adaptation to living with, or rehabilitation from, emotional or mental disorders;
 - C. Rehabilitation from the effects of drug or alcohol abuse;
 - D. Supervision while in a program of alternatives to imprisonment, including, but not limited to pre-release, work release and probationary programs.
- 303.39 HAZARDOUS WASTE: Any waste product generated by any industrial or business operation which is listed as a hazardous material by the United States Environmental Protection Agency.
- 303.40 HOME OCCUPATION: An occupation or business enterprise conducted in a dwelling unit or building accessory to a dwelling unit (barn, garage, shop, etc.) on the same premises with such dwelling, which occupies not more than 1,000 square feet if a retail or personal service business, which occupies not more than 3,000 square feet if any other type of commercial business or industry, which has no more than five rental units if a lodging use (bed and breakfast, campground, etc.) and in which no more than three full-time equivalent persons are employed on the premises. Such persons may be in addition to any persons who reside in the dwelling unit with which the occupation or business enterprise is associated and such persons may reside off of the premises on which the occupation or business enterprise is located.
- 303.41 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.
- 303.42 INDUSTRIAL USE: Of, relating to, concerning, or arising from the assembling, fabrication, finishing, manufacturing, packaging, or processing of goods, or mineral extraction.

303.43 INTENSIVE ANIMAL FEEDING USE: The feeding of more 300 animal units at any one time in partial or total earthen pens or lots which are designed or used for confinement of animals where manure is or may be in contact with the earth and which are not normally used for growing of crops or vegetation. An intensive animal feeding use shall include any land where untreated or partially treated manure is applied as a liquid to the surface of the land, but shall not include any land where the manure is applied to the surface of the land as a solid or injected into the soil as a liquid. The confinement of an unrestricted number of animals for birthing, weaning or backgrounding purposes for less than 210 days per calendar year shall not be considered an intensive animal feeding use. The determination of the number of animal units in any such use shall be based upon the number of animal units set forth in a permit issued by the Nebraska Department of Environmental Quality or its successor or, in the event such a use existed prior to regulation by the Department of Environmental Quality and a permit is not required, such determination shall be by written declaration, of the owner of such use of the one-time capacity of such use, to the 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. For purposes of this Resolution, intensive animal feeding uses shall be classified and regulated with regard to the number of animal units as follows:

Class I - An intensive animal feeding use with a one-time capacity of more than 300, but less than 1,001 animal units.

Class II - An intensive animal feeding use with a one-time capacity of more than 1,000 but less than 5,001 animal units.

Class III - An intensive animal feeding use with a one-time capacity of more than 5,000, but less than 20,001 animal units.

Class IV - An intensive animal feeding use with a one-time capacity of more than 20,000 animal units.

303.44 JUNK YARD: See Salvage Yard

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

303.46 LIVESTOCK: Domesticated animals kept on a farm or ranch and raised for sale and profit.

303.47 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.

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- 303.48 LOT AREA: The total horizontal area of a lot, excluding all street or alley rights of-way.
- 303.49 LOT, CORNER: A lot which has frontage on two or more streets or roads at the intersection of said streets or roads.
- 303.50 LOT DEPTH: The average horizontal distance between the front and rear lot lines of any lot.
- 303.51 LOT OF RECORD: A lot which is part of a subdivision plot or lot, plot or parcel described by metes and bounds recorded in the office of the Register of Deeds of Cherry County, Nebraska at the time of adoption of this Resolution.
- 303.52 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.
- 303.53 MANUFACTURED HOME A factory-built structure which is to be used as a place 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 a modular 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 successor thereto, and which complies with the following minimum standards:
1. A minimum floor area of 900 square feet,
 2. A minimum exterior width of 18 feet,
 3. A minimum roof pitch of two and one-half inches of rise per each 12 inches of horizontal run.
 4. Exterior material shall be of a color, material and scale comparable with existing residential site-built, single-family construction.
 5. A non-reflective roof of material which is or simulates asphalt or wood shingles, tile or rock.
 6. All wheels, axles, transporting lights and removable towing apparatus have been removed.
 7. Is placed on and permanently attached to a foundation of the same construction as required for site-built homes.
 8. Is permanently connected to public utilities in the same manner required for site-built homes.
- 303.54 MANUFACTURED HOME – FEDERAL HOUSING ACT OF 1974 COMPLIANT: A structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or 40feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. Calculations used to determine the number of square feet in a structure will be based on the structure’s exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable

rooms, cabinets and other projections containing interior space, but do not include bay windows. Manufactured Home shall include all structures which meet the above requirements, except the size requirements and with respect to which the manufacturer voluntarily files a certificate pursuant to 24 CFR 3282.13 and complies with the standards set forth in 24 CFR 3280. Nothing in this definition shall be interpreted to mean that a “manufactured home” necessarily meets the requirements of HUD’s Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

303.55 MOBILE HOME: A detached single or two-family dwelling unit which was originally designed for long term human habitation, which was constructed and fabricated into a complete unit at a factory, which is capable of being transported to a location for use on its own chassis and wheels, which is identified by model number and serial number by its manufacturer, and which is designed primarily for placement on a non- permanent foundation, but which does not comply with the definition of Section 303.53 MANUFACTURED HOME or Section 303.54 MANUFACTURED HOME.

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

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

303.58 MOBILE HOME SUBDIVISION: A parcel of land which has been or is intended to be subdivided into three or more lots for sale to persons to place a mobile home on said lot.

303.59 MODULAR HOME: A manufactured housing unit, as defined in Section 71-1557 of the Nebraska Revised Statutes 1943, which bears the seal of the Nebraska Department of Health or its successor.

303.60 NON-CONFORMING LOT OF RECORD: A lawfully existing lot in existence at the date of adoption of this Resolution, which does not comply with the minimum lot area, width and other lot standards established in the various zoning districts created by this Resolution.

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

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

303.63 ODOR: That characteristic of a substance which makes it offensive to the human sense of smell as determined by the majority of any three or more persons, where such persons shall include the Zoning Administrator, a representative of the use being investigated for odor and one or more neutral persons agreed upon by the Zoning Administrator and the representative of the use being investigated for odor.

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- 303.64 **PERMANENT FOUNDATION:** The substructure 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.
- 303.65 **PARKING SPACE, OFF-STREET:** An area, open or closed, which is sufficient in size to permit the parking of one or more vehicles, together with a driveway connecting said parking area to a street or road to permit ingress and egress by said vehicle.
- 303.66 **PREMISES:** The land area containing a land use which is contiguous with and under the same ownership as the land use.
- 303.67 **PREVAILING WINDS:** Prevailing winds in Cherry 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 45 degrees west of magnetic north to 45 degrees east of magnetic north
South - from 45 degrees west of magnetic south to 45 degrees east of magnetic south
East - from 45 degrees east of magnetic north to 45 degrees east of magnetic south
West - from 45 degrees west of magnetic north to 45 degrees west of magnetic south.
- 303.68 **PRINCIPAL BUILDING:** A building in which the principle use on the lot is situated.
- 303.69 **PRIVATE ROADWAY:** A privately owned, open, unoccupied space other than a public road or privately owned road by use, reserved as the principal means of access to abutting property.
- 303.70 **PUBLIC USE AREA:** An area of land or water, whether publicly or privately owned, which is designed for and used by 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 cemeteries, rights-of-way for streets or roadways or privately owned land used for hunting and/or fishing.
- 303.71 **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 sides, has two intersecting sides which coincide with two intersecting section lines and contains approximately one-fourth of the land area contained within a square section of land.
- 303.72 **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.
- 303.73 **RIVER DEPENDENT USE:** A land use which requires direct contact with the water of a river or lake and which could not operate at another location due to the nature of the use and its dependency on those persons using the river or lake.
- 303.74 **ROAD / ROADWAY:** A public right-of-way set aside for public travel which affords the principal means of access to abutting property.
- 303.75 **ROAD CENTERLINE:** A line extending down the center of a road or street.

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- 303.76 **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.
- 303.77 **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.
- 303.78 **SETBACK:** A horizontal distance, as prescribed in the various zoning districts established in this Resolution, from the centerline of the roadway on which the lot has frontage and the side or rear lot line of any lot in which a building may not be constructed. Setbacks are further defined as follows:
- A. **SETBACK, FRONT:** An open space extending across the entire width of a lot between the centerline of the road on which the lot has frontage and the nearest point of a building. A corner lot has two 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.
- 303.79 **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.
- 303.80 **SOLID MANURE:** Waste produced by living cattle, dairy cattle, sheep and other ruminants and horses which contains not less than 12% solids by weight and waste produced by living swine, poultry, or other non-ruminant animals which contains not less than 25% solids by weight.
- 303.81 **STORY:** That portion of a building included between the surface of any floor and the surface of the next floor above, or if there be no floor above, then the space between the floor and the ceiling next above it. A basement shall be counted as a story if more than four feet of said basement is above the average finished grade of the adjoining ground.
- 303.82 **STREET:** See ROAD
- 303.83 **STRUCTURE:** Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, including a building.
- 303.84 **STRUCTURAL ALTERATIONS:** Any change in the supporting members of a structure, such as bearing walls, partitions, columns, beams or girders, or any complete rebuilding of the roof or exterior walls.

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- 303.85 TEMPORARY USE: A use established for a fixed period of time (see Section 611 of this Resolution), with the intent to discontinue such use upon the expiration of such time that does not involve the construction or alteration of any permanent structure.
- 303.86 USE: The purpose or activity for which land and buildings thereon is designed, arranged, intended, or for which it is occupied or maintained.
- 303.87 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.
- 303.88 WATER ENJOYMENT USE: A recreational land use that facilitates access to the water of a lake or river and is dependent on the persons utilizing the waters or a lake or river, but the locations of buildings and structures other than walkways leading to the lake or river is not dependent on direct contact with the shorelines of a lake or river.
- 303.89 YARD / SETBACK: Open space on a lot unoccupied and unobstructed by any buildings or structure or portion thereof, except for fences, retaining walls, posts and other customary yard accessories.
- 303.90 YARD, FRONT: A yard extending across the entire width of the lot between the front lot line and the nearest point of a building. For purposes of determining yard requirements for corner and through lots, all sides of a lot abutting a street shall be considered a front yard and shall comply with the requirements thereof.
- 303.91 YARD, REAR A yard extending across the entire width of the lot between the rear lot line and the nearest part of a building or non-minor structure.
- 303.92 YARD, SIDE: On single frontage lots, a yard extending along the side lot line from the front yard to the rear yard and lying between the side lot line and the nearest part of a building on non-minor structure. On through lots, a yard extending along the side lot line from front yard to front yard and lying between the side lot lines and the nearest part of the building or non-minor structure. On corner lots, a yard extending along the side lot line from the front yard to the opposite side lot line lying between the side lot line and the nearest part of a building or non-minor structure.
- 303.93 YARD, SPECIAL: A yard behind any required yard adjacent to a public street, required to perform the some functions as a side or rear yard, but adjacent to a lot line so placed or oriented that neither the term "side yard" or "rear yard" clearly applies. In such cases, the Zoning Administrator shall require a yard with minimum dimensions as generally required for a side yard or a rear yard in the zoning district, determining which shall apply by the relationship of the portion of the lot on which the yard is to be located to the adjoining lot or lots with due regard to the orientation and location of buildings, structures and buildable areas therein.

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

303.95 ZONING DISTRICT: One of the 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 areas of the County which are under the legal zoning jurisdiction of the County.

ARTICLE 4 - ESTABLISHMENT AND DESIGNATION OF DISTRICTS

SECTION 401 - PLANNING COMMISSION RECOMMENDATIONS

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

SECTION 402 - DISTRICTS CREATED

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

CCAG - Cattle Country Agricultural District
NRCAG - Niobrara River Corridor Agricultural District

In addition to these zoning districts, this Resolution also recognizes the authority of the Joint Airport Zoning Board to adopt airport zoning regulations for Miller Field and hereby adopts by reference, the Airport Zoning Regulations and Airport Zoning Map No. ZN-VL-75 and any subsequent amendments to such regulations and Airport Zoning Map. (Refer to Miller Field Airport Zoning Regulations.)

SECTION 403 - OFFICIAL ZONING MAP

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

SECTION 404 – OFFICIAL ZONING MAP CHANGES

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

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

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

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

SECTION 405 - OFFICIAL ZONING MAP REPLACEMENT

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

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

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

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

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

406.04 Boundaries indicated as following shore lines of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such shore line and in the event of change in the shore line shall be construed as moving with the shore line Boundaries indicated as following the centerline of rivers, streams, canals, lakes, ponds or other bodies of water shall be construed to follow such centerline.

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

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- 406.06 Distances not specifically set forth on the Official Zoning Map shall be determined by measurement according to the scale of the map.
- 406.07 Where a district boundary line divides a lot which was under single ownership and control at the date of adoption of this Resolution, the Board of Zoning Adjustment may, upon application, permit the extension of either zoning district for either portion of the lot into the remaining portion of the lot.
- 406.08 In circumstances not covered by Items 01 through 07 immediately above or where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, the Board of Adjustment shall interpret the district boundaries to best accomplish the objectives of the Intent statements of the zoning districts involved.

SECTION 407 - ANNEXATION RULE

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

ARTICLE 5 - ZONING DISTRICTS

SECTION 501 CCAG - CATTLE COUNTRY AGRICULTURAL DISTRICT

501.01 INTENT: The intent of this district is to implement the policies and objectives of the Cherry County, Nebraska Comprehensive Plan by maintaining agricultural crop and livestock production which is in balance with the natural environment and promote other and new forms of agricultural production which is compatible with existing ranch and farm uses and the environment. The intent is also to encourage soil and water conservation, preserve water quality, prevent contamination of the natural environment within the County and to preserve and protect ranch and farm operations from conflict with non-agricultural uses which, if allowed to develop, would be or could become incompatible with the agricultural character of the County and the occasional generation of dust, noise, odors, and other similar events produced by the agricultural uses and livestock production uses permitted within this district, or which could have adverse property tax impacts, or which is not compatible with the limited public facilities and services available in the rural areas of the County.

501.02 OUTRIGHT ALLOWABLE PRINCIPAL USES AND STRUCTURES: The following uses and structures shall not require a written zoning permit:

1. Agricultural uses, as defined in Section 303.06 of this Resolution.
2. Grain 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.
4. Forestry, tree farms and plant nurseries.

501.03 PERMITTED PRINCIPAL USES AND STRUCTURES: The following uses and structures shall require the issuance of a written zoning permit:

1. Churches, cemeteries and related uses.
2. Signs, both on-site and outdoor advertising signs, provided the number of on-site signs shall not exceed three per premises and that outdoor advertising signs shall be located no closer than one-eighth mile to any other on-site or outdoor advertising sign. Agricultural and recreational directional signs and non-commercial informational signs are allowed without a permit. (All signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads).
3. Single-Family dwellings under the jurisdiction of this Resolution, including up to five manufactured home dwellings, as defined in Section 303.53 and 303.54 of this Resolution and/or mobile homes, as defined in Section 303.55 of this Resolution, per section of land, provided such dwellings comply with all of the following conditions.
 - A. Such dwellings, if not on the same lot with and not of the same ownership as any existing ranch or farm operation, shall be subject to the granting of a Cattle Country Easement.
 - B. Such dwelling shall be located on a lot with an area of not less than two and one-half acres as set forth in Section 501.07 of this Resolution and a minimum lot width as set forth in Section 501.08 of this Resolution, provided that a larger lot may be required if the regulations of the Nebraska Department of Environmental Quality or its successor with regard to proper sizing and location of a septic tank and tile field or lagoon sewage disposal system.

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- C. The lot on which such dwelling is located shall front on or have a minimum 40 feet wide access by deed or easement to an existing state or county roadway classified by the Cherry County Board of Commissioners as maintenance level I through 3. Development of any lot on a county roadway classified as a Class 4 (minimum maintenance) roadway shall require the developer of such lot(s) to improve the roadway to County standards before the County shall accept maintenance of such roadway. Cherry County shall not be required to construct or improve any new private roadways and shall not be committed to accepting any such roadway as a publicly maintained County road even if such roadway is improved to County road standards by the owner(s) of such roadway. Further, where more than one lot fronts on a private roadway, provisions shall be made for self- assessment of each such lot owner for the maintenance of such common private roadway.
- D. The total number of lots for development of dwelling units which are 10 acres or larger in area shall be unrestricted, but the total number of lots which are less than 10 acres in area shall not exceed a total of five per section of land unless a conditional use for a residential subdivision has been authorized by the County Board of Commissioners in accordance with the procedures and requirements of this Resolution.
- E. Each side of a lot on which a non-farm or non-ranch use is developed, which abuts grazing land shall be fenced, as defined by Neb.Rev.Stat.34-115, and such fence shall be maintained to prevent conflict with grazing of such neighboring lands, unless there is a written agreement between the owner of the lot and the owner of such adjoining grazing land to the contrary. Such fence shall be constructed by and at the expense of the developer of the lot on which a non-farm or non-ranch use is proposed. Similarly, the access points on the property line of any lot on which a non-farm or non-ranch use is proposed shall be equipped with a gate(s) capable of preventing cattle on adjoining grazing land from entering the lot through such access point(s). Construction and maintenance of such gate(s) shall be the responsibility of the developer of the non-farm or non-ranch use.
- F. Such dwellings, if not on the same lot with and not of the same ownership as any existing confined or intensive animal feeding use shall be separated from such use(s) by the minimum distances as set forth in Section 501.05 of this Resolution, unless the developer of such dwelling shall grant a Cattle Country Easement(s), as defined in Section 303.17 of this Resolution, to the owner of the confined or intensive animal feeding use, in which case any lesser distance shall be permitted. Such minimum distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, including any land where raw or partially digested liquid or slurry waste is applied to the surface of the land, to such dwelling. Application of raw or partially digested 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 considered part of the confined feeding use and the minimum spacing distance herein specified shall not apply. Exceptions to these minimum distance requirements may be approved as a conditional use where special types of confined or intensive animal feeding uses, special provisions for odor and dust control by the owner of the neighboring intensive animal feeding use, topography, prevailing winds or other factor or

combination of other factors exist and it is determined by the Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use or enjoyment of such residential use and that such residential use will not unreasonably interfere with the operation of the intensive animal feeding use.

4. Any Confined or Intensive Animal Feeding use which was in existence as of the effective date of this Resolution may be expanded, even if such use does not comply with the minimum separation distances to a dwelling unit not on the same premises and not of the same ownership as the animal feeding use, a church, school or public use area, subject to the following restrictions:
 - A. Expansion shall be limited to a one time expansion of up to 50% of the total one-time capacity, in animal units, which existed as of the effective date of this Resolution.
 - B. Expansion of any confined or intensive animal feeding use beyond 50% of the one-time animal unit capacity which existed as of the effective date of this Resolution may only be permitted upon authorization of a conditional use in accordance with the provisions of this Resolution.
 - C. Such expansion shall not further decrease the minimum separation distance between any dwelling unit not on the same premises and not of the same ownership as the animal feeding use, church, school or public use area as set forth in Section 501.05 of this Resolution for the Class of such confined or intensive animal feeding use that the use will qualify after expansion.
 - D. Any physical expansion of such confined or intensive animal feeding use shall be immediately contiguous with the use that existed as of the effective date of this Resolution.
 - E. Where any additional Federal or State permit for development and operation of such expanded confined or intensive animal feeding use is required, such permit(s) shall have been approved and all facilities and safeguards required as a condition of such permit(s) shall be in place and operable prior to the introduction of any additional animals.

501.04 PERMITTED ACCESSORY USES AND STRUCTURES: All accessory uses and structures shall require a written permit except for the following:

1. Non-commercial television antennae towers, non-commercial satellite dishes and similar non-commercial television, radio and communication facilities.
2. Small Wind Energy Conversion Systems for residential uses not to exceed 50 feet in height and electrical generation of more than 100KW.
3. Home occupations and home based businesses, which are in compliance with Section 608 of this Resolution.
4. Temporary roadside stands for the sale of produce or crafts.
5. Hunting and fishing for a fee where such activity does not involve development of lodges or other buildings devoted solely to the support of such hunting and fishing

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- activities. Temporary housing of hunters and fishermen in farm or ranch dwellings, bunkhouses or other farm or ranch related housing shall be permitted.
6. Child care and day care facilities and services.

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

1. General welding and agricultural equipment repair businesses, automobile repair and body shop businesses and other commercial business and industrial uses determined by the Board of Commissioners to be reasonably compatible with the surrounding land uses with regard to traffic generation, noise, odors, dust, vibrations, any potential air, soil or water pollution or explosion or other hazards and the availability of roadways and public services.
2. Livestock auction barns and yards.
3. Crop dusting businesses and related aircraft landing strips and airports.
4. Solid waste landfills, recycling facilities and transfer stations when in compliance with all requirements established by the Board of Commissioners in granting a conditional use and in compliance with all requirements of the Nebraska Department of Environmental Quality and further provided that all portions of such use are screened from view from any public roadway by a landscape screen or opaque fence.
5. 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 mile and further provided that all portions of such use are screened from view from any public roadway by a landscape screen or opaque fence.
6. Residential subdivisions containing more than five lots per section, where such lots are less than 10 acres in area.
7. Manufactured home and mobile home parks, courts or subdivisions containing more than five lots per section.
8. Two-family and multi-family dwellings, provided such higher density residential uses are located near municipalities within the County or in such other areas where the development of higher density uses can be adequately served by roadways, water, sewer, as well as law enforcement, fire protection and other public services, as determined by the Board of Commissioners.
9. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, game lodges, canoe outfitters, rental cabins, camp stores, public or commercial river access sites, scenic overlooks and other similar uses including bed and breakfast operations and motels.
10. Public service facilities including public, parochial, private schools, road maintenance equipment sheds, fire stations, public utility substations and utility distribution systems.
11. Fish hatcheries, game farms and commercial hunting and fishing involving development of lodges or cabins used primarily for housing of hunters and fishermen.
12. All types of commercial radio, television, communications, microwave and other types of erected towers used for commercial purposes.
13. Mineral extraction and sand and gravel extraction facilities and operations.
14. Nursing home facilities, and group homes
15. Confined animal feeding uses, as defined and classified in Sections 303.23 of this Resolution, provided such confined animal feeding use shall meet all of the following requirements:

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- A. Class A: All buildings, pens and waste handling facilities of a Class A, Confined Animal Feeding use, as defined in Section 303.23 of this Resolution, shall be located a minimum of one-half mile from any church, school, public use area or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use located to the north or south of such use or a minimum of one-third mile from any church, school, public use area or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use located to the east or west of such use. Measurement of this distance shall be from the point of the building, lot, pen or waste handling facility of confined animal feeding use nearest to said church, school, public use area or dwelling to the nearest point of such dwelling, church, public use area or school, provided that if one or more Cattle Country Easement(s), as defined in Section 303.17 of this Resolution shall have been granted to the owner of the confined animal feeding use, in which case any residences associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Exceptions to these minimum distance requirements may be approved as part of granting of a conditional use where special types of confined feeding operations, special provisions for odor and dust control, topography, prevailing winds, or other factor or combination of other factors exist and it is determined by the County Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties. For purposes of this regulation, a dwelling unit not of the same ownership and not on the same premises as the confined 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.
- B. Class ANC: All buildings, pens and waste handling facilities for a Class ANC, Confined Animal Feeding use, as defined in Section 303.23 of this Resolution, shall be located a minimum of three fourths mile from any church, school, public use area or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use to the north or south of such use or a minimum of one-half mile from any church, school, public use area or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use to the east or west of such use. Measurement of this distance shall be from the point of the building, lot, pen or waste handling facility of the confined animal feeding use nearest to said church, school, public use area or dwelling to the nearest point of such dwelling, church, public use area or school, provided that if one or more Cattle County Easement(s), as defined in Section 303.17 of this Resolution, shall have been granted to the owner of the confined animal feeding use, in which case any residences associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified.. Exceptions to these minimum distance requirements may be approved as part of granting of a conditional use where special types of confined feeding operations, special provisions for odor and dust control, topography, prevailing winds or other factor or combination of other factors exist and it is determined by the County Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties. For purposes of this regulation, a dwelling unit not of the same ownership and not on

the same premises as the confined 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.

- C. Class AN: All buildings, pens and waste handling facilities for a Class AN Confined Animal Feeding use, as defined in Section 303.23 of this Resolution, including any land where liquid or slurry waste or such use is applied to the surface of such land shall not be located closer than two miles from any church, school, public use area, or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use to the north and south of such use or closer than one mile from any church, school, public use area, or dwelling unit not of the same ownership and not on the same premises as the confined animal feeding use to the east and west of such use. Measurement of this distance shall be from the point of the building or waste handling facility of confined animal feeding use, including any land on which such undigested waste is applied to the surface of the land as a liquid or slurry whether or not such land is in the same ownership as the confined animal feeding use, nearest said church, school, public use area or dwelling to the nearest point of such dwelling, church, public use area or school, provided that if one or more Cattle Country Easement(s), as defined in Section 303.17 of this Resolution, shall have been granted to the owner of the confined animal feeding use, in which case any residences associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Exceptions to these minimum spacing distances may be approved as part of granting of a conditional use where special types of confined animal feeding uses, special provisions for odor and dust control, topography, prevailing winds or other factor or combination of other factors exist and it is determined by the County Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties. For purposes of this regulation, a dwelling unit not of the some ownership and not on the same premises as the confined 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.
- D. To minimize the potential for unreasonable odor impacts on abutting and neighboring properties and/or to minimize the extent of the number of properties which may be occasionally impacted through surface application of manure in any general location, the number of animal units in any confined animal feeding use shall not exceed 2,000 animal units per section of land. Authorization to exceed this limit may be approved by the County Board of Commissioners if the owner of the proposed confined feeding use can provide assurances, acceptable to the County Board of Commissioners that such larger numbers of animals will not result in more properties being subjected to unreasonable levels of odor for unreasonable duration periods.
- E. For all classes of confined animal feeding uses, regardless of size or type, all run-off, control ponds and basins, methods of manure disposal and related facilities and operational activities shall be engineered and developed to minimize air and water pollution and shall be constructed and operated in accordance with the

requirements established by the County Board of Commissioners, which may include review and recommendation by the applicable Natural Resource District, the Natural Resources Conservation Service, the Nebraska Department of Environmental Quality, their successor agencies, geologists, soil scientists, agronomist, biological engineers, civil engineers and any other entity with environmental protection expertise and shall have a permit as required by the Nebraska Department of Environmental Quality.

- F. Any confined animal feeding use which proposes to dispose of any or all of the manure produced at the facility through application of said manure on crop or other land, shall indicate that the owners of such confined animal feeding use shall have, either through ownership or lease of suitable terms, an adequate amount of such land to permit application of such manure based on the nutrient needs of the crops to be produced and avoid any build-up of nutrients or chemicals which can damage the production capacity of the land, result in runoff of such manure or chemicals into abutting property or into any stream or drainageway or contaminate the ground water. The County Board of Commissioners, in authorizing any confined animal feeding use, may utilize recommendations of the Natural Resources Conservation Service, the Cooperative Extensive Service and any other crop production experts in determining the maximum amount of manure to be placed on each acre of land to be used for such purposes, the timing of such manure placements, the total amount of land necessary to distribute all manure waste produced by the confined animal feeding use, and shall establish such maximum per acre application limits and such minimum total land area as conditions of such authorization. The County Board of Commissioners may require the owner/operator of such confined animal feeding use to conduct soil sampling and testing for build-up of nutrients or ground water sampling to test for contamination on all locations where manure is to be placed and may require the submission of the results of such soil sampling and testing to the County Board of Commissioners.
- G. All locations which are used by any authorized confined animal feeding use for stockpiling or composting of livestock manure, bedding or other waste shall be subject to authorization by the County Board of Commissioners as part of the authorization of any confined animal feeding use and such authorization may include the establishment of maximum amounts of waste which may be stockpiled, the methods and operation of any waste composting facility, and facilities to collect and properly digest or dispose of any waste contaminated runoff from any waste stockpiling or composting site.
- H. Each confined animal feeding use shall submit a plan for the proper and timely disposal of dead animals and such plan shall be subject to the approval of the County Board of Commissioners.
- I. Each confined animal feeding use authorized by the County Board of Commissioners shall agree to permit unannounced access to the waste handling facilities of the use, to allow inspection of the premises by persons designated by the County Board of Commissioners to assure compliance with all conditions established by the County Board of Commissioners in authorizing such use, provided that such designated person shall make reasonable effort to contact the owner/operator of the use to be inspected prior to entering the premises for such

inspection. Such inspections shall be conducted only on a complaint basis and shall first be investigated by the Zoning Administrator who shall document compliance or lack of compliance with all conditions of use established by the County Board of Commissioners in authorizing such use. Such inspections shall be considered a general function of the Zoning Administrator and the cost of such inspection of such complaints shall be considered an administrative expense of the County and shall not be assessed against the owner(s) of a confined feeding use(s).

Upon a finding by the Zoning Administrator that the confined animal feeding use is not in compliance with the approved conditions of use, he/she shall report same to the County Board of Commissioners and shall notify the owner/operator of the confined animal feeding use involved, in writing, that the use is in violation of the approved conditions of use and shall state the specific violation(s) of such conditions. The owner/operator shall take actions necessary to correct any such violation within 30 days of such notice. 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 any and all actions authorized under this Resolution to require compliance with the conditions of use approved by the County Board of Commissioners, including the possible requirements of reducing the number of animal units on the premises or removal of all animals until such violations have been corrected.

A condition of authorization of any confined animal feeding use shall be that the owner(s)/operator of each confined animal feeding use authorized under this Resolution shall agree to comply with any written order of the County Board of Commissioners, up to and including reduction in the number of animals being feed at the location, to correct any lack of compliance with any conditions of the original or subsequent conditional use authorization detected in any on-site inspection within 30 calendar days of the date of the written order for compliance issued by the Zoning Administrator. In the event the owner/operator of the confined animal feeding use involved in the inspection can present reasonable cause to the County Board of Commissioners that additional time to comply with any order of the Zoning Administrator is needed, the County Board of Commissioners may authorize an extension of time up to, but not exceeding 60 calendar days. Failure to comply with the order for compliance within the time specified shall result in a further order to remove all animals from the premises until such time as compliance with these regulations can be achieved.

- J. Any confined animal feeding use shall be located only in areas of the County which are not subject to flooding on a 100 year basis, and only in areas where it is determined by the County Board of Commissioners that the geology, soil permeability, depth to water table, drainage patterns and other natural environment characteristics will minimize the potential for surface and ground water contamination. In making a determination regarding the appropriateness of the site, the County Board of Commissioners shall utilize the advice and recommendations of the Natural Resource District, the Natural Resources Conservation Service, geologist and any other entities with applicable environmental protection expertise.

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- K. Each confined animal feeding use shall be engineered, constructed and operated utilizing best management practices to minimize odor, dust, flies, vermin and other problems and hazards to avoid environmental contamination and / or negative impacts on adjoining and neighboring properties.
- L. In authorizing any confined animal feeding use, the County Board of Commissioners may attach any additional requirement or condition of design or operation of such use which will minimize the potential for environmental degradation and/or negative impacts on adjoining and neighboring properties, provided such requirement or condition is based upon scientific fact which may include recommendations by the Natural Resource District, the Natural Resources Conservation Service, the Department of Environmental Quality, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise, and not hear say, unfounded public remonstrance or other reason not based on reasonable finding or fact.
- M. Where any Federal or State of Nebraska permit for facilities associated with confined animal feeding uses are required, such permits shall be approved by the appropriate Federal or State agency and all facilities required by such Federal or State agency and all facilities and safeguards required by the County Board of Commissioners shall be in place and operable prior to introduction of any animals into such use.
- N. Residential dwellings existing on the same premises and under the same ownership as a confined animal feeding use, as defined in Section 303.23 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership and on the same premises with such confined animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the confined animal feeding use has been abandoned. Nothing in this subsection shall prohibit the relocation of any such dwelling unit to a location beyond the minimum spacing distance requirements from such confined animal feeding use as set forth in this Resolution.
- O. Any conditional use application for an intensive animal feeding use which is determined by the County Board of Commissioners, which shall include review and recommendation by the Planning Commission and may include review and recommendation by the Natural Resource District, the Natural Resources Conservation Service, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise, to be in compliance with all requirements of this Section and for which there is agreement by the owner of such proposed use to comply with any additional requirement or condition established by the Board of Commissioners, as set forth in Subsection L above, shall be authorized by the County Board of Commissioners.
16. Intensive Animal Feeding uses, as defined and classified in Sections 303.43 of this Resolution, provided that each intensive animal feeding use shall meet all of the following requirements:
- A. All buildings, pens, lots and waste handling facilities of a Class I through Class IV, Intensive Animal Feeding use, as defined in Section 303.43 of this Resolution, shall not be located closer than the following distances to any church,

school, public use area or dwelling unit not of the same ownership and not on the same premises as the intensive animal feeding use based upon the number of animal units:

<u>Animal Unit Capacity</u>	<u>Minimum Separation Distance</u>	
	<u>North - South</u>	<u>East - West</u>
Class I	½ mile	¼ mile
Class II	1 mile	¾ mile
Class III	2 miles	1 ½ mile
Class IV	4 miles	2 miles

Measurement of this distance shall be from the point of the building, lot, pen or waste handling facility of the intensive animal feeding use nearest said church, school, public use area or dwelling, to the nearest point of such dwelling, church, public use area or school, provided that if a Cattle Country Easement, as defined in Section 303.17 of this Resolution, shall have been granted to the owner of the intensive animal feeding use, in which case any residences associated with the land on which any such easement has been granted shall not be included in the minimum distance measurements herein specified. Exceptions to these minimum distance requirements may be approved as part of granting of a conditional use where special types of intensive animal feeding uses, special provisions for odor and dust control, topography, prevailing winds or other factor or combination of other factors exist and it is determined by the Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use and enjoyment of adjoining and neighboring properties. For purposes of this regulation, a dwelling unit not of the same ownership and not on the same premises as the intensive animal feeding use shall be interpreted to mean that such dwelling is an occupied or habitable dwelling and, if vacant and not habitable, would not require more cost than its present assessed valuation to make such dwelling habitable.

- B. For all classes of intensive animal feeding uses, regardless of size or type, all run-off, control ponds and basins, methods of manure disposal and related facilities and operational activities shall be engineered and developed to minimize air and water pollution and shall be constructed and operated in accordance with the requirements established by the County Board of Commissioners which may include review and recommendation by the applicable Natural Resource District, the Natural Resources Conservation Service, the Department of Environmental Quality, their successor agencies, geologists, soil scientists, agronomist, biological engineers, civil engineers and any other entity with environmental protection expertise and shall have a permit as required by the Nebraska Department of Environmental Quality.

- C. Any intensive animal feeding use which proposes to dispose of any or all of the manure produced at the facility through application of said manure on crop or other land shall indicate that the owners of such intensive animal feeding use shall have, either through ownership or lease of suitable terms, an adequate amount of such land to permit application of such manure based on the nutrient needs of the crops to be produced and avoid any build-up of nutrients or chemicals which can damage the production capacity of the land, result in runoff of such manure or chemicals into abutting property or into any stream or drainageway or contaminate the groundwater. The County Board of Commissioners, in

authorizing any intensive animal feeding use, may utilize recommendations of the Natural Resource District, Natural Resources Conservation Service, the Cooperative Extensive Service and any other crop production experts in determining the maximum amount of manure to be placed on each acre of land to be used for such purposes, the timing of such manure placements and the total amount of land necessary to distribute all manure waste produced by the intensive animal feeding use, and shall establish such maximum per acre application limits and such minimum total land area as conditions of such authorization. The County Board of Commissioners may require the owner/operator of such intensive animal feeding use to conduct soil sampling and testing for build up of nutrients on all locations where manure is to be placed and may require the submission of the results of such soil sampling and testing to the County Board of Commissioners.

- D. All locations which are used by any authorized intensive animal feeding use for stockpiling or composting of livestock manure, bedding or other waste shall be subject to authorization by the County Board of Commissioners as part of the authorization of any intensive animal feeding use and such authorization may include the establishment of maximum amounts of waste which may be stockpiled, the methods and operation of any waste composting facility, and facilities to collect and properly digest or dispose of any waste contaminated runoff from any waste stockpiling or composting site.
- E. Each intensive animal feeding use shall submit a plan for the proper and timely disposal of dead animals and such plan shall be subject to the approval of the County Board of Commissioners.
- F. Each intensive animal feeding use authorized by the County Board of Commissioners shall agree to permit unannounced access to the waste handling facilities of the use, to allow inspection of the premises by persons designated by the County Board of Commissioners to assure compliance with all conditions established by the County Board of Commissioners in authorizing such use, provided such person shall make reasonable effort to notify the owner / operator of such use of the proposed inspection prior to such inspection. Such inspections shall be conducted on a complaint basis only and shall first be investigated by the Zoning Administrator who shall document compliance or lack of compliance with all conditions of use established by the County Board of Commissioners in authorizing such use. Such inspections shall be considered a general function of the Zoning Administrator and the cost of such inspection of such complaints shall be considered an administrative expense of the County and shall not be assessed against the owner(s) of an intensive feeding use.

Upon a finding by the Zoning Administrator that the intensive animal feeding use is not in compliance with the approved conditions of use, he/she shall report same to the County Board of Commissioners and shall notify the owner / operator of the intensive animal feeding use involved, in writing, that the use is in violation of the approved conditions of use and shall state the specific violations of such conditions. The owner/operator of such use(s) shall have 30 calendar days to correct such violation. If the violation is not corrected within such time period, as verified through additional inspections by the Zoning Administrator, the Zoning Administrator shall initiate any and all actions authorized under this Resolution to

require compliance with the conditions of use approved by the County Board of Commissioners, including the possible requirements of reducing the number of animal units on the premises or removal of all animals until such violation(s) have been corrected.

A condition of authorization of any intensive animal feeding use shall be that the owner(s)/operator of each intensive animal feeding use authorized under this Resolution shall agree to comply with any written order of the County Board of Commissioners, up to and including reduction in the number of animals being fed 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 30 calendar days of the date of the written order for compliance issued by the Zoning Administrator. In the event the owner/operator of the intensive animal feeding use involved in the inspection can present reasonable cause to the County Board of Commissioners that additional time to comply with any order of the Zoning Administrator is needed, the County Board of Commissioners may authorize an extension of time up to, but not exceeding 60 calendar days. Failure to comply with the order for compliance within the time specified shall result in a further order to remove all animals from the premises until such time as compliance with these regulations can be achieved.

- G. Any intensive animal feeding use shall be located only in areas of the County which are not subject to flooding on a 100 year basis, and only in areas where it is determined by the County Board of Commissioners that the geology, soil permeability, depth to water table, drainage patterns and other natural environment characteristics will minimize the potential for surface and ground water contamination. In making a determination regarding the appropriateness of the site, the County Board of Commissioners may utilize the advice and recommendations of the Natural Resource District, the Natural Resources Conservation Service, geologist and any other entities with applicable environmental protection expertise.
- H. Each intensive animal feeding use shall be engineered, constructed and operated utilizing best management practices to minimize odor, dust, flies, vermin and other problems and hazards to avoid environmental contamination and/or negative impacts on adjoining and neighboring properties.
- I. In authorizing any intensive animal feeding use, the County Board of Commissioners may attach any additional requirement or condition of design or operation of such use which will minimize the potential for environmental degradation and/or negative impacts on adjoining and neighboring properties, provided such requirement or condition is based upon scientific fact and recommendations by the Natural Resource District, the Natural Resources Conservation Service, the Department of Environmental Quality, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise and not here say, unfounded public remonstrance or other reason not based on reasonable finding or fact.
- J. Where any Federal or State of Nebraska permit for facilities associated with intensive animal feeding uses are required, such permits shall be approved by the appropriate Federal or State agency and all facilities required by such Federal or

State agency and all facilities and safeguards required by the County Board of Commissioners shall be in place and operable prior to introduction of any animals into such use.

- K. Residential dwellings existing on the same premises and under the same ownership as a intensive animal feeding use, as defined in Section 303.43 of this Resolution, as of the effective date of this Resolution, shall remain under the same ownership and on the same premises with such intensive animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the intensive animal feeding use has been abandoned. Nothing in this subsection shall prohibit the relocation of any such dwelling unit to a location beyond the minimum spacing distance requirements from such intensive animal feeding use as set forth in this Resolution.
 - L. Any conditional use application for an intensive animal feeding use which is determined by the County Board of Commissioners, which may include review and recommendation by the Planning Commission, the Natural Resource District, the Natural Resources Conservation Service, geologists, biological engineers, civil engineers and any other entities with applicable environmental protection expertise, to be in compliance with all requirements of this Section and for which there is agreement by the owner of such proposed use to comply with any additional condition established by the Board of Commissioners, as set forth in Subsection I above, shall be authorized by the County Board of Commissioners.
17. Application of animal manure from livestock being fed outside the boundaries of Cherry County, Nebraska on land within the County, except surface application of solid manure as defined in Section 303.80 of this Resolution, or injection of liquid or slurry (non-solid) manure into the soil. Any authorization of surface application of partially or undigested, liquid or slurry manure shall require that the site(s) for such application shall be located not less than two miles from any dwelling, church, school or public use area in Cherry County or the adjoining county which is located north or south of such use or less than one mile from any dwelling, church, school or public use area in Cherry County or the adjoining county which is located east or west of such use.

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

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

1. The minimum lot area for a single-family dwelling unit, manufactured home or mobile home shall be two and one-half acres, provided that a larger lot area may be required by the standards and regulations of the Nebraska Department of Environmental Quality or its successor agency with regard to proper sizing and location of septic tank and tile field or lagoon sewage disposal systems.
2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Commissioners in granting

of any such use in accordance with Article 10 of this Resolution, provided that no lot shall be less than two and one-half acres in area.

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

1. The minimum lot width shall be 200 feet and the minimum lot frontage shall be 100 feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Commissioners in granting of any such use in accordance with Article 10 of this Resolution, provided that no lot shall have a width less than 200 feet and a minimum frontage less than 100 feet.

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

1. Front Setback - 58 feet
 2. Side Setback - 10 feet
 3. Rear Setback - 10 feet
- (Refer also to 502.07, 5.E. for minimum setback from the river)

Where a property or property line extends into or through to the opposite shore of the Niobrara River, all setbacks shall be comply with Section 502.07. 5.E.

501.10 MAXIMUM HEIGHT: No limitation, except for buildings designed for human habitation which shall be a height limitation of 35 feet.

SECTION 502 NRCAG NIOBRARA RIVER CORRIDOR AGRICULTURAL DISTRICT

502.01 INTENT: The intent of this district is to implement the Comprehensive Development Plan by maintaining the pastoral landscape and scenic beauty that led to the designation of the Niobrara River as a National Scenic River through preservation of agricultural uses as the predominant land use and through maintaining the visual qualities of the river corridor and the local economic activity that the scenic river generates.

502.02 OUTRIGHT ALLOWABLE PRINCIPAL LAND USES AND STRUCTURES: The following uses and structures shall not require a written zoning permit:

1. Agricultural uses, as defined in Section 303.06 of this Resolution, excluding any dwelling unit(s) whether or not associated with an agricultural use.
2. Grain 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.
4. Forestry, tree farms, plant nurseries and timber harvesting and management accomplished in accordance with a plan prepared by a professional forester. Timber harvesting shall not be deemed to include removal of new growth trees in pasture areas, trimming of trees for maintenance of livestock fencing, removal of dead or diseased trees or trimming of trees overhanging a roadway or fire break.

502.03 PERMITTED PRINCIPAL USES AND STRUCTURES: The following uses and structures shall require the issuance of a written zoning permit:

1. Churches, cemeteries and related uses.
2. Signs advertising a business, home occupation or home based business shall be limited to no more than two off-premise directional signs of no more than eight square feet each if located outside the NRCAG District, or six square feet each if located within the NRCAG District; no more than two on-premise directional signs of no more than four square feet each; and one freestanding or building sign of no more than 16 square feet. None of these signs shall be visible from the Niobrara River unless the home business includes a water-enjoyment or river-dependent recreational use. Such uses may display one additional freestanding or building sign of no more than 16 square feet to river travelers.
3. Single-Family dwellings under the jurisdiction of this Resolution, including manufactured and modular housing, as defined in Sections 303.53 and 303.59 respectively, but excluding manufactured homes not meeting the definition of Section 303.53 and mobile homes, as defined in Section 303.55 of this Resolution, provided such dwellings comply with all of the following conditions:
 - A. Such dwellings, if not on the same lot with and not of the same ownership as any existing Confined or Intensive Animal Feeding use shall be separated from such use(s) by the minimum distances as set forth in Section 501.05 of this Resolution for the various classes of Confined and Intensive Animal Feeding uses, unless the developer of such dwelling shall grant a Cattle Country Easement(s), as defined in Section 303.17 of this Resolution, to the owner of the confined or intensive animal feeding use, in which case any lesser distance shall be permitted. Such minimum distance shall be measured from the nearest point of the area used or approved, under this Resolution for the animal feeding use, including any land where raw or partially digested liquid or slurry waste is applied to the surface of the land, to such dwelling. Application of raw or partially digested waste or

composted waste, which in solid form to the surface of the land or the injection of liquid or slurry waste into the soil, shall not be considered part of the confined feeding use and the minimum spacing distance herein specified shall not apply. Exceptions to these minimum distance requirements may be approved as a conditional use where special types of intensive animal feeding uses, special provisions for odor and dust control by the owner of the neighboring confined or intensive animal feeding use, topography, prevailing winds or other factor or combination of other factors exist and it is determined by the Board of Commissioners that reduction of this minimum spacing distance will not unreasonably interfere with the value, use or enjoyment of such residential use and that such residential use will not unreasonably interfere with the operation of the confined or intensive animal feeding use.

- B. Such dwelling shall be located on a lot with an area of not less than two and one-half acres, as set forth in Section 502.08 of this Resolution, provided that a larger lot area may be required by the standards and regulations of the Nebraska Department of Environmental Quality or its successor agency with regard to proper sizing and location of septic tank and tile field sewage disposal systems. Such lot shall have a minimum lot width as set forth in Section 502.09 of this Resolution, and further provided that the total number of dwellings shall not exceed two per quarter section, unless a conditional use for a residential subdivision containing additional lots is authorized by the County Board of Commissioners in accordance with the provisions of this Resolution.
- C. The lot on which such dwelling is located shall front on or have a minimum 40 feet wide access by deed or easement to an existing state or county roadway classified by the Cherry County Board of Commissioners as maintenance level 1 through 3. Development of any lot on a county roadway classified as a Class 4 (minimum maintenance) roadway shall require the developer of such lot(s) to improve the roadway to County standards before the County shall accept maintenance of such roadway. Cherry County shall not construct or improve any new private roadways and shall not be committed to accepting any such roadway as a publicly maintained County road even if such roadway is improved to County road standards by the owner(s) of such roadway. Further, where more than one lot fronts on a private roadway, provisions shall be made for self-assessment of each such lot owner for the maintenance of such common private roadway.
- D. Each side of a lot on which a non-farm or non-ranch use is developed which abuts grazing land shall be fenced, as defined by Neb. Rev. Stat. 34-115, and such fence shall be maintained to prevent conflict with grazing of such neighboring lands, unless there is a written agreement between the owner of the lot and the owner of such adjoining grazing land to the contrary. Such fence shall be constructed by and at the expense of the developer of the lot on which a non-farm or non-ranch use is proposed and shall be equipped with a gate(s) capable of preventing cattle on adjoining grazing land from entering the lot through such access point(s). Construction and maintenance of such gate(s) shall be the responsibility of the developer of the non-farm or non-ranch use.

- E. Such dwellings, if not on the same lot with and not of the same ownership as any

existing ranch or farm operation, shall be subject to the granting of a Cattle Country Easement.

F. Residential dwellings existing on the same premises and under the same ownership as a confined or intensive animal feeding use, as defined in Sections 303.23 and 303.43 of this Resolution, as of the effective date of this Resolution shall remain under the same ownership and on the same premises with such confined or intensive animal feeding use and shall not be subdivided or otherwise sold off as a separate parcel unless the confined or intensive animal feeding use has been abandoned. Nothing in this subsection shall prohibit the relocation of any such dwelling unit to a location beyond the minimum spacing distance requirements from such confined or intensive animal feeding use as set forth in Section 501.05 of this Resolution.

502.04 PERMITTED ACCESSORY USES AND STRUCTURES: All accessory uses and structures shall require a written permit except for the following:

1. Non-commercial television antennae towers, non-commercial satellite dishes and similar non-commercial television, radio and communication facilities.
2. Small Wind Energy Conversion Systems for residential uses not to exceed 50 feet in height and electrical generation of more than 100KW.
3. Home occupations and home based businesses, which are in compliance with Section 608 of this Resolution.
4. Temporary roadside stands for the sale of produce or crafts.
5. Hunting and fishing for a fee where such activity does not involve development of lodges or other buildings devoted solely to the support of such hunting and fishing activities. Temporary housing of hunters and fishermen in farm or ranch dwellings, bunkhouses or other farm or ranch related housing shall be permitted.
6. Child care and day care facilities and services.

502.05 CONDITIONAL USES: After the provisions of this Resolution relating to conditional uses have been fulfilled, the Board of Commissioners may, in accordance with the procedures and requirements of Article 10 of this Resolution, permit the following as conditional uses in this district:

1. Residential subdivisions containing more than two lots per quarter section. The County Board of Commissioners, in authorizing a subdivision containing more than two lots per quarter section may require the surveying, engineering of improvements and platting of such subdivision.
2. Public and private recreational uses and commercial recreational enterprises, including parks, playgrounds, campgrounds, riding stables, lodges, bed and breakfast uses, canoe outfitters, rental cabins, camp stores, public or commercial river access sites, scenic overlook facilities and other similar uses.
3. Fish hatcheries, game farms and commercial hunting and fishing involving development of lodges or cabins used primarily for housing of hunters and fishermen.
4. Walking, hiking, horse trails, fire trails and other non-motorized recreational trails.
5. Public service facilities

502.06 PROHIBITED USES AND STRUCTURES: All other uses and structures which are

not specifically allowed in this District as permitted uses and consistent with the Intent statement of this zoning district. This prohibition shall specifically include the development of all types of new confined or intensive animal feeding uses as defined in Sections 303.23 and 303.43 of this Resolution and manufactured homes not meeting the standards of Section 303.53 of this Resolution and mobile homes.

502.07 PERFORMANCE STANDARDS AND DEVELOPMENT REQUIREMENTS:

The owners of real property within the Niobrara Scenic River Corridor have a right to enjoy the scenic quality and view of the river, the river valley and related scenic vistas whether along the river or roadways in the corridor. In order to protect these rights and to preserve the scenic quality of the river, in a manner consistent with the National Park Service Niobrara National Scenic River Final General Management Plan/Environmental Impact Statement (GMP), development of buildings and structures associated with uses authorized in this district, when developed within sight from any location within the corridor, shall comply with the following standards and limitations:

1. All buildings, structures and uses which require a zoning permit shall be subject to such permit application or certificate request being forwarded to the Niobrara Council for review and comment with regard to compliance of the proposed development with the GMP. The Zoning Administrator shall not issue any zoning permit in this District until a response from the Niobrara Council has been received, provided such response is received within 90 days from the date the Zoning Administrator sends the application for a zoning permit to the Niobrara Council. If no response is received from the Niobrara Council within such time period, the application shall be deemed to be consistent with the GMP. In the event the Niobrara Council shall determine that the proposed development is not consistent with the GMP it shall recommend modifications in the proposed development which would allow the development to become consistent with the GMP. Upon receipt of such findings and recommendations, the Zoning Administrator shall notify the applicant of such inconsistency and recommendations and request modifications in the application so that the development becomes consistent with the GMP. Upon receipt of a revised application which is consistent with the recommendations of the Niobrara Council, such permit or certificate may then be issued.
2. Application for authorization of any use listed as a conditional use in this district shall be referred to the Niobrara Council for review and comment in the same manner and for the same purpose as in Paragraph 1 immediately above, provided that the findings and recommendations of the Niobrara Council shall be forwarded to the Planning Commission and Board of Commissioners so that such findings and recommendations may be considered during the conditional use review process set forth in this Resolution.
3. Application for a variance from the requirements of this Resolution shall be referred to the Niobrara Council for review and comment in the same manner and for the same purpose as in Paragraph 1 above, provided that the findings and recommendations of the Niobrara Council shall be forwarded to the Board of Adjustment so that such findings and recommendations may be considered during the deliberations of the Board of Adjustment on a variance application.
4. In instances where land is included within the NRCAG zoning district, but such land lies outside of the designated Niobrara River Corridor as established in the GMP, the Niobrara Council shall not have review authority and only the requirements of this Resolution shall govern.
5. Residential Uses:
 - A. In all instances where residential dwellings and accessory buildings may be

viewable from any river level vantage point or prominent scenic vista such dwelling or accessory buildings shall be limited to 35 feet in height and may be placed in a manner which will optimize the scenic views from such buildings, but which will not be generally visible from any river level vantage point or prominent scenic vista at the time of completion of construction and occupancy of the dwelling and thereafter. Not generally visible shall mean that a building or structure shall not be visible during summer months when deciduous trees have leaves, except for occasional visibility caused by wind generated motion in the screening material and during night time hours when lighting within or associated with such buildings or structures filters through the screening material.

- B. In order for such buildings to not be generally visible, they shall be placed in a manner where the natural topography, existing or installed, living landscape material, berming or installation of native or adapted landscape screening materials shall result in such buildings not being generally visible from the upstream surface of the Niobrara River or prominent scenic vistas during months when deciduous trees have foliage and being only 50% visible during the remainder of the year. Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%.
- C. If dwellings or accessory buildings are constructed of exterior materials which are or simulate natural wood and natural wood colors and roofing material is or simulates wood shingles or other non-reflective material of natural wood or summer green tones, such buildings may be 50% visible from the upstream surface of the River. Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%. In all cases the percent of visibility shall be achieved at the time of completion of construction and occupancy of the dwelling and thereafter.
- D. In all instances where trees and \ or vegetation is used to limit visibility from the river level vantage point or prominent scenic vista and such trees and \ or vegetation is damaged by fire, disease or other reason, such trees and \ or vegetation shall be immediately re-established by the owner of such buildings with materials which have sufficient size when planted and have sufficient growth rate to provide the required screening within five years of planting.
- E. With the exceptions herein noted, all buildings and structures shall be set back a minimum of 200 feet from the high water mark of the Niobrara River and other streams or wetlands within the Scenic River boundary. Exceptions to this standard may be authorized after review by the Niobrara Council and County zoning authorities, where development within the 200 feet limitation can be effectively screened from the river, in accordance with the standards herein described, and any on-site sewage disposal system serving such a use is located beyond the two hundred feet limitation. Specific additional exceptions shall include river dependent recreational uses, river dependent use signs and river access ways along the river when developed in accordance with the standards herein described;
- F. In development of uses allowable in this district, the construction of any roadway or vehicle access shall be directed as much as possible away from the river (as opposed to paralleling the river) and shall be constructed to minimize the

visibility of such roadways or access from the river.

- G. In the location and construction of such buildings, roadways or vehicular access, clearing of or disturbance of the soil surface, trees and other natural vegetation shall be minimized to preserve the scenic quality of the river corridor and to minimize the potential for erosion. Areas which are cleared or disturbed shall be seeded back to grasses, trees and other vegetation native to or adaptable to the area. Where necessary to prevent erosion of construction sites, and areas along roadway and accesses, provisions shall be made to control erosion thus minimizing potential damage to adjoining properties and the scenic quality and water quality of the Niobrara River.
 - H. Exterior lighting associated with any use in the corridor, other than existing agricultural uses, shall be limited to low to moderate intensity lighting, either at or near ground level or on posts not exceeding 10 feet in height. Lighting shall generally be limited to less than 100 watts per fixture and lighting on posts shall be shielded so that direct visibility of the light source is not visible from the river. Use of high intensity exterior security or yard lighting shall be prohibited.
 - I. Signs associated with accessory uses or home occupations, other than signs for river dependent uses as addressed below, shall not be visible from any river level vantage point or prominent scenic vista. Signs shall be limited to no more than two off-premise directional signs of no more than eight square feet each if located outside the NRCAG District, or six square feet each if located within the NRCAG District; no more than two on-premise directional signs of no more than four square feet each and one freestanding or building sign of not more than 16 square feet. River dependent uses may display one additional freestanding or building sign of no more than 16 square feet to river travelers. The materials and colors selected for signs in the NRCAG District shall be compatible with the scenic pastoral landscape of the river corridor. Appropriate materials include wood with natural finishes, carved wood, painted wood and anodized aluminum. Appropriate colors include those found naturally in the river corridor. No directly illuminated, flashing, blinking or moving signs (including signs that appear to move) shall be displayed in the NRCAG District. Signs in the NRCAG District may have indirect illumination.
6. Commercial and Other Uses:
- A. In all instances where commercial, public service and other non-residential uses may be viewable from any river level vantage point or prominent scenic vista such dwelling or accessory buildings shall be limited to 35 feet in height and may be placed in a manner which will optimize the scenic views from such buildings, but which will not be generally visible from any river level vantage point or prominent scenic vista at the time of completion of construction and occupancy of the dwelling and thereafter. Not generally visible shall mean that a building or structure shall not be visible during summer months when deciduous trees have leaves, except for occasional visibility caused by wind generated motion in the screening material and during night time hours when lighting within or associated with such buildings or structures filters through the screening material.
 - B. In order for such buildings to not be generally visible they shall be placed in a manner where the natural topography, existing or installed, living landscape material, berming or installation of native or adapted landscape screening

materials shall result in such buildings not being generally visible from the upstream surface of the Niobrara River or prominent scenic vistas during months when deciduous trees have foliage and being only 50% visible during the remainder of the year. Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%.

- C. If commercial, public service and other non-residential buildings or structures are constructed of exterior materials which are or simulate natural wood and natural wood colors and roofing material is or simulates wood shingles or other non-reflective material of natural wood or summer green tones, such buildings may be 50% visible from the upstream surface of the River. Visibility of such buildings from a lateral or downstream surface of the Niobrara River shall be limited to 50%. In all cases the percent of visibility shall be achieved at the time of completion of construction and occupancy of the dwelling and thereafter.
- D. In all instances where trees and/or vegetation is used to limit visibility from the river level vantage point or prominent scenic vista and such trees and/or vegetation is damaged by fire, disease or other reason, such trees and/or vegetation shall be immediately re-established by the owner of such buildings with materials which have sufficient size when planted and have sufficient growth rate to provide the required screening within five years of planting.
- E. With the exceptions herein noted, all buildings and structures shall be set back a minimum of 200 feet from the high water mark of the Niobrara River and other streams or wetlands within the Scenic River boundary. Exceptions to this standard may be authorized after review by the Niobrara Council and County zoning authorities, where development within the 200 feet limitation can be effectively screened from the river, in accordance with the standards herein described, and any on-site sewage disposal system serving such a use is located beyond the two hundred feet limitation. Specific additional exceptions shall include river dependent recreational uses, river dependent use signs, river access ways and scenic overlooks along the river when developed in accordance with the standards herein described.
- F. In development of uses allowable in this district, the construction of any roadway or vehicle access shall be directed as much as possible away from the river (as opposed to paralleling the river) and shall be constructed to minimize the visibility of such roadways or access from the river.
- G. In the location and construction of such buildings, roadways or vehicular access, clearing of or disturbance of the soil surface, trees and other natural vegetation shall be minimized to preserve the scenic quality of the river corridor and to minimize the potential for erosion. Areas which are cleared or disturbed shall be seeded back to grasses, trees and other vegetation native to or adaptable to the

area. Where necessary to prevent erosion of construction sites, and areas along roadway and accesses, provisions shall be made to control erosion thus minimizing potential damage to adjoining properties and the scenic quality and water quality of the Niobrara River.

- H. Exterior lighting associated with any use in the corridor, other than existing agricultural uses, shall be limited to low to moderate intensity lighting, either at or near ground level or on posts not exceeding 10 feet in height. Lighting shall generally be limited to less than 100 watts per fixture and lighting on posts shall be shielded so that direct visibility of the light source is not visible from the river. Use of high intensity exterior security or yard lighting shall be prohibited.
- I. Signs associated with accessory uses or home occupations, other than signs for river dependent uses as addressed below, shall not be visible from any river level vantage point or prominent scenic vista. River dependent uses may display no more than two off-premise directional signs of no more than eight square feet each if located outside the NRCAG District, or six square feet each if located within the NRCAG District, necessary on-premise directional signs of no more than four square feet each, one freestanding or building sign of no more than 24 square feet that is not visible from the river and one freestanding or building sign of no more than 16 square feet that is visible to river travelers. The materials and colors selected for signs in the NRCAG District shall be compatible with the scenic pastoral landscape of the river corridor. Appropriate colors include those found naturally in the river corridor. No directly illuminated, flashing, blinking or moving signs (including signs that appear to move) shall be displayed in the NRCAG District. Signs in the NRCAG District may have indirect illuminations.

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

- 1. The minimum lot area shall be two and one-half acres, provided that a larger lot area may be required by the standards and regulations of the Nebraska Department of Environmental Quality or its successor agency with regard to proper sizing and location of septic tank and tile field or lagoon sewage disposal systems.
- 2. The minimum lot area for uses identified as conditional uses in this District, other than residential dwelling units in residential subdivisions, shall be the lot area appropriate for such uses, as determined by the Board of Commissioners, provided that no lot shall be less than two and one half acres in area.

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

- 1. The minimum lot width shall be 200 feet and the minimum lot frontage shall be 100 feet, except that the minimum lot width and frontage for uses identified as conditional uses in this district shall be the lot width and frontage appropriate to such uses, as determined by the Board of Commissioners, provided that no lot shall have a width less than 200 feet and a minimum frontage less than 100 feet.

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

- 1. Front Setback - 80 feet
- 2. Side Setback - 25 feet
- 3. Rear Setback - 25 feet

(Refer also to 502.07, 5.E. for minimum setback from the river)

502.11 MAXIMUM HEIGHT: The maximum height for any building or structure shall be 35 feet. (Refer to Section 502.07 for screening requirements for all buildings and structures which may be visible from any river level vantage point or prominent scenic vista.)

ARTICLE 6 - SUPPLEMENTAL DISTRICT REGULATIONS

SECTION 601 APPLICATION

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

SECTION 602 SETBACK REQUIREMENTS

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

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

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

SECTION 603 FENCES AND WALLS

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

SECTION 604 SETBACK EXEMPTIONS

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

SECTION 605 DIVISION OF LOTS

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

SECTION 606 CONVERSIONS OF USE

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

SECTION 607 ACCESSORY USES

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

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

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

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

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

SECTION 608 HOME OCCUPATIONS AND HOME BASED BUSINESSES

A home occupation or home based business, in compliance with the following restrictions, shall be permitted to accompany residential (agricultural or non-agricultural) use and, with the exception of home occupations or home based businesses in the NRCAG zoning district which are situated in buildings other than the dwelling unit, which shall be regulated in accordance with Section 502.04, Subsection 3, such home occupation or home based business shall not require any written zoning permit:

608.01 The home occupation shall be conducted within the dwelling unit or accessory building and shall be limited in size and scale in accordance with the definition of home occupations as set forth in Section 303.40 of this Resolution.

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

608.03 The home occupation shall not be a hazardous waste generator, as defined in Section 303.40 of this Resolution.

608.04 On premise and directional signs shall be permitted for home occupations and home based businesses in accordance with the zoning district regulations.

608.05 If a home occupation or home based business is situated within the Niobrara River Corridor Agricultural District, no outdoor work or storage or raw materials or finished products shall be visible from the surface of the Niobrara River and shall be screened from view from any public roadway within such zoning district.

608.06 No home occupation or home based business shall generate volumes of traffic or axle loads inconsistent with the capacity of the roadways serving the lot on which the use is located and no home occupation or home based business shall unduly increase the demand for law enforcement, fire protection or emergency medical services.

SECTION 609 CONSERVATION EASEMENTS

The County Zoning Administrator, Planning Commission, and/or the Board of Commissioners reserve the right to review any intended Conservation Easement for compliance with this Resolution and as per State Statute.

SECTION 610 SIGNS

610.01 DEFINITIONS

1. SIGN, FLASHING: A sign that exhibits artificially changing light or color effects visible from the right-of-way or adjoining properties.
2. SIGN, NEON: A sign formed from neon lamps containing neon gas.

610.02 SIGN REQUIREMENTS:

The following are requirements for signs within Cherry County, unless otherwise noted in this Resolution.

1. Signs, both on-site and outdoor advertising signs, provided the number of on-site signs shall not exceed three per premises.
2. Outdoor advertising signs shall be located no closer than one-eighth mile to any other on-site or outdoor advertising sign.
3. Agricultural and recreational directional signs and non-commercial informational signs are allowed without a permit.
4. All signs along federal and state highways are subject to the permit requirements of the Nebraska Department of Roads.
5. The use of neon and flashing signs within the Niobrara River Corridor Agricultural District is prohibited.

SECTION 611 TEMPORARY USES

A seasonal use that does not involve the construction or alteration of any permanent structure. The seasonal use shall not exceed 120 days.

SECTION 612 RADIO, TELEVISION AND WIRELESS COMMUNICATION TOWERS

612.01 Intent

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

612.02 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

612.03 Location of Towers and Construction Standards

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

612.04 Application to develop a Tower

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

1. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.
2. The legal description and address of the tract of land on which the tower is to be located.
3. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful effort to obtain permission to install or collocate the applicant's telecommunication facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicant's telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
4. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturer's literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.
5. Designation of an appropriate space for Cherry County's operational and emergency services communication equipment to be provided at no cost to the County by the applicant.

612.05 Tower Development Permit: Procedure

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

612.06 Setbacks and Separation or Buffer Requirements

1. All towers up to 50 feet in height shall be set back on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 50 feet in height shall be set back one additional foot for each foot of tower height in excess of 50 feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.

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2. Towers exceeding 100 feet in height must be separated from all residential areas and occupied structures, other than those utilized by the tower owner, by a minimum of 200 feet or 100% of the height of the proposed tower, whichever is greater.
 3. Towers of 100 feet or less in height may be located in residential area provided said tower is separated from any residential structure, school, church, and/or occupied structures, other than those utilized by the tower owner, by a minimum of 100% of the height of the tower.
 4. Towers must meet the following minimum separation requirements from other towers:
 - A. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
 - B. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

612.07 Maintenance, Repair or Modification of Existing Towers

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

612.08 Inspections

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

612.09 Maintenance

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

612.10 Abandonment

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

ARTICLE 7 - NON-CONFORMING USES

SECTION 701 INTENT

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

SECTION 702 NONCONFORMING BUILDINGS, STRUCTURES AND USES

Nothing in this Resolution shall be deemed to require a change or cessation of use of any land which was in existence as of the effective date of this Resolution. Existing buildings, structures and uses shall not require a permit to continue the purpose and use that was existing at the adoption of this Resolution or for which actual construction had been lawfully initiated prior to the effective date of this Resolution, provided actual construction activity has been diligently carried on. Actual construction is defined as the placing of construction materials in a permanent position and fastened in a permanent manner, or in the instance of a future amendment to this Resolution, where a zoning permit has been issued.

SECTION 703 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 and confined or intensive animal feeding uses, shall not be extended or enlarged after adoption of this Resolution or amendment thereto, except as specifically authorized in this Resolution.

SECTION 704 HARDSHIP

To avoid any undue hardship, nothing in this Resolution shall be deemed to require a change in the plans, construction or designated use of any building or structure for which actual construction has been lawfully initiated prior to the effective date of the Resolution or amendment thereto where actual construction activity has been carried on diligently. Actual construction is defined to include the placing of construction materials in a permanent position and fastened in a permanent manner, or where a zoning permit has been issued.

SECTION 705 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:

705.01 Such residential use shall comply with Section 706 of this Resolution.

705.02 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.

Further, in accordance with the Sections 501.03, Subsection 4 of this Resolution, lawfully established confined or intensive animal feeding uses rendered non-conforming by these regulations may be expanded, but only in accordance with the restrictions set forth in the above referenced sections of this Resolution.

SECTION 706 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:

706.01 Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width or both that are applicable to the zoning district in which such lot is located, provided that erection of any building or structure shall comply with all setbacks (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.

706.02 If two 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 lot(s) involved shall be considered to be lots of record for purposes of the Resolution provided, no portion of said lot(s) 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 lot(s) is located nor shall a 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 lot(s) is located.

SECTION 707 NON-CONFORMING USES OF LAND

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

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

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

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

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

SECTION 708 NON-CONFORMING USES OF BUILDINGS/STRUCTURES AND LAND IN COMBINATION

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

708.01 With the exceptions set forth in Section 706 of this Resolution, no existing building or structure devoted to a use not permitted in the zoning district in which it is located shall be enlarged, extended, reconstructed, moved or structurally altered, except in changing the use to a use permitted in the zoning district as a permitted, accessory use or conditional use.

708.02 With the exceptions set forth in Section 706 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.

708.03 If no structural alterations are made, any non-conforming use of a building or structure and land in combination may, through authorization of a conditional use in accordance with the procedures and requirements of this Resolution, be changed to another non-conforming use provided that the County Board of Commissioners, in authorizing said conditional use, shall find that the proposed use is equally appropriate or more appropriate to the intent of the zoning district than is the existing use. In authorizing such conditional use, the Board of Commissioners may set conditions for the proposed use to assure that such use will remain appropriate for location in the zoning district.

708.04 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.

708.05 When a non-conforming use of a building or structure, or building or structure and land in combination, is discontinued or abandoned for 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, as defined in this Resolution, is discontinued or abandoned for a period of 12 consecutive months, such use may be re-established within the confines of the area in which the previous feeding operation was conducted, but such use shall be considered permanently abandoned and shall not be re-established if its use is discontinued for a period of 36 consecutive months or longer.

708.06 Where non-conforming use status applies to a building or structure, a building or structure and land in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction, for the purposes of this Resolution, is defined as damage to an extent of more than 75% of the replacement cost at the time of destruction.

SECTION 709 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.

SECTION 710 USES UNDER CONDITIONAL USE

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

ARTICLE 8 - ADMINISTRATION AND ENFORCEMENT

SECTION 801 ORGANIZATION

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

SECTION 802 AUTHORITIES

Planning Commission:

With regard to the proper administrative procedures of this Resolution, the Cherry County Planning Commission shall have the following authorities:

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

802.02 Hear and recommend action by the Board of Commissioners regarding all applications for conditional uses listed in the various zoning districts.

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

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

Board of Adjustment:

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

802.05 Hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator when such order, requirement, decision, or determination is appealed by the person(s) affected.

802.06 Hear and authorize specific appeals at variance with the requirements of this Resolution, that would not be contrary to the public interest, where owing to special conditions demonstrated and after written findings of legitimate hardship, as defined and specified in Section 907.03 of this Resolution, a literal enforcement of the provisions of this Resolution would result in a legitimate and unnecessary hardship and not merely an inconvenience.

802.07 Hear and decide appeals regarding interpretation of zoning district boundaries, as indicated on the Official Zoning Map, in accordance with the requirements and limitations of this Resolution.

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

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

Board of Commissioners:

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

802.10 Hear and decide conditional use applications upon which it is required to act under the terms of this Resolution, after recommendation from the Planning Commission.

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

802.12 Consider and adopt a schedule of permit and application fees for administration of this Resolution.

802.13 Provide for the proper and constant enforcement of this Resolution through appointment of a Zoning Administrator and sufficient budget to enable the Planning Commission, the Board of Adjustment, the Board of Commissioners, the Zoning Administrator, the County Attorney and any other persons designated by the Board of Commissioners to carry out the responsibilities assigned to them by adoption of this Resolution.

Zoning Administrator:

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

802.14 Make available to the public application forms for amendments to this Resolution and/or Official Zoning Map, for appeals to the Board of Adjustment, and conditional use requests to the Board of Commissioners and to issue zoning permits as required by the Resolution and to maintain records of all such applications and permits issued.

802.15 Conduct inspections of buildings, structures, premises and the uses of land to determine compliance with the terms of this Resolution and report findings and violations to the Planning Commission, Board of Adjustment, Board of Commissioners, and County Attorney, for the purpose of ordering of compliance with the requirements of this Resolution.

802.16 Provide interpretation of the text of this Resolution and the Official Zoning Map when necessary and such other technical and clerical assistance as the public, the Planning Commission, Board of Adjustment and Board of Commissioners may require.

802.17 Maintain and provide information to the public regarding the requirements of this Resolution and provide for the timely publishing of legal notices and other notifications relative to administration of this Resolution as prescribed by law.

802.18 Maintain permanent and current records with regard to this Resolution, including but not limited to all maps, amendments, zoning permits, variances, appeals, conditional uses and applications thereof together with all records of meetings and public hearings pertaining to this Resolution.

SECTION 803 RESPONSIBILITIES

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

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

803.02 It is further the intent of this Resolution that the duties of the Board of Commissioners relative to this Resolution shall be limited to those specified in Section 802.10 through 802.13 of this Resolution and shall not include the hearing and deciding questions of interpretation and enforcement that may arise. The procedure of deciding such questions shall be as stated in this Resolution.

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

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

SECTION 804 ZONING PERMITS REQUIRED

No building or other structure shall be erected, moved, added to or structurally altered without a zoning permit therefore, issued by the Zoning Administrator, provided however, that no zoning permit shall be required for any non-residential farm building or structure. Buildings and structures used in connection with confined or intensive animal feeding uses, as defined in Section 303.23 and 303.43 of this Resolution, shall be considered farm buildings or structures and shall not require a zoning permit, provided however, that the use within such buildings or structures shall be subject to all applicable requirements of this Resolution. No zoning permit 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, an approved variance or a written authorization from the Board of Commissioners in the form of an approved conditional use, as provided for in this Resolution.

Permits issued are subject to the regulations which were in force when a legally issued permit was approved. An amendment to this Resolution shall not impact said permit while progress is being made to comply with the permit. Progress, for purposes of this Section shall mean the continued work and noticeable advancement of the project on a weekly basis.

SECTION 805 APPLICATION FOR A ZONING PERMIT

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

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

805.02 The application shall include the name(s), address(es) and telephone number(s) of the applicant and such other information as may be lawfully required by the Zoning Administrator, including existing and proposed uses of land, buildings and structures, existing or proposed building or structure alterations, the number of families, housekeeping units on the premises, conditions existing on the premises, provisions for water supply, sewage disposal and erosion control, soil conditions and permeability, and such other information as may be necessary to determine conformance with the requirements of the Resolution and enforcement thereof.

805.03 Upon receipt of a complete zoning permit application and receipt of any applicable application fee, the Zoning Administrator shall make two copies of the zoning permit application and return one copy to the applicant after he/she has marked the copy of the permit as approved or disapproved and attested to same by his/her dated signature. If a zoning permit application is denied, the Zoning Administrator shall state the reason(s) for such denial in writing and attach the same to the applicant's copy of the application. The Zoning Administrator shall mark the original of the zoning permit application as approved or disapproved in the same manner as the copy and shall maintain said original together with written reason(s) for denial of said application in the permanent files of the County.

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

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

A Zoning Permit may require an onsite inspection of footing locations when said setback is 100 feet or less from a Federal or State Highway or a County Road. The Cherry County Zoning Administrator reserves the right to inspect an approved project for compliance with this Resolution.

805.06 Zoning permits for development of land uses, buildings and structures which are located in the Niobrara River Corridor Agricultural District shall be subject to review and recommendation by the Niobrara Council to evaluate compliance with the GMP. Upon receipt of a zoning permit application, the Zoning Administrator shall immediately provide a copy of such permit to the Niobrara Council together with a request that, within 90 days, the Council review said application for compliance with the GMP. If the proposed use/construction is inconsistent with such Plan, the Council shall provide recommendations regarding how the use/construction may be modified to allow compliance with said Plan. Upon receipt of comments from the Niobrara Council, the Zoning Administrator shall take appropriate action to approve, request modification(s) in the use/construction proposed, or deny said application in accordance with the requirements of this Resolution and the GMP.

SECTION 806 LIMITATION OF ISSUANCE OF ZONING PERMIT

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

SECTION 807 EXPIRATION OF ZONING PERMIT

If the work described in any approved zoning permit has not been initiated within 90 calendar days of the date of approval of such permit, or if work described in any approved permit has not been completed within two 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 COMPLIANCE WITH ISSUED ZONING PERMITS

The following requirements shall apply to the issuance of zoning permits:

808.01 It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises or both or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use until a Zoning Permit has been issued therefore by the Zoning Administrator

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

808.03 Zoning permits issued on the basis of plot plans and information presented by the applicant and approved by the Zoning Administrator shall authorize only the use, arrangement and construction set forth in such approved plot plans and permit.

Where a portion or all of the use/structure is not compliant, the Zoning Administrator shall inform the applicant in writing of the violation(s) and specify the actions necessary to bring such use, arrangement or construction into compliance with any approved zoning permit and the potential penalties that may apply.

Where work has begun and/or completed without a prior issued zoning permit, the Zoning Administrator shall inform the applicant in writing of the violation(s) and specify the actions necessary to bring such use, arrangement or construction into compliance and any potential penalties that may apply.

808.04 A zoning permit, once issued, shall remain in effect so long as the use of the land, buildings and structures is used in accordance with said Permit.

SECTION 809 FAILURE TO OBTAIN ZONING PERMIT

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

ARTICLE 9 - BOARD OF ADJUSTMENT

SECTION 901 ESTABLISHMENT AND PROCEDURE

A Board of Adjustment is hereby created and shall be known as the Cherry County Board of Adjustment. The Board of Adjustment shall be appointed by the Board of Commissioners and shall consist of five members, plus one 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 member of the Board of Adjustment shall be appointed from the membership of the Cherry County Planning Commission. 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 by the Board of Commissioners. No member of the Board of Commissioners shall be a member of the Board of Adjustment.

SECTION 902 TERMS OF OFFICE

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

SECTION 903 ELECTION OF OFFICERS

The Board of Adjustment shall annually elect one 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 of its members as Secretary/Treasurer or shall appoint the Zoning Administrator to serve as Secretary/Treasurer to the Board of Adjustment. In this capacity the Zoning Administrator shall be a non-voting ex-officio officer of the Board, but shall not be considered a member of the Board.

SECTION 905 RECORDS OF THE BOARD OF ADJUSTMENT

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

SECTION 906 QUORUM AND VOTING

A quorum for the Board of Adjustment shall be three 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 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 members.

SECTION 907 POWERS AND DUTIES

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

907.01 Administrative Review: To hear and decide appeals where it is alleged by the appellant that there is an error in order, requirement, decision or refusal made by the Zoning Administrator or official based on or made in the enforcement of this Resolution or any regulation relating to the location of structures.

907.02 Zoning Map Interpretation: To hear and decide, in accordance with the provisions of this Resolution, requests for interpretation of Official Zoning Map of the County.

907.03 Variances: To hear applications for and authorize, in specific cases, a variance from the specific terms of this Resolution which will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Resolution would result in unnecessary hardship and provided that the spirit of this Resolution shall be observed, public safety and welfare secured and substantial justice done. A variance shall not be granted by the Board of Adjustment unless and until the Board shall have made written findings that ALL of the following conditions exist or have been met:

1. Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of adoption of this Resolution, or by reason of exceptional topographic 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. Such relief may be granted only when the Board determines that a variance will not result in substantial detriment to the public good and without substantially impairing the intent and purpose of this Resolution. No variance shall be authorized by the Board of Adjustment unless the Board finds that:
 - A. The strict application of the regulations would produce undue hardship;
 - B. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - C. The authorization of such variance shall not be of substantial detriment to adjacent properties and the character of the district will not be changed by the granting of such variance;
 - D. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of the owner's convenience, profit or caprice.
2. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to this Resolution.

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

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

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

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

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

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

SECTION 908 PUBLIC HEARINGS

Prior to acting on any powers granted to it under this Resolution, the Board of Adjustment shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one time at least 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 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 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 10 days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

SECTION 909 BOARD HAS POWERS OF ADMINISTRATIVE OFFICIAL ON APPEALS

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

SECTION 910 APPEALS

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board or bureau of the County, may 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 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 days after the issuance of the summons. Within 10 days after the return day of the summons, the County Board shall file an answer to the petition which shall admit or deny the substantial averments of the petition and matters in dispute as disclosed by the petition. The answer shall be verified in like manner as required for the petition. At the expiration of the time for filing the answer, the court shall proceed to hear and determine the cause without delay and shall render judgment according to law. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review. Appeal to the district court shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the Board and on due cause shown, grant a restraining order. Any appeal from such judgment of the district court shall be prosecuted in accordance with the general laws of the State regulating appeals in actions at law.

ARTICLE 10 - CONDITIONAL USES

SECTION 1001 GENERAL POWERS

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

SECTION 1002 APPLICATION REQUIREMENTS

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

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

SECTION 1003 REFERRAL TO PLANNING COMMISSION

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

SECTION 1004 PLANNING COMMISSION PUBLIC NOTICE

Prior to consideration of a conditional use application by the Planning Commission, shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one time at least 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 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 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 10 days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

SECTION 1005 PUBLIC HEARING, CONSIDERATION AND PROCEDURES

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

SECTION 1006 COUNTY BOARD OF COMMISSIONERS PUBLIC NOTICE

Prior to consideration of a conditional use application, the Board of Commissioners shall give public notice of a public hearing. Such notice shall be published in the legal newspaper of general circulation in the County one time at least 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 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 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 10 days prior to the date of such public hearing. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.

SECTION 1007 PUBLIC HEARING, CONSIDERATION AND PROCEDURES

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

SECTION 1008 REQUIREMENTS GOVERNING REVIEW AND APPROVAL OF CONDITIONAL USES

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

- 1008.01 Both ingress and egress to the property and conditional use thereon and the existing and proposed buildings and structures thereon is appropriate with particular reference to automobile and truck safety, traffic flow, site distance, roadway and bridge capacities, convenience and access in case of fire or catastrophe;
- 1008.02 Off-street parking, including spaces for handicapped persons, is adequate for the use proposed and will not create any safety hazards relative to public roadways;
- 1008.03 Refuse disposal or manure collection and disposal facilities and operations and other service facilities are appropriate relative to location, capacity and safety;
- 1008.04 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;
- 1008.05 The number, location, size and use of buildings and structures proposed is appropriate relative to the size of the site and protection of adjoining properties and scenic views.
- 1008.06 Front, side and rear setbacks meet or exceed the minimum setback requirements of the zoning district in which the conditional use is located.
- 1008.07 Provisions to avoid development within any area subject to flooding and/or to avoid

modification of any wetlands.

1008.08 For proposed industrial uses and confined or intensive animal feeding uses, the types of operations to be conducted on the site will not result in inappropriate levels of traffic, noise, dust, odor, or undue potentials for air, water pollution or explosion hazards.

1008.09 Signed Cattle Country Easement to be filed in the Register of Deeds office.

SECTION 1009 CONDITIONS, SAFEGUARDS AND LIMITATIONS OF USE

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

SECTION 1010 EXPIRATION OF CONDITIONAL USE AUTHORIZATIONS

Development of any authorized conditional use shall be commenced within one year of the date of approval of such conditional use by the Board of Commissioners and development of said authorized conditional use shall be completed within two years from the date of approval of such conditional use by the Board of Commissioners 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 Commissioners, in the manner herein described. Notwithstanding the limitation of time provided in this section, in the event the Board of Commissioners at its hearing determines that the development of the conditional use is one that would reasonable require more than two years to complete, then the Board of Commissioners may allow such additional time for completion of the development as it determines is reasonably required for that purpose, not to exceed a total of five years. This provision shall also apply to unexpired permits that were issued prior to approval of this amendment. A permittee under an unexpired permit may apply to the Board of Commissioners for an extension of the time originally granted to such permittee and the Commissioners may for good cause shown extend the time of the original permit for a reasonable period of time, not to exceed five years from the date of approval of the conditional use permit.

ARTICLE 11 - AMENDMENTS

SECTION 1101 AUTHORITY

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

SECTION 1102 PUBLIC NOTICE AND PUBLIC HEARINGS

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

- 1102.01 Such notice shall be published in the legal newspaper of general circulation in the County one time at least 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 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 miles of the property affected by such action. Any party may appear in person or be represented by an agent or attorney at the public hearing and be heard.
- 1102.02 If such proposed modification is not a general revision of an existing provision of this Resolution and will affect only a specific property, the public notice shall include the general location and a legal description of such specific property and, in addition, notice of the public hearing(s) shall be mailed by first class mail to the applicant and the owners of record of real estate that is located adjacent to or immediately across a road from the property affected by such modification at least 10 calendar days prior to such public hearings.
- 1102.03 The provisions of this Section regarding notification by first class mail shall not apply to:
1. A proposed modification of this Resolution where such modification will apply throughout the County or throughout an existing zoning district;
 2. Additional or different types of zoning districts are proposed, whether or not such additional or different zoning districts are made applicable to areas or parts of areas already within a zoning district of the County;
 3. In these instances only the publication of public notice in the newspaper, and notice to other planning commissions having jurisdiction over lands within three miles of lands which will be effected by such modification and notification of local units of government, as set forth in Section 1102 above, shall be required.

SECTION 1103 AMENDMENT CONSIDERATION AND ADOPTION

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

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

SECTION 1104 AMENDING OFFICIAL ZONING MAP

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

SECTION 1105 PROTESTS

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

ARTICLE 12 - COMPLAINTS, VIOLATIONS, REMEDIES AND PENALTIES

SECTION 1201 COMPLAINTS REGARDING VIOLATIONS

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

SECTION 1202 PENALTIES FOR VIOLATION

Violation of the provisions of this Resolution or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with approval of variance and conditional uses, shall constitute a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating this Resolution or failing 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 a 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 constructed, reconstructed, structurally altered, 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 action. This action shall restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, prevent any illegal act, conduct business or use in or about such premises.

ARTICLE 13 - SCHEDULE OF FEES

SECTION 1301 AUTHORITY

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

SECTION 1302 NON-PAYMENT OF FEES

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

ARTICLE 14 - LEGAL STATUS PROVISIONS

SECTION 1401 SEPARABILITY

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

SECTION 1402 PURPOSE OF CATCH HEADS

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

SECTION 1403 REPEAL OF CONFLICTING RESOLUTIONS

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

SECTION 1404 EFFECTIVE DATE

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