

# SCOTTS BLUFF COUNTY ZONING REGULATIONS

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SCOTTS BLUFF COUNTY, NEBRASKA  
ZONING REGULATIONS

A RESOLUTION ESTABLISHING COMPREHENSIVE ZONING REGULATIONS FOR THE COUNTY OF SCOTTSBLUFF, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 23, LAWS OF NEBRASKA.

WHEREAS, Chapter 23, Laws of Nebraska, empowers the County to adopt zoning regulations and to provide for their administration, enforcement and amendment, and

WHEREAS, the Scotts Bluff County Board of Commissioners, pursuant to the provisions of Chapter 23, Laws of Nebraska, has appointed a Planning Commission, and

WHEREAS, the County Planning Commission has prepared a Comprehensive Development Plan for Scotts Bluff County, and has, after public hearings, submitted its specific recommendations for zoning regulations which are consistent with the Comprehensive Development Plan, and

WHEREAS, the County Board of Commissioners has held public hearings and adopted the County Comprehensive Development Plan, and

WHEREAS, all of the requirements of Chapter 23, Laws of Nebraska have been met;

NOW THEREFORE BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS OF SCOTTS BLUFF COUNTY, NEBRASKA:

Section 1. TITLE AND PURPOSE

- 1.1 This resolution shall be known and may be cited and referred to as the Scotts Bluff County zoning regulation.
- 1.2 This zoning regulation is consistent with the Scotts Bluff County Comprehensive Development Plan and is designed for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Scotts Bluff County, including, among others, such specific purposes as: (1) developing both urban and non-urban areas; (2) lessening congestion in the streets or roads; (3) reducing the waste of excessive amounts of roads; (4) securing safety from fire and other dangers; (5) lessening or avoiding the hazards to persons and damage to property resulting from the accumulation or run-off of storm or flood waters; (6) providing adequate light and air; (7) preventing excessive concentration of population and excessive and wasteful scattering of population or settlement; (8) promoting such distribution of population such as classification of land uses, and such distribution of land development as will assure adequate provisions for transportation, water flowage, water supply, drainage, sanitation, recreation, soil fertility, food supply, and other public requirements; (9) protecting the tax base; (10) protecting property against blight and depreciation; (11) securing economy in governmental expenditures; (12) fostering the state's agriculture, recreation, and other industries; (13) encouraging the most appropriate use of land in the county; and (14) preserving, protecting and enhancing historic buildings, places and districts.

**Section 2. ESTABLISHMENT OF DISTRICTS; OFFICIAL ZONING DISTRICT MAP; INTERPRETATION OF DISTRICT BOUNDARIES**

2.1 For the purposes of this zoning regulation, that portion of Scotts Bluff County, Nebraska, which is outside of the incorporated limits of any city or village and outside of any unincorporated area wherein a city or village has been granting zoning jurisdiction and is exercising such jurisdiction, is hereby divided into the following districts:

- A Agricultural
- RR Rural Residential
- RCR Recreation Residential
- C Commercial
- RCC Recreation Commercial
- I Industrial
- F Flood Plain Overlay Zone
- AP Airport Overlay Zone
- WP Wellhead Protection Overlay Zone

Any land disconnected from an incorporated city or village or for any other reason is within the zoning jurisdiction of Scotts Bluff County, shall be classified Agricultural (A) District until reclassified by amendment.

2.2 The boundaries of these districts are hereby established 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 regulation.

The Official Zoning Map shall be identified by the signature of the Chairman of the County Board attested to by the County Clerk, and bearing the seal of the county under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 2 of Scotts Bluff County, Nebraska", together with the date of the adoption of this regulation.

If, in accordance with the provisions of this regulation, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map promptly after the amendment has been approved and adopted by the County Board.

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 Building Administrator, shall be the final authority as to the current zoning status of land, water areas, buildings, and other structures.

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

Boundaries indicated as approximately following the center lines or right of way of streets, highways or alleys shall be construed to follow such center or right of way lines unless otherwise noted.

Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

Boundaries indicated as approximately following city limits shall be construed as following city limits.

Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

Boundaries indicated as following shore lines shall be construed to follow such shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.

Boundaries indicated as parallel to or extensions of features indicated in the foregoing rules shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by the foregoing rules, the Board of Adjustment shall interpret the district boundaries.

**Section 3. APPLICATION OF DISTRICT REGULATIONS**

- 3.1 The regulations set by this regulation within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure, land, and particularly, except as hereinafter provided:
- 3.101 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, relocated, moved or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located.
- 3.102 No building or other structure shall hereafter be erected or altered:
- (a) To exceed the height;
  - (b) To accommodate or house a greater number of families;
  - (c) To occupy a greater percentage of lot area;
  - (d) To have narrower or smaller rear yards, front yard, side yards, or other open spaces;
- Than herein required; or in any other manner contrary to the provisions of this regulation.
- 3.103 No part of a yard, or other open spaces, or off-street parking or loading space required for or in connection with any building for the purpose of complying with this regulation shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building
- 3.104 No yard or lot existing at the time of passage of this regulation shall be reduced in dimension or area below the minimum requirements established by this regulation.
- 3.105 No water or sewer facility shall be constructed, altered, connected or used unless in conformity with all of the regulations herein specified.
- 3.2 Whenever this regulation requires a greater width or size of yard, courts, or other open spaces, or requires a lower height of a building or less number of storage or requires a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulation made under authority of said sections shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts, or other open space or require a lower height of building or a less number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such statute or local ordinance or regulations shall govern.

**Section 4. NON-CONFORMING LOTS, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, AND NON-CONFORMING USES OF STRUCTURES AND PREMISES.**

- 4.1 Within the districts established by this regulation or amendments that may later be adopted there exist lots, structures, and uses of land and structures which were lawful before this regulation was passed or amended, but which would be prohibited, regulated or restricted under the terms of this regulation or future amendment.

It is the intent of this regulation to permit these non-conformities to continue until they are removed, but not to encourage their survival. Such uses are declared by this regulation to be incompatible with permitted uses in the districts involved. It is further the intent of this regulation that non-conformities shall not be enlarged upon, expanded on or extended, nor be used as grounds for adding other structures or used prohibited elsewhere in the same district.

A non-conforming use of a structure, a non-conforming use of land, or a non-conforming use of a structure and land shall not be extended or enlarged after passage of this regulation by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in this regulation shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of

adoption or amendment of this regulation and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent positions and fastened in a permanent manner; except that where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such as demolition or removal shall be deemed to be actual construction, provided that work shall be diligently carried on until completion of the building involved. Exception: Non-Conforming lots may be replatted to increase area without meeting district area requirements. Non-Conforming lots shall not have area reduced in any manner.

**4.2 Non-Conforming Uses of Land.** Where, at the effective date of adoption or amendment of this resolution, lawful use of land exists that is made no longer permissible under the terms of this resolution as enacted or amended, such use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this regulation.
2. No such non-conforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this regulation.
3. If any such non-conforming use of land, except agricultural and commercial feed lots, ceases for any reason for a period of more than 365 days, any subsequent use of such land shall conform to the regulations specified by this regulation for the district in which such land is located.

**4.3 Non-Conforming Structures.** Where a lawful structure exists at the effective date of adoption or amendment of this regulation that could not be built under the terms of this regulation by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its non-conformity.
2. Should such structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this regulation.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.  
(a) Exception:

To avoid undue hardship, any existing nonconforming structure(s) damaged or destroyed by accidental fire or natural disaster shall be permitted to make repairs to replace such structure(s) without losing "Existing Nonconforming" designation.

**4.4 Non-Conforming Uses of Structures.** If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of this regulation, that would not be allowed in the district under the terms of this regulation, the lawful use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this regulation in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
2. Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this regulation, but no such use shall be extended to occupy any land outside such building.
3. If no structural alterations are made, any non-conforming use of a structure, or structure and premises, may be changed to another non-conforming use provided that the Board of Adjustment, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing non-conforming use. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accord with the provisions of this regulation.

4. Any structure, 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 regulations for the district in which such structure is located, and the non-conforming use may not thereafter be resumed.
5. When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve consecutive months, the structure or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the district in which it is located.
6. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land.

#### **4.5 Repairs and Maintenance.**

On any building devoted in whole or in part to any non-conforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding 10 percent of the current replacement value of the building, provided that the cubic content of the building as it existed at the time of passage or amendment of this regulation shall not be increased.

Nothing in this regulation shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

#### **4.6. Uses Under Exception Provisions, Not Non-Conforming Uses.**

Any use for which a conditional permit is issued as provided in this regulation shall not be deemed a non-conforming use, but shall without further action be deemed a conforming use in such district subject to conditions of the permit.

**Non-Conforming Accessory Uses:** No use which is accessory to a principal non-conforming use shall continue after the principal use shall cease or terminate unless the accessory use is permitted in the district.

**Change of Ownership:** A non-conforming use may be continued, but not increased, by a new owner of such property.

**Non-Conforming Lot of Record:** A lot which is part of a recorded subdivision or a parcel of land, the deed to which was recorded prior to the adoption of these regulations, and the lot does not comply with the lot area or width requirements of the district in which it is located.

**Non-Conforming Lots of Record:** The Zoning Administrator may issue a building (zoning) permit for an undeveloped non-conforming lot of record provided that:

1. The lot is shown by a recorded plat or deed to have been owned or leased separately and individually from adjoining tracts of land at a time when the creation of a lot of the size and width at that location would have been prohibited by any zoning regulations.
2. The lot has remained in separate and individual ownership from adjoining tracts of land continuously during the entire time that the creation of the lot has been prohibited by any zoning regulations.
3. The lot can meet all yard regulations for the district in which it is located.

**Section 5. DISTRICT REGULATIONS** - In the following established districts, a structure, building or premise shall be used or occupied only for the following purposes and shall conform to the following regulations.

- 5.1. Agricultural (A) District. Intent:** This district is intended to satisfy the basic needs of the county's farming-ranching operations. Since agriculture is one of the county's primary industries, it is vital that agricultural operations be protected from encroachments of non-agricultural uses and potential nuisance situations. Therefore, the mixture of sporadically located intense residential and other urban uses within the agricultural district is not encouraged.

Some non-agricultural uses serving both rural and urban needs are, however, frequently found to exist in rural areas. With proper design and location these uses can co-exist without detriment to agricultural interests. These uses may be permitted by special review and approval of the Planning Commission and County Commissioners.

**5.101 Permitted Uses**

1. Agricultural and ranching activities, including the storage of chemicals and other farm associated products for sole use of the farm or ranch operator.
2. Single Family Dwellings as follows:
  - (a) One farm or ranch dwelling per farm for owner/operator.
  - (b) Accessory single family dwellings for persons customarily employed at or engaged in farming or ranching.
  - (c) Non-farm dwelling on a three (3) acre or larger lot existing at the time of adoption of this resolution, which lot has a previously identified parcel number and is NOT a government lot.
3. Bed & breakfasts and guest ranches.
4. Manufactured Home meeting the following requirements:
  - a. a minimum of 800 square feet of floor area.
  - b. a roof pitch with a minimum vertical rise of 2 ½ inches per foot of horizontal run.
  - c. exterior materials in compliance with existing site-built residential construction code.
  - d. a roof of non-reflective material that is or similar to asphalt or wood shingles, tile or rock.
  - e. all wheels, transporting lights, and towing apparatus removed; and
  - f. bears an appropriate seal which indicates that it was constructed in accordance with the with the standards of the U.S. Department of Housing & Urban Development.
5. Church, education facilities and parish house.
6. Existing Public school and private school having a curriculum equivalent to public schools.
7. Cemeteries.
8. Wildlife reserve.
9. Public park, playground, golf course and other recreational uses including campgrounds owned or under franchise of the county or state governments.
10. Beet dumps.
11. Public utilities.
12. **“Agricultural Special Use Area”**
  - a. The intent of this subsection (5.101-12) is not to encourage the creation of a large number of agricultural special use areas (ASUA), but such intent is to allow the “subdivision” or sale of a small area (the “special use area”) for the purposes hereafter described, upon the following more specific requirements:
  - b. An ASUA shall be defined (for purposes of 5.101-12) as an area, less than twenty (20) acres, within a zoned Agricultural (A) District or Rural Residential (RR) district. The actual use of this ASUA shall be for one or more of the “Permitted Accessory Uses” as are set out in 5.104-1 through 13, or for one or more of the “Conditional Uses” as are set out in 5.102-1 through 21.
  - c. In the event that there is a situation, whereby a parcel of land could potentially be considered under either 5.101-12, ASUA, or 5.101-13, AEDS; then preference shall be given to AEDS.
  - d. Examples (only) of instances in which an ASUA would potentially be applicable, would be such as (without limitation): a conveyance of a small parcel of land between adjoining landowners, for convenience in agricultural pursuits (parcels separated by natural barriers, or such as irrigation facilities); a conveyance of a small parcel of land between adjoining landowners, for correction of title; a conveyance of a small parcel of land, for the use by the grantee for a facility, such as: a transmitter tower, a railroad installation, an electrical service device.

- e. An ASUA shall be restrictively created, in other words, the creation of an ASUA is not preferred, but shall be approved only in the instance when interests of encouraging the most appropriate use of land in the county shall be the result (see also Section 1.2 of the “Zoning Regulations” of Scotts Bluff County, Nebraska). In the event that a request for a subdivision (Section 3 and Section 4 of the “Subdivision Regulations” of Scotts Bluff County Nebraska) is preferable, then the “formal” subdivision approach shall be preferred.
- f. Each ASUA shall be shaped and located so as to allow accurate plotting on the official zoning map of Scotts Bluff County (i.e.: abutting on lines identifiable as a segment of a section, such as a section line or a 1/4 section line, or upon other readily identifiable features). Additionally, each ASUA shall be subject to the provisions for preliminary plat procedure and requirements from Section 3 and Section 4 of the “Subdivision Regulations of Scotts Bluff County, Nebraska, if applicable.
- g. If approved, the ASUA parcel shall be noted by the Zoning Administrator for future reference.
- h. The procedure to obtain an ASUA shall be: an application for the same shall be presented by the owner(s) to the Scotts Bluff County Planning Commission. The application shall be reviewed by the Planning Commission at a regular meeting of the same, and, if approved, referred to the Scotts Bluff County Board of Commissioners for its approval. If approved by the Board of Commissioners, there shall then be prepared a “certificate” identifying the ASUA, which certificate shall be filed in the real estate records of the county.
- i. In the event that after approval, an ASUA is no longer actually used for a purpose in existence upon such approval (because of which purpose, such approval was given) then the approval granted by the Board of Commissioners shall automatically be revoked.
- j. Before any action can be taken, applicant shall submit a receipt from the Scotts Bluff County Treasurer’s Office showing that all current property taxes have been paid. (Resolution: February 7, 1983)

**13. “Agricultural Estate Dwelling Site (AEDS)”**

- a. The intent of this subsection (5.101-13) is to allow the subdivision of land for low-density residential purposes.
- b. Each AEDS shall be a minimum of 2 acres for each dwelling (maximum of two 2 dwellings per AEDS), excluding any and all easements and rights of ways, with a maximum area of 19.99 acres. AEDS shall be approved only on marginal use lands. “Marginal Use Lands” being described as: land with relatively little agricultural productivity capability.
- c. Each AEDS shall have no more than 2 AEDS approved in each aliquot 80-acre parcel as originally surveyed and platted by the USGS. Exception: All Dwellings existing at the time of adoption of this regulation (2/17/2026) shall be allowed an AEDS provided it meets the requirements of this section.
- d. Each AEDS with frontage on an existing dedicated public road, shall have a minimum width of 150 feet (as a “front lot” width). In the event such AEDS is of an interior-section type, it shall have a dedicated access road, at least 25 feet in width, to a dedicated public road. Each AEDS shall be subject to the provisions for preliminary plat procedures and requirements, from Section 3 and Section 4 of the “Subdivision Regulations” of Scotts Bluff County, Nebraska. Lots of record smaller than two acres, shall be allowed a 10-foot setback from the side and rear yard property boundary lines.
- e. In reviewing an application for an AEDS, the Planning Commission and the Board of Commissioners shall take into consideration the effect of such an AEDS upon: utilities, roads, drainage, terrain, usage, zoning, future subdividing, etc.
- f. The procedure to request an AEDS shall be: an application for the same shall be presented by the owner(s) to the Scotts Bluff Planning Commission. The application shall be reviewed and considered by the Planning Commission at a regular meeting of the same, and recommendation for action referred to the Scotts Bluff County Board of Commissioners. If approved by the Board of Commissioners, there shall then be prepared a “Certificate” identifying the AEDS, which certificate shall be recorded in the Scotts Bluff County Register of Deeds Office.
- g. Before any final action can be taken, applicant shall submit a receipt from the Scotts Bluff County Treasurer’s Office showing that all current property taxes have been paid. (Resolution: February 7, 1983)

## 14. Animal Feeding Operation

### a. Intent:

The intent of this subsection (5.101-14) is to encourage the location of confined livestock feeding operations in Scotts Bluff County, which recognizes that livestock feeding will promote agribusiness within the county; however, it is also recognized that livestock feeding must be considered along with other interests found in the county, such as residential uses found within certain areas of the county. "Animal feeding operation" shall also mean "dairy".

### b. Definitions:

**Agricultural (A) District** - means the district regulation of "Agricultural," solely relative to an Animal feeding operation, as specified in Section 5.1 of the Scotts Bluff County Zoning Regulations, and no other district regulation found in the Scotts Bluff County Zoning Regulations.

**Animal feeding operation** - means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other, or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture as defined in Neb. Rev. Stat. § 2-3804.01.

**Applicant** - means the person applying for the permit or major modification.

**Application area** - means land utilized for the land application of livestock wastes.

**Authorized representative** - means: (a) In the case of a corporation, a principal executive officer in charge of a principal business function and of at least the level of vice president; (b) In the case of a limited liability company, a manager, or a person as described in Neb. Rev. Stat. § 21-2606, or a principal executive officer; (c) In the case of a partnership, a general partner; (d) In the case of a sole proprietorship, the proprietor; or (e) In the case of a municipal, state or other public entity, a principal executive officer or ranking elected official.

**Best Management Practices** - means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective methods based on the best available technology achievable for specific sites to prevent or reduce the discharge of pollutants to waters of the State and control odor where appropriate. Best management practices also include operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

**Concentrated animal feeding operation** - or "CAFO" means an animal feeding operation that is: (a) Defined as a large concentrated animal feeding operation because of size; (b) Defined as a medium concentrated animal feeding operation because of size and because animals are in direct contact with waters of the State or waste is discharged to waters of the state through a man-made conduit; or (c) Designated as a medium or small concentrated animal feeding operation by the Director.

**Construct or Construction** - means the initiation of physical on-site activities.

**Construction and operating permit** - means the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation.

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

**Holding pond** - means an impoundment made by constructing an excavated pit, dam, embankment or combination of these for temporary storage of liquid livestock wastes, generally receiving runoff from open lots and contributing drainage area.

**Irrigation distribution system** - means any device or combination of devices having a hose, pipe, or other conduit through which livestock wastes or a mixture of water and livestock wastes is drawn and applied for agricultural or horticultural purposes.

**Lagoon** - means an impoundment made by constructing an excavated pit, dam, embankment or combination of these for treatment of liquid livestock waste by anaerobic, aerobic or facultative digestion. Such impoundment predominantly receives waste from a totally housed animal feeding operation.

**Large concentrated animal feeding operation** - or “Large animal feeding operation” means an animal feeding operation that stables or confines as many as or more than the number of animals specified in any of the following categories: (a) 700 mature dairy cows, whether milked or dry; (b) 1,000 veal calves; (c) 1,000 cattle other than mature dairy cows or veal calves and including but not limited to heifers, steers, bulls, and cow/calf pairs; (d) 2,500 swine each weighing 55 pounds or more; (e) 10,000 swine each weighing less than 55 pounds; (f) 500 horses; (g) 10,000 sheep or lambs; (h) 55,000 turkeys; (i) 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system; (j) 125,000 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system; (k) 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system; (l) 5,000 ducks, if the animal feeding operation uses a liquid manure handling system; or (m) 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system.

**Liquid manure storage pits** - means earthen or lined pits located wholly or partially beneath a semi- or totally housed animal feeding operation or at some removed location used to collect waste production.

**Livestock waste control facility** - means any structure or combination of structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, settling basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock wastes.

**Livestock wastes** - means animal and poultry excreta and associated feed losses, bedding, spillage or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock wastes.

**Major modification** - means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility.

**Medium animal feeding operation** - means an animal feeding operation that confines or stables the type and number of animals in any of the following ranges: (a) 200 to 699 mature dairy cows, whether milked or dry; (b) 300 to 999 veal calves; (c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle include but are not limited to heifers, steers, bulls, and cow/calf pairs; (d) 750 to 2,499 swine each weighing 55 pounds or more; (e) 3,000 to 9,999 swine each weighing less than 55 pounds; (f) 150 to 499 horses; (g) 3,000 to 9,999 sheep or lambs; (h) 16,500 to 54,999 turkeys; (i) 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system; (j) 37,500 to 124,999 chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system; (k) 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system; (l) 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; or (m) 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system.

**Medium concentrated animal feeding operation** - means a medium animal feeding operation, as defined by the type and number of animals that it confines or stables, and which has been defined or designated as a concentrated animal feeding operation. An animal feeding operation is defined as a medium concentrated animal feeding operation if either one of the following conditions is met: (a) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or (b) Pollutants are discharged directly into waters of the state that originate outside of and pass over, across, or through the animal feeding operation or otherwise come into direct contact with the animals confined in the operation.

**National Pollutant Discharge Elimination System (NPDES) permit** - means either a general permit or an individual permit, issued by the Department pursuant to Subsection 11 of Neb. Rev. Stat. § 81-1505. A general

permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of the Department of Environmental Quality, are more appropriately controlled under a NPDES general permit than under an individual permit.

**One hundred year, 24-hour rainfall event** - means a rainfall event with a probable recurrence interval of one in one hundred (100) years.

**Open lot animal feeding operations** - means pens or similar concentrated areas, including small shed-type areas or open-front buildings, with dirt, or concrete (or paved or hard) surfaces, wherein animals or poultry are substantially or entirely exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed-type areas.

**Operating permit** - means a permit issued prior to December 1, 2006, by the Department after the completion of the livestock waste control facility in accordance with the construction approval and the submittal of a completed certification form to the Department;

**Operator** - means the person responsible for the operation of an animal feeding operation.

**Production area** - means that part of an animal feeding operation that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement areas includes but is not limited to open lots, housed lots, feedlot, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

**Small animal feeding operation** - means an animal feeding operation with fewer animals than a medium animal feeding operation.

**Small concentrated animal feeding operation** - means an animal feeding operation that is designated as a concentrated animal feeding operation and is not a medium or large concentrated animal feeding operation

**Surface water** - means all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, springs, canal systems, drainage systems, and all other bodies or accumulations of water, natural or artificial, public or private, situated wholly or partly within, or bordering upon, the State. Impounded waters in this definition do not include areas designated by the Department as wastewater treatment or wastewater retention facilities or irrigation reuse pits.

**Totally housed animal feeding operation** - means an operation that is totally under roof where animals are housed, rainfall is prevented from becoming process wastewater, and all manure, litter, and process wastewater is contained. The roofed structure may or may not be enclosed on the sides.

**Twenty-five year, 24-hour rainfall event** - means a rainfall event with a probable recurrence interval of one in twenty-five (25) years.

**Waters of the State** - means all waters within the jurisdiction of this State including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the State.

**Zoning Jurisdiction of Cities** - means the area beyond and adjacent to the corporate boundaries of first class cities, second class cities, and villages, located in Scotts Bluff County, defined as “extra-territorial jurisdiction” and is more completely detailed in Neb. Rev. Stat. 16-901 for first class cities, and Neb. Rev. Stat. 17-1001 for second class cities, and villages.

c. General Provisions:

1. Animal feeding operations shall only be allowed in Agricultural (A) or Rural-Residential (RR) District areas of the county jurisdiction. This provision is intended to apply to small, medium, and large animal feeding operations.
2. Only small animal feeding operations shall be allowed in the Rural-Residential (RR) District of the county jurisdiction. The maximum capacity of each small feeding operation shall be governed by the number of animal units as prescribed in **Section 5.201(7)** of these zoning regulations.
3. Medium feeding operations, and large feeding operations, shall only be allowed in the Agricultural (A) District of the county jurisdiction.
4. The procedure for obtaining approval for an animal feeding operation shall be as follows:
  - 4.1 Small animal feeding operations shall be allowed without written approval from the county and shall be subject to the requirements of all applicable sections of these zoning regulations.
  - 4.2 Medium animal feeding operations shall be allowed without written approval from the county under the following conditions: (a) when applicable, owner and/or operator must provide a copy of the Construction & Operating (C&O) Permit application received by the Nebraska Department of Environment & Energy (NDEE) to the Zoning Administrator. ; (b) when applicable, owner and/or operator must provide a copy of the approved NPDES Permit to the Zoning Administrator.
  - 4.3 Large animal feeding operations shall require approval of a conditional use permit, which procedure for application is prescribed in Section 10 of these zoning regulations.

d. Specific Provisions:

1. The animal feeding operation shall be located with recognition given to the prevailing winds in the area, so as to minimize the possibility of interference with nearby residential use.
2. The animal feeding operation or any portion of it shall be located so as to provide adequate safeguards for the following:
  - i. Diversion of outside surface water from entering the production area.
  - ii. Adequate drainage within the production area, with the use of mounds as a suggested characteristic.
  - iii. Adequate provisions for debris basins to intercept runoff.
  - iv. Adequate detention ponds designed to temporarily hold runoff.
  - v. Provide adequate means to dispose of runoff.
3. The animal feeding operation shall demonstrate that it has a sufficient water supply for the number of head of livestock allowed by its permit to be enclosed.
4. There must be demonstrated that reasonable techniques will be employed to keep dust, odor, insects, and noise at a minimum.
5. Whenever it is possible in the opinion of the planning director or the Planning Commission/Board of Commissioners, that livestock wastes from the feedlot would violate Nebraska Water Quality Standards, approval for the design and construction of waste control facilities of the feedlot must be approved by the Department of Environmental and Energy (NDEE), such that the Department is satisfied and will join in the permit granted by Scotts Bluff County to the extent permissible by law.

e. Enforcement:

1. The enforcement of this subsection of “animal feeding operation” (5.101-14) shall fall under the general provision of Neb. Rev. Stat. 23-174 and Neb. Rev. Stat. 23-114.05; or, as those sections may be changed from time to time; together with other applicable law as there might be.
2. Additionally, the specific conditions of (d), above, shall apply to the permit which may be issued for an animal feeding operation, such that any violation of any of such provisions shall be cause for the Planning Director to issue a notice of revocation of the permit. Notice of revocation of the permit shall be given in writing, allowing the applicant 15 days to make corrections as shall be deemed necessary to bring the permit into compliance (however, consideration shall be given to complications due to weather which would prohibit the applicant from making the corrections within the 15 day period); however, upon the passing of 15 days without corrections made to the satisfaction of the Planning Director, the revocation of the permit shall be final. The revocation shall be noted in the record of the Board of Commissioners to give final approval to the same. The applicant may, after the revocation of the permit by the Planning Director, first request that the Scotts Bluff County Planning Commission review and then the Scotts Bluff County Board of Commissioners make a decision of revocation, by requesting a public hearing before the Planning Commission and the Board of Commissioners; additionally, the applicant shall be entitled to other remedies provided in the Scotts Bluff Zoning Regulations and applicable law.
3. The remedies available for enforcement of this subsection (5.101-14), outlined above, are mutually exclusive, and in addition to other legal remedies as the law may provide.
4. Must provide a closure plan at the time of application. Shall comply with all Federal, State and local regulations at the time of closure.

f. Prohibited Locations. A livestock waste control facility shall not be constructed:

1. Within 100 feet of any well used for domestic purposes. For the purposes of these regulations, domestic water well means a water well providing water to any water supply system furnishing water for human consumption other than a public water supply system; for the watering of livestock, poultry, farm, and domestic animals; or for the irrigation of lands not exceeding an area of two acres.
2. Within 1000 feet of a public drinking water supply well, unless the applicant has obtained approved from the NDEE.
3. Less than four feet above the seasonal high ground water level, unless approval is granted by NDEE.

All existing animal feeding operations which are permitted by the NDEE at the time of the adoption of these amendments (9/19/2022) shall be deemed in compliance with these zoning regulations.

**5.102 Conditional Uses:** The following conditional uses may be permitted in the "A" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Airport or landing strip.
2. Asphalt and/or concrete batch plant.
3. Public buildings and facilities erected and established by any governmental agency.
4. Extraction and processing of sand, gravel, petroleum and other minerals.
5. Radio and television towers and transmitters; cellular towers.
6. Commercial and private recreational and tourist areas, including private country clubs, lodges, campgrounds and accessory motel, resort and incidental facilities.
7. Seasonal dwellings.
8. Large animal feeding operation.
9. Sanitary Land Fill.
10. Agricultural Service establishments primarily engaged in performing agricultural husbandry, or horticulture services on a fee or contract basis including:
  - A. Grain and/or feed elevators.
  - B. Crop dusting or spraying operations facilities (including hangers, landing strips, fertilizer storage facilities, and offices accessory to the crop dusting or spraying operation).
  - C. Farm equipment sales, repair, and installation facilities.
  - D. Veterinary clinics and hospitals and related facilities.
  - E. Grain and Feed Sales.
  - F. Commercial Grain Storage and drying.
  - G. Fertilizer storage, mixing, blending, and sales.
  - H. Seed processing, storage, mixing, blending, and sales.
  - I. Sorting, grading and packing fruits and vegetables for the grower.
  - J. Livestock sales barns and processing facilities
  - K. Forage dehydration facilities.
  - L. Winery.
11. Billboards (in accordance with Section 12).
12. Commercial trailer washout.
13. Kennels.
14. Home Occupation where business is carried on completely inside a building on the premises.
15. Solar energy generation facilities.
16. Salvage Operation, Auto - possessing a Department of Motor Vehicles operating license.
17. Salvage Operation, Other - that can demonstrate processing and the sale of processed material is, or will, occur within the time limitation imposed as a condition of use.
18. Sewage and wastewater treatment operations.
19. Solid waste disposal sites and facilities.
20. Event Facility.
21. Non-farm dwelling located on a non-conforming lot of record. (see non-conforming lot section)
22. Retail sales and services.
23. Tractor, trailer and/or truck storage, including maintenance facilities.
24. Commercial shooting range.
25. Commercial uses as provided in Section 6.201 of these regulations.
26. Commercial self-storage facilities.
27. Wind energy generation facilities.

**5.103 Minimum Lot and Maximum Height Regulations (1)**

Use	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard	Height
Farm	20 acres	-	50'	20'	20'	2 ½ stories or 35'
Farm and Ranch Dwelling	-	-	50'	20'	20'	2 ½ stories or 35'
Ag-Estate	2 acres	-	50'	20'	20'	2 ½ stories or 35'

- (1) Setbacks to comply with Section 9 and all other provisions in the Zoning & Subdivision Regulations

**5.104 Permitted Accessory Uses**

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Home Occupations with five or fewer employees.
3. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
4. Hunting and fishing shelters.
5. Signs as permitted in Section 8.13
6. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
7. Public utility and services infrastructure.
8. Television, radio receiving and transmitting equipment, and satellite dishes.
9. Temporary buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the work.
10. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
11. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
12. Fences: Fences are not required to comply with the minimum setback and may be located on the property line.
13. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section 17.58.

**5.2 Rural Residential (RR) District.** The intent of this district is to provide the present and future residents of the County with low-density residential subdivisions in rural areas. However, no “residential zoning district” will be approved to locate within one mile of any existing Class I or higher livestock operation. Any new rural residential subdivisions shall be located with direct access to a paved road or have approval from the public works director when the subdivision involves a county road.

**5.201 Permitted Uses**

1. One (1) single family dwelling unit per lot.
2. Crop production, orchards, horticulture and truck farms.
3. Church, educational facilities, and parish houses.
4. Existing Public school and private school having curriculum equivalent to public schools.
5. Public park, playground, golf course and other recreational uses.
6. Accessory Dwelling Unit (ADU) or bed & breakfast.
7. Horses and other livestock, provided however, that such animals are housed at least twenty feet (20’) from adjacent property lines, and that the maximum density shall be one animal unit per one-half (½) acre, rounding to the nearest whole animal unit.
8. Manufactured Home meeting the following requirements:
  - a. a minimum of 800 square feet of floor area.
  - b. a roof pitch with a minimum vertical rise of 2 ½ inches per foot of horizontal run.
  - c. exterior materials in compliance with existing site-built residential construction code.
  - d. a roof of non-reflective material that is or similar to asphalt or wood shingles, tile or rock.
  - e. all wheels, transporting lights, and towing apparatus removed; and
  - f. bears an appropriate seal which indicates that it was constructed in accordance with the with the standards of the U.S. Department of Housing & Urban Development.

**5.202. Conditional Uses:** The following conditional uses may be permitted in the "RR" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Private country clubs, recreation areas, golf courses, tennis courts, swimming pool and accessory recreational uses, and uses customarily accessory thereto, except miniature golf, driving ranges and other similar activities operated as a commercial business.
2. Flood control facilities.
3. Home Occupations with five or more employees.
4. Wind-driven electric generators for household use only.
5. Mechanic Shop.

**5.203 Minimum area, yard setbacks and height regulations (1)**

**Rural Residential Lots**

Use	Lot Area Minimum	Lot Width	Front Yard	Side Yard	Rear Yard	Height
Single Family Home	3 acres	200’	50’	20’	20’	Section 7.103

(1) Setbacks to comply with Section 9 and all other provisions in the Zoning & Subdivision Regulations

#### **5.204 Permitted Accessory Uses**

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Barns, garages and sheds.
3. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
4. Hunting and fishing shelters.
5. Signs as permitted in Section 8.13
6. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
7. Public utility and services infrastructure.
8. Temporary buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the work.
9. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
10. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
11. Fences: Fences are not required to comply with the minimum setback and may be located on the property line.
12. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section 17.58.
13. Home occupation(s) with fewer than five employees, where all work is performed inside a structure.

**5.3 Recreation Residential (RCR) District.** This district is intended to provide for higher density residential developments adjacent to recreational resources. Access to subdivisions within this district must be by paved road.

**5.301 Permitted Uses**

1. Single family dwelling.
2. Private and public park, playground and recreational facilities.
3. Manufactured Home meeting the following requirements:
  - a. a minimum of 800 square feet of floor area.
  - b. a roof pitch with a minimum vertical rise of 2 ½ inches per foot of horizontal run.
  - c. exterior materials in compliance with existing site-built residential construction code.
  - d. a roof of non-reflective material that is or similar to asphalt or wood shingles, tile or rock.
  - e. all wheels, transporting lights, and towing apparatus removed; and
  - f. bears an appropriate seal which indicates that it was constructed in accordance with the with the standards of the U.S. Department of Housing & Urban Development.

**5.302 Conditional Uses:** The following conditional uses may be permitted in the "RCR" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Private country clubs, recreational areas, golf course, tennis courts, swimming pool and accessory recreational uses.
2. Home Occupations with five or more employees.

**5.303 Minimum area, yard setbacks and height regulations**

Use	Lot Area Minimum (1)	Lot Width	Front Yard (2)	Side Yard (3)	Rear Yard (4)	Height (5)
Single Family Home	2 acres	100'	25'	5' & 15'	5' & 15'	2 ½ stories or 35'

(1) Lots less than 2 acres in size but not less than one-half (1/2) acre may be allowed provided all Nebraska Department of Environmental Quality regulations can be met regarding sewage disposal and potable water systems. Such systems may be installed to function as shared community systems, occupy shared “community” space and must be installed so as not to limit the future replacement, upgrade or development of sewer and water systems on any adjoining lot or parcel.

(2) Not withstanding any other setback requirements in these regulations.

(3) One side setback may be 5 feet or more with the opposite side setback being 15 feet.

(4) 5 feet when lot abuts on a public alley, otherwise the minimum rear yard setback will be 15 feet.

(5) To comply with all other provisions in these zoning and subdivision regulations.

**5.304 Permitted Accessory Uses**

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
3. Signs as permitted in Section 8.13.
4. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
5. Public utility and services infrastructure.
6. Television, radio receiving and transmitting equipment, and satellite dishes.
7. Temporary buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the work.
8. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
9. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
10. Fences: Fences are not required to comply with the minimum setback and may be located on the property line.
11. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section 17.58.
12. Home occupation(s) with fewer than five employees, where all work is performed inside a structure.

**6.1 Recreation Commercial (RC) District.** This district is intended to provide retail goods and services to the surrounding residential districts and recreation resource users/patrons.

**6.101 Principle Permitted Uses**

1. Retail stores and services.
2. Boat and recreational vehicle sales, repair and storage.
3. Dining and drinking establishments (joint facility).
4. Campgrounds.

**6.102 Conditional Uses:** The following conditional uses may be permitted in the "RC" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Drinking establishments without food service.
2. Rental storage facilities.

**6.103 Permitted Accessory Uses**

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
3. Signs as permitted in Section 8.13.
4. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
5. Public utility and services infrastructure.
6. Television, radio receiving and transmitting equipment, and satellite dishes.
7. Temporary buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the work.
8. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
9. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
10. Fences: Fences are not required to comply with the minimum setback and may be located on the property line.
11. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section 17.58.

**6.104 Minimum Lot and Maximum Height Regulations**

Use	Lot Area (1)	Lot Width	Front Yard (2)	Side Yard (3)	Rear Yard (4)	Height (5)
Principle Structure	1 acres	100'	25'	5' & 15'	5' & 15'	2 ½ stories or 35'

- (1) All establishments must meet Department of Environmental Quality regulations concerning water and wastewater systems.
- (2) Notwithstanding any other setback requirements in these regulations.
- (3) One side setback may be 5 feet or more with the opposite side setback being 15 feet.
- (4) 5 feet when lot abuts on a public alley, otherwise the minimum rear yard setback will be 15 feet.
- (5) To comply with all other provisions in these zoning and subdivision regulations.

**6.2 Commercial (C) District.** This district is intended to accommodate existing commercial establishments located within the county zoning jurisdiction that can not be accommodated within the Agricultural (A) zoning regulations. The presence of this district is not intended to allow the establishment of new commercial zoning districts within the county zoning jurisdiction.

**6.201 Permitted Uses**

1. Automobile, truck and camper service, repair and/or sales establishment.
2. Motel and hotel.
3. Campground.
4. Warehousing/shipping facilities.
5. Implement dealer.
6. Public utility facilities and offices.
7. Sign shop
8. Tack shop

**6.202 Conditional Uses:** The following conditional uses may be permitted in the "C" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Stock car race track.
2. Conditional Uses as provided in Section 5.102.

**6.203 Permitted Accessory Uses**

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
3. Signs as permitted in Section 8.13.
4. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
5. Public utility and services infrastructure.
6. Television, radio receiving and transmitting equipment, and satellite dishes.
7. Temporary buildings and uses incidental to construction work which shall be removed upon completion or abandonment of the work.
8. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
9. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
10. Fences: Fences are not required to comply with the minimum setback and may be located on the property line
11. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section 17.58.

**6.204 Minimum Lot and Maximum Height Regulations**

Use	Lot Area Minimum (1)	Lot Width	Front Yard (2)	Side Yard (3)	Rear Yard (4)	Height (5)
Principle Uses				5' & 15'	5' & 15'	35'
Signs			30'			50'
Accessory Uses			50'	10'	50'	35'

- (1) Lots less than 1 acre in size may be allowed provided all Nebraska Department of Environmental Quality regulations can be met regarding sewage disposal and potable water systems. Such systems may be installed to function as shared community systems, occupy shared "community" space and must be installed so as not to limit the future replacement, upgrade or development of sewer and water systems on any adjoining lot or parcel.
- (2) Not withstanding any other setback requirements in these regulations.
- (3) One side setback may be 5 feet or more with the opposite side setback being 15 feet.
- (4) 5 feet when lot abuts on a public alley, otherwise the minimum rear yard setback will be 15 feet.
- (5) To comply with all other provisions in these zoning and subdivision regulations.

**Section 6.3 "I" INDUSTRIAL DISTRICT**

**Intent:** Although most industrial uses are encouraged to be located within the zoning jurisdictions of the county’s incorporated communities where adequate public infrastructure is present, it is understood that certain businesses due to their specific nature may need to locate outside these boundaries. Therefore, the intent of this district is to provide for those activities which due to their nature require distance separation from more urbanized and/or residential land uses, or which must be located outside of urban areas due to special land volume requirements - and/or are required to be located adjacent to railroad and air transportation facilities due to the nature of the business.

**6.301 Principle Permitted Uses:**

1. Commercial storage units and warehousing.
2. Light indoor manufacturing or fabrication establishments which are not noxious or offensive by reason of vibration, noise, dust, fumes, gas, odor or smoke.
3. Manufacturing or storage of bulk oil or gas.
4. Offices.
5. One dwelling unit is permitted for use exclusively by a watchman or custodian.
6. Public utility and public service uses, including:
  - a. Telephone exchange, telephone transmission buildings and electric power plants.
  - b. Public utility storage yards.
7. Truck Terminal.

**6.302 Conditional Uses:** The following conditional uses may be permitted in the "I" District upon approval of a permit in accordance with the requirements and procedures set forth in Section 10.

1. Billboards in accordance with Section 12.
2. Commercial transmitting towers.
3. Manufacturing or fabrication establishments which are not allowed as a permitted use.

**6.303 Minimum Lot and Maximum Height Regulations**

Use	Lot Area Minimum (1)	Lot Width	Front Yard (2)	Side Yard	Rear Yard	Height (2)
Principle Uses			50'	10'	20'	45'
Signs			10'		20'	70'
Accessory Uses			50'	10'	20'	45'

- (1) Lots less than 1 acre in size may be allowed provided all Nebraska Department of Environmental Quality regulations can be met regarding sewage disposal and potable water systems. Such systems may be installed to function as shared community systems, occupy shared “community” space and must be installed so as not to limit the future replacement, upgrade or development of sewer and water systems on any adjoining lot or parcel.
- (2) To comply with all other provisions in these zoning and subdivision regulations.

**6.304 Permitted Accessory Uses.**

1. Food service and vending machines for tenants only, private garages for motor vehicles, apartment for maintenance personnel, low-level exterior lighting, flagpoles, cooling towers, and other similar uses.
2. Irrigation wells and associated buildings and equipment, customarily incidental to the principal use of the property.
3. Off-street parking and loading serving a principal use. All off-street parking shall be located on the same lot as the principal use.
4. Signs subject to additional regulations Section 8.13.
5. Storage of goods sold by a principal commercial activity, or used in or produced by a principal manufacturing activity engaged in by the same firm on the same lot.
6. Temporary conduct of a real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five or more lots.
7. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time.
8. Fences: Except as otherwise specifically provided in other codes and regulations, the following regulations shall apply to the construction of fences:
  - a. No fence shall be constructed which will constitute a traffic hazard.
  - b. No person shall erect or maintain any fence which shall adversely affect the public health, safety and welfare.
  - c. Fences may be constructed on the property line as long as the fence complies with all street/road, utility, and other applicable easements.
9. Sight Triangle: All structures and landscaping shall conform to the requirements of the sight triangle as specified in Section

**6.305 Performance Standards**

1. Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness and, as measured at any property line, shall not exceed the following intensity in relation to sound frequency.

Octave Band in Cycles Per Second

0-50	75 Decibels
150-300	67
300-600	60
600-1200	55
1200-2400	50
2400-4800	43
Above 4800	40

Such sound levels shall be measured with a sound level meter and an octave band analyzer conforming with specifications of the American Standards Association.

2. Air Pollution. The density of emission of air contaminants and smoke shall be less dark than designated #2 on the Ringleman Chart, as published by the United States Bureau of Mines, except that smoke of a density designated as #2 shall be permitted for one 5-minute period in each hour. Light colored contaminants of such opacity as to obscure an observer's view to a degree equal or greater than the aforesaid shall not be permitted. Any finely divided liquid or solid matter capable of being air - or gas-borne, as measured at the point of emission, shall not be emitted in excess of .2 grains per cubic foot, as corrected to a temperature of 500 degrees Fahrenheit, except for a period of 5 minutes in any one hour period, at which time it may be equal but not exceeding .6 grains per cubic foot, as corrected to a temperature of 500 degrees Fahrenheit. In any case, there shall not be discharged from any sources whatsoever such quantities of air contaminants, smoke or detriment, nuisance or annoyance to any considerable number of persons or to the public in general or to endanger the comfort, health or safety of any such considerable number of persons or have a natural tendency to cause injury or damage to business, vegetation or property.
3. Odor. The emission of odorous matter in such quantities as to be readily detectable at any point along lot lines or to produce a public nuisance or hazard beyond lot lines is prohibited.
4. Glare, Heat or Radiation. Every use shall be so operated that there is no emission of heat, glare or radiation visible or discernable beyond the property line.
5. Vibration. Every use shall be so operated that the ground vibration inherently and recurrently generated is not perceptible, without instruments, at any point on the property line.
6. Sewage and Liquid Wastes. No operation shall be carried on which involves the discharge into a sewer, watercourse, river or the ground of liquid wastes of any radioactive nature, or liquid wastes of chemical nature, which are detrimental to normal sewage plant operations or corrosive or damaging to sewer pipes and installations.
7. Fire Hazard. All flammable substances involved in any activity or use, shall be handled in conformance with the standard of the National Board of Fire Underwriters and any additional regulations that may from time to time be adopted by the County Board of Supervisors.
8. Physical Appearance. Except for the display of operable or new merchandise and parking areas, the required front yard shall be landscaped with grass, trees and shrubs.

## Section 7. AIRPORT ZONING

This article shall be known as "Airport Zoning Regulations". These regulations are intended to provide for the safe operation of aircraft into and out of Western Nebraska Regional Airport, William G. Heilig Field.

### 7.1 Definitions

1. Airport. Western Nebraska Regional Airport, William G. Heilig Field, Scottsbluff, Nebraska
2. Airport Elevation. William G. Heilig: 3,944 feet MSL.
3. Airport Encroachment. Any structure, tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at Western Nebraska Regional Airport, William G. Heilig Field, or is otherwise hazardous to the operation of aircraft.
4. Airport Encroachment Area. Any area of land or water upon which an airport hazard might be established if not prevented by this article.
5. Departure Limit. The horizontal line perpendicular to the runway center line, established as the as the beginning of the usable takeoff runway.
6. Landing Area. The area of the airport intended for use for the landing, taking off or taxiing of aircraft.
7. Landing Threshold. A horizontal line, perpendicular to the runway center line, established as the beginning of the usable landing runway.
8. Mean Sea Level. The United States Coast and Geodetic Survey zero datum plane, abbreviated "MSL".
9. Non-conforming Use. Any Structure, tree or use of land which does not conform to the requirements of this article, or an amendment thereto, as of the effective date of this article or amendment.
10. Person. Any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee or other similar representatives thereof.
11. Runway. Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length.
12. Structure. Any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.
13. Tree. Any object of natural growth, except farm crops which are cut at least once a year, and except shrubs, bushes or plants which do not grow to a height of more than five feet.
14. Zoning Reference Point. The point of intersection of the center line of William B. Heilig Field, Runway 12/30 with the center line of William B. Heilig Field, Runway 5/23.
15. Locations and Borders. Vicinity of the airport located in Sections 16, 17, 20 and 21, Township 22, Range 54 West, Scotts Bluff County, Nebraska.
16. Electrical Facility. Electrical facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in Neb. Rev. Stat., §70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers.
17. Existing Runway. Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction.
18. Proposed Runway. Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction, but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration.
19. Political Subdivision. Political subdivision means any municipality, city, village, or county.

## 7.2 Adoption of Western Nebraska Regional Airport, Airport Layout Plan

In order to define the dimensions of the zones established by these regulations, the County of Scotts Bluff hereby adopts the Airport Project No. 3-31-0072-22, Airport Layout Plan, dated May 16, 1994. All subsequent adopted Airport Layout Plans are hereby incorporated by reference.

## 7.3 Airport Hazard Area Description.

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

### 7.301 Zone Descriptions.

1. The **Operation Zones** are longitudinally centered on each existing or proposed runway.
  - A. **Length.** For existing and proposed paved runways, the operation zones begin and end 200 feet beyond the end of each runway. For existing and proposed turf runways, the operation zones begin and end at the runway ends.
  - B. **Width.** For existing and proposed instrument runways, the operation zones are 1,000 feet wide, with 500 feet on either side of the runway centerline. For all other existing and proposed runways, the operation zones are 500 feet wide, with two hundred fifty feet on either side of the runway centerline.
  - C. **Height.** The height limit of the operation zones is the same as the height of the nearest point on an existing or proposed runway or the surface of the ground, whichever is higher.
2. The **Approach Zones** extend from the end of each operation zone and are centered along the extended runway centerlines. An approach zones' dimensions are as follows:
  - A. **Instrument Runways.**
    - i. **Length and Width.** The approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand (1,000) feet wide at the end of the nearest the runway (i.e., adjacent to the operation zone) and expands uniformly to sixteen thousand eight hundred forty (16,840) feet wide at the farthest end of the zone (i.e., ten miles (10) from the operation zone).
    - ii. **Height Limit.** The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally (50:1), except that the height limit shall not exceed one hundred fifty (150) feet above the nearest existing or proposed runway end elevation within three (3) miles of the end of the operation zone at that runway end. At three (3) miles from said operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally (50:1) and continues to the ten (10) mile limit.
  - B. **Visual Runways.**
    - i. **Length and Width.** An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred (500) feet wide at the end of the zone nearest the runway (i.e., adjacent to the operation zone) and expands uniformly so that at a point on the extended runway centerline three (3) miles from the operation zone, the approach zone is three thousand seven hundred feet wide.
    - ii. **Height.** The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty (40) feet horizontally, except that the height limit shall not exceed one hundred fifty (150) feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end.
3. The **Transition Zones** extend outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally (7:1). The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty (150) feet above the highest elevation on the existing or proposed runway.

4. The **Turning Zones** are located at a distance of three miles (3) radius from the corners of the operational zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the operation zone, approach zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway.

#### **7.4 Height Restrictions.**

No building, transmission line, pole, tower, chimney, wires, or other structure or appurtenance of any kind or character shall hereafter be erected, constructed, repaired or established, nor shall any tree or other object of natural growth be allowed to grow, above the heights described in Section 7.301.

#### **7.5 Use Regulations.**

Notwithstanding any other provision of this section, no use may be made of any land within any runway area zone, approach-departure zone, horizontal zone, conical zone, or transition zone in any manner as to create electrical interference with the radio or radar communication or navigation aids between the airport and aircraft; make it difficult for air crews to distinguish between airport lights and others; result in glare in the eye of air crews using the airport, impair visibility in the vicinity of the airport; or otherwise endanger the landing, taking off or maneuvering of a aircraft within these zones.

#### **7.6 Non-conforming Uses.**

1. Continuation of Lawful Non-conforming Uses. Any land use lawfully existing on the effective date of this chapter may continue, subject to the provisions of this section.
2. Enlarging Degree of Non-conformance. No non-conforming structure or tree shall be built, replaced, altered, replanted or allowed to grow to a height that increases the degree of non-conformance or that violates the height limits established by this section.
3. Damage or Destruction. (a) Should a structure occupied by a lawful non-conforming use be damaged to the extent that the cost of restoration exceeds 50 percent of the replacement cost of the structure, the non-conforming use shall no longer be permitted; (b) Any non-conforming tree which has been damaged or decayed to the extent of 50 percent or more shall be removed.
4. Abandonment. If any structure or property containing a lawful non-conforming use becomes vacant or unused for a continuous period of six months or longer, any subsequent use must conform to all airport zoning regulations.
5. Unlawful non-conforming Uses. These provisions shall not be interpreted as authorization for or approval of the continuation of any structure, use or tree in violation of any zoning regulations in effect on or before the effective date of this chapter.

#### **7.7 Administration and Enforcement of Article**

**7.701** Enforcement by Appropriate Subdivision. The location of various encroachment areas is within the zoning authority of Scotts Bluff County, or City of Scottsbluff, or the City of Gering, or the Village of Minatare, or the City of Terrytown. In order to properly enforce the Airport Zoning Regulations and protect air traffic at Western Nebraska Regional Airport, the city council for the Village of Minatare does hereby grant to the Scotts Bluff County Building & Zoning Department authority to act as administrative agency and enforcement agency, and does further appoint Scotts Bluff County Board of Commissioners as the Board of Adjustment on behalf of the Village of Minatare as it pertains to the enforcement of these Airport Zoning Regulations only.

In order to properly enforce the Airport Zoning Regulations and protect air traffic at Western Nebraska Regional Airport, the city council for the City of Terrytown does hereby grant to the City of Scottsbluff Zoning Department authority to act as administrative agency and enforcement agency, and does further appoint the City Council of the City of Scottsbluff or its designee as the board of Adjustment on behalf of the City Terrytown as it pertains to the enforcement of these Airport Zoning Regulations only.

**7.702** Administrative Agency. It shall be the duty of the Scotts Bluff County Department of Building & Zoning, or the City of Scottsbluff Zoning Department, or the City of Gering Zoning Department, as the case may be, to enforce this section, and the appropriate political subdivision is hereby appointed the “administrative agency” provided for in R.R.S., 1943, §3-319. The appropriate administrative agency shall have all the powers and perform all duties as provided by the Airport Zoning Act.

**7.703** Permit; Required and Exceptions.

1. Permit Required. It shall hereafter be unlawful to erect, construct, reconstruct, repair, or establish any building, transmission line, pole, tower, chimney, wires, or any other structure or appurtenance within the Hazard Area without first obtaining a permit from the Scotts Bluff County Building and Zoning Department or the City of Scottsbluff Zoning Department, or the City of Gering zoning Department, as the case may be, upon a form furnished by it. Any application shall be promptly considered and granted or denied. Applications for action by the Zoning Board of Adjustments shall be transmitted in accordance with the applicable provisions of the Airport Zoning Regulations, appropriate city and/or county ordinances, and/or state law. It shall also be unlawful to plant or replant any tree or other object of natural growth without the necessary permit.
2. Permit Exceptions. Within the outer area of the Approach Zones and within the Turning Zones, no permit shall be required for any construction or planting that is not higher than seventy-five (75) feet above the nearest existing or proposed runway end.

The repair, reconstruction, or replacement of nonconforming electric facilities will be permitted in compliance with Neb. Rev. Stat., §3-311(3).

3. Location Sketch and Zoning Map. The boundaries, Approach Zones, Operations Zone, Transition Zones, and Turning Zones of the airport are indicated on the Zoning Map that accompanies and is hereby made a part hereof by reference. A copy of the airport hazard area zoning regulations shall at all times be on file in the office of the Airport Director located at Western Nebraska Regional Airport.

## **7.8 Appeals**

1. Designation of Board of Adjustment. The Scotts Bluff County Board of Commissioners or its designee, or the City Council for the City of Scottsbluff, or the City Council for the City of Gering, shall be the Board of Adjustment with respect to this section, and shall have and exercise the powers conferred by R.R.S. 1943, §3-320, and such other powers and duties as are conferred and imposed by law. Any person aggrieved or affected by any decisions or actions made in administration of this article may appeal such decision or action to the appropriate Board of Adjustment. Any appeal taken pursuant to this section shall be by the procedure established by law.
2. Powers of the Zoning Board of Adjustment. The Scotts Bluff County Board of Commissioners or its designee, or the City Council for the City of Scottsbluff or its designee, or the City Council for the City of Gering or its designee, as the case may be, shall have the following powers:
  - (1) To hear and decide appeals from any order, requirement or decision made by the permits and inspections division in the enforcement of this section.
  - (2) To hear and decide any special exemptions to the terms of this section which such board may be required to pass under this section.
  - (3) To hear and decide specific variances under R.R.S. 1943, §3-312.
3. Appeal from the decisions of Board of Adjustment. Any person aggrieved or affected by a decision of the Board of Adjustment may appeal to the District Court for Scotts Bluff County, Nebraska, in the manner provided in R.R.S. 1943, §3-324 et seq.

## Section 8. SUPPLEMENTARY REGULATIONS

- 8.1 Projections from Buildings.** Cornices, eaves, canopies, belt courses, sills, ornamental features and other similar architectural features may project not more than two feet into any required yard or into required open spaces.
- 8.2 General Exception to Building Height Limitations.** Except as to avoid a conflict with Section 7.103 herein, the following types of structure or structural parts are not subject to the building height limitations of this regulation; chimney's, cupolas, tanks, church spires, belfries, domes, derricks, monuments, fire and hose towers, observation towers, transmission towers, smokestacks, flagpoles, radio and television towers, masts, aerials, cooling towers, water towers, elevator shafts, windmills, conveyors, and other similar projections.
- 8.3 Front Yard.** In all Districts irrespective of which way the building faces, one street-side yard shall comply with the front yard setback requirements of the district.
- 8.4 Deleted (5/07/2007)**
- 8.5 Floor Area of New Dwelling Units.** No single family dwelling unit shall have less than 750 square feet of livable floor space, nor 450 square feet for any individual multiple family dwelling unit.
- 8.6 Street Frontage.** No lot shall contain any building used for any purpose other than agricultural unless such lot abuts on a street or unless it has an exclusive unobstructed private easement of access or right of way at least 20 feet in width to a street provided there shall not be more than one single family dwelling for such easement.
- 8.7 Fences.** In the RR district no solid fence shall be erected except at the rear of a lot to height of more than four (4) feet above ground. At the rear of lots, solid fences or walls shall not exceed a height of six (6) feet above ground; provided if the lot is a corner lot the part of the fence between the building line nearest the street that the rear lot line intersects, and the street line of that street shall not exceed forty-two (42) inches in height. Partition fences on the lot line between two lots may be erected to maximum height of six (6) feet; provided the part of the fence exceeding four (4) feet in height shall not be of solid construction, and the total height of the part between the front setback line and the front lot line shall not exceed three and one-half (3½) feet. On any other corner lot no fence that is more than three feet in height above the established curb grade at such corner shall be erected within the triangular area bounded by the boundary line of the two intersecting streets and by a line connecting a point on each of such street boundary lines respectively, that is twenty (20) feet from the point of intersection of such boundary lines.
- 8.8 No basement or cellar shall be used as a separate dwelling unit.**
- 8.9 Erection of More Than One Principal Structure on a Lot.** In any commercial or industrial district more than one structure housing a permitted or permissible principal use may be erected on a single lot provided that yard and other requirements of this regulation shall be met for each structure as through it were on an individual lot.
- 8.10 Parking, Storage or Use of Major Recreation Equipment.** No major recreation equipment such as boats, boat trailers, travel trailers, pick-up campers or coaches, tent trailers, and the like, shall be parked or stored on any lot in a residential district except in a carport or enclosed building or behind the nearest portion of a building to the street, provided however, that such equipment may be parked anywhere on residential premises for not to exceed twenty-four hours during loading or unloading. No such equipment shall be used for living, sleeping or housekeeping purposes when parked or stored on a residential lot, or in any location not approved for such use.
- 8.11 Parking and Storage of Certain Vehicles.** Automotive vehicles or trailers of any kind or type without current license plates shall not be parked or stored in any residential district for over forty-eight hours, other than in completely enclosed buildings, except in permitted auto salvage yards.
- 8.12 Water and Sewer Facilities.** In all districts where a building, structure, or use hereafter established requires the use of water and sewage disposal facilities, and any water or sewage disposal facilities are hereafter provided for an existing building, structure or use, such facilities shall be provided in accordance with this regulation. The location, construction, connection and use of all water and sewage disposal facilities hereafter provided, except those to be used for livestock or other non-human purposes, shall be approved and comply with all county and state codes and regulations.

**8.13 Signs.** All signs in all districts shall conform to the following requirements.

1. All signs and sign structures shall be kept in good repair and in a proper state of presentation. Signs which are abandoned shall be removed within thirty days following abandonment.
2. No sign or sign structure shall be erected at any location where it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device, or is a hazard to traffic. Beacon and flashing signs are prohibited.
3. If any non-conforming sign is damaged exceeding two-thirds of its replacement value, it shall not be rebuilt; provided, however, that nothing herein contained shall prevent maintenance of non-conforming signs.
4. No sign or attachment thereof shall be located closer than ten feet to any property line or dedicated right-of-way.

**8.14 Deleted (5/07/2007)**

**Section 9. BUILDING SETBACK LINES**

**9.1** Notwithstanding any other setback requirements in this regulation, in no case shall a building be hereafter erected or structurally altered within a tract, the distance to the centerline of the right-of-way as follows:

County Roads (Local or Below Designation)	60 feet
Scotts Bluff County Highway System	80 feet
State Highways	100 feet
Irrigation District System Canals	50 feet (1)

(1) Distance to the nearest high water mark

Provided, however, the setback for lots of record in a duly approved and recorded plat at the time of adoption of this regulation shall conform to the setback required in the district in which it is located.

## **Section 10. CONDITIONAL USES**

### **10.1 Purpose**

In order to provide for the most appropriate use of land throughout the district and giving the maximum consideration to the character of the district and its peculiar suitability for particular uses in the area affected by this regulation which is predominately agricultural, having low density and a wide range of topographic characteristics, special exceptions in the form of conditional uses are hereby established.

### **10.2 Procedure**

The County Board may, by special permit after review and recommendation from the Planning Commission and public hearing as described in Section 15, authorize the establishment of special exceptions in the form of conditional uses designated in the district regulations if it is found that the location and characteristics of the use will not be injurious to the health, safety, morals and general welfare of the area.

### **10.3 Standards**

The conditional uses shall conform to the intent and purpose of this regulation and the following requirements.

- 10.301 The use shall in all other respects conform to the applicable regulations of the district in which it is located.
- 10.302 The use shall conform to all other applicable ordinances, laws and regulations of any governmental jurisdiction.
- 10.303 The use shall have adequate water, sewer and drainage facility approved by the County Board.
- 10.304 Ingress and egress shall be so designed as to minimize traffic congestion on the public roadways.
- 10.305 The use shall be in harmony with the character of the area and the most appropriate use of the land.
- 10.306 The density of livestock as permitted in Section 5.102 may be varied due to special conditions involving such factors as:
  - (1) Soil composition
  - (2) Slope
  - (3) Potential pollution of adjacent drainage ways or water courses.
  - (4) Wind Direction
  - (5) Proximity to urban development and residences
  - (6) Ground water

The County Board and the Planning Commission in considering an application for a conditional use may consider, among other things, the most appropriate use of the land; the conservation and stabilization of the value of property; adequate open space for light and air; concentration of population; congestion of public streets; and the promotion of public safety, health, convenience, and comfort. The County Board may stipulate and require such conditions and restrictions upon the conditional use and operation deemed necessary for the protection of the public interest and to secure compliance with this regulation.

## Section 11. OFF STREET PARKING AND LOADING REQUIREMENTS

### 11.1 Off-Street Parking Requirements

At the time of erection of a structure or building, or at the time of enlargement, or change in use of a structure, building or land, off-street parking spaces shall be provided and maintained for all uses as follows.

Use	Area or Parking Spaces
Dwelling and Mobile Home	One space per dwelling unit
Bowling Alley	Six spaces for each alley
Hotel and Motel	One space per each guest room
Hospitals, Nursing Homes, Sanitariums	One space for each two beds
Places of public assembly (auditorium) such as churches, theaters, community buildings, etc.	One space for each four seats
Offices	One space for each 400 sq. ft. of floor area
Retail sales and service uses such as stores, eating establishments, clinics, taverns, banks, drive-ins, etc.	One space per 250 sq. ft. of gross floor area
Schools - Elementary or Junior	One space per classroom or one space for each six seats in the auditorium, whichever is greater.
High School	One space for each six students or one space for each six seats in the auditorium, whichever is greater.
Manufacturing, wholesale, warehouses, industrial.	One space for each three employees on the maximum working shift.

### 11.2 Off-Street Loading Requirements

At the time of erection of a structure or building, or at the time of enlargement, of a structure or building having gross floor area of 10,000 square feet or more, off-street loading berths shall be provided and maintained for all uses as follows:

Number of Berths	Gross Floor Area
1 (250 sq. ft.)	20,000 to 50,000 sq. ft.
1 (250 sq ft)	For each 30,000 sq. ft. or fraction thereof.

### 11.3 Location

All yard areas except the front yard required for residential uses may be used for parking purposes. All parking spaces required by this regulation shall be located on or within 300 feet of the lot it serves or adjacent to the use intended to be served.

### 11.4 Interpretation

In the case of any building, structure or land, the use of which is not specifically mentioned herein, the provisions for a use which is so mentioned and to which said use is similar, shall apply.

In the event several uses occupy a single building or parcel of land, the total requirement for off-street parking shall be the sum of the requirements of the several uses computed separately.

## Section 12. Billboards: All billboards erected after the adoption of this Resolution shall comply with the following regulations:

1. Billboards shall only be allowed as a conditional use in the A, C, and I Districts.
2. No Billboard shall be erected without a conditional use permit from the County Board. The County Commissioners shall consult the recommendation of the Planning Commission when issuing a conditional use for a billboard.
3. Any billboard that is not kept in good condition shall either be repaired or removed at owners expense.
4. The County Board may implement conditions upon a billboard to minimize the environmental or scenic impact of a billboard.

## **Section 13. ADMINISTRATION AND ENFORCEMENT**

### **13.1 Building Inspector.**

A Building Inspector designated by the County Board shall administer and enforce this regulation. He may be provided with the assistance of such other persons as the County Board may direct.

### **13.2 Building Permit Required.**

It shall be unlawful to commence or do any excavating, erecting, constructing, reconstructing, enlarging, altering, or moving of any building or structure or to use or occupy or permit the use or occupancy of any building, land or premise, or construction or connection to water or sewer facilities or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a building permit shall have been issued therefore by the Building Administrator or Inspector stating that the proposed use of the building or land conforms to this regulation.

Notwithstanding any provisions contained herein, farm buildings and structures located in Agricultural Zoning, except farm dwellings, are exempt from the requirements of applying for and receiving building permits provided such buildings and structures must conform to all applicable provisions of this regulation.

The Building Administrator or Inspector may issue a temporary building permit for uses in any district for the purpose of uses and buildings incidental and required in the construction of a principal permitted use in the district in which it is located and highway construction, provided that such use be of a temporary nature and does not involve the erection of substantial buildings. Such permit shall be granted in the form of a temporary and revocable permit for not more than six months subject to conditions as will safeguard the public health, safety, and general welfare.

### **13.3 Application for Building Permit.**

Written applications on forms prescribed and furnished by the Building Administrator or Inspector stating such information as may be required for the enforcement of this regulation shall be submitted and shall be accompanied by plans in duplicate, drawn to scale, showing the actual shape and dimensions of the lot to be built upon or to be changed in its use, in whole or in part, the exact location, existing and intended use of each building or structure or part thereof, the number of families or housekeeping units the building is designed to accommodate and when no buildings are involved, the location of the present use and proposed use to be made of the lot, existing and proposed water and sanitary sewer facilities, as may be necessary to determine and provide for the enforcement of this regulation. One (1) copy of such plans shall be returned to the owner when such plans have been approved by the Building Administrator or Inspector together with such building permits as may be granted. All dimensions shown on these plans relating to the location and size of the lot to be built upon, shall be based on actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started.

The Building Administrator or Inspector shall issue a written permit, or denial, thereof, with reasons in writing within fifteen (15) days from the date of the acceptance of the application. Appeal may be made in accordance with Section 14 of this regulation.

Except where an extension has been obtained in writing from the Building Administrator or Inspector, permits issued shall expire within ninety (90) days if the work described in the permit has not begun or the use applied for has not been established and within one year if the work has not been completed.

### **13.4 Certificate of Occupancy**

No structure or land shall be hereafter used or the use changed thereof until a Certificate of Occupancy shall have been issued by the Building Administrator or Inspector.

A Certificate of Occupancy for a new building, or for the alteration of an existing structure shall be applied for coincident with the application for a building permit and shall be issued within ten days after the erection or alteration of such building is completed in conformity with this regulation.

No Certificate of Occupancy shall be issued for residential purposes for a partially completed or portion of a building. No structure shall be used as a temporary residence.

Application for a change of use of land or existing structure shall be made on forms provided by the Building Administrator or Inspector and shall state the proposed use is in conformity with this regulation.

### **13.5 Enforcement by Building Inspector**

It shall be the duty of the Building Inspector to enforce this regulation in accordance with its provisions. All departments, officials and public employees of Scotts Bluff County which are vested with the duty or authority to issue permits or licenses, shall conform to the provisions of this regulation and shall issue no permit or license for any use, building or purpose, if the same would be in conflict with the provisions of this regulation.

The erection, construction, reconstruction, alteration, repair, conversion, maintenance or use of any building, structure, water or sewer facility, automobile trailer, house trailer or land in violation of this regulation is hereby declared to be a violation of this regulation.

## **Section 14. BOARD OF ADJUSTMENT**

**14.1** A Board of Adjustment is hereby established and it is resolved that the Scotts Bluff County Board shall constitute the Scotts Bluff County Board of Adjustment.

**14.2** The Board of Adjustment shall adopt rules in accordance with the provisions of this regulation. Meetings of the Board shall be held at the call of the chairman and at such other times and the Board may determine. The Chairman, or in his absence the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep record of its examinations and other official actions all of which shall be immediately filed with the County Clerk and shall be a public record.

The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of said sections in harmony with their general purpose and intent, and in accordance with the general or specific rules therein contained.

**14.3** An appeal to the Board of Adjustment may be taken by any person or persons aggrieved, or by any officer, department, board or bureau of the County affected by any decision of an administrative officer or planning commission. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Adjustment, by filing with the Board a notice of appeal specifying the grounds thereof. The officer or agency from whom the appeal is taken shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Any party may appeal at the hearing in person, by agency, or by attorney.

**14.4 The Board of Adjustment shall have the following powers.**

14.401 To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, or refusal made by an administrative official or agency based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.

14.402 To hear and decide, in accordance with the provisions of any regulation, requests for interpretation of any map, or for decisions upon other special questions upon which the Board of Adjustment is authorized by any such regulation to pass, and

14.403 Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any enacted regulation under this act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any resolution, but no such variance shall be authorized unless the Board of Adjustment finds that: (a) the strict application of the resolution 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 will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and (d) the granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.

No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the resolution.

In exercising the above mentioned powers, the Board of Adjustment may, in conformity with the provisions of this act, reverse, or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as shall be proper, and to that end shall have the power of the officer or agency from whom the appeal is taken. The concurring vote of 2/3 of the 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 any such resolution or to effect any variation in such resolution.

- 14.5** Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any officer, department, board, or bureau of the county, may present to the district court for the county, a petition, duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within fifteen days after the filing of the decision in the office of the Board of Adjustment.

**Section 15. AMENDMENTS**

- 15.1** This regulation and zoning map may be amended, supplemented or changed from time to time by the Board on its own motion or on petition from the Planning Commission or a property owner. An application for an amendment shall be submitted to the Board on forms obtained in the office of the Building Administrator. No change or amendment shall become effective until after submission to and report from the Planning Commission and a public hearing by the Board, notice of the time and place of such hearing shall be given by the publication thereof in the legal newspaper of Scotts Bluff County one time at least ten days prior to such hearing. If no report is received from the Planning Commission in sixty days, it may be assumed that said Commission has approved the amendment.

In case, however, of a protest against such change, signed by the owners of twenty percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent to the rear thereof extending one hundred feet there from, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendments shall not become effective except by the favorable vote of two-thirds majority of the Board.

**Section 16. SCHEDULE OF FEES AND CHARGES**

- 16.1** The County Board shall establish a schedule of fees and charges and a collection procedure for building permits, certificates of occupancy, appeals, amendments, and other matters pertaining to this regulation. The schedule of fees shall be posted in the office of the Building Administrator and may be altered or amended only by the Board.
- 16.2** Until all applicable fees and charges have been paid in full, no action should be taken on any application or appeal.

## Section 17. DEFINITIONS

**17.1** For the purpose of this regulation certain terms and words are herewith defined. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular. The word “shall” is mandatory.

**Accessory Dwelling Unit (ADU).** A dwelling or habitable living space no larger than 800 square feet and with no more than two bedrooms, appurtenant to the principal dwelling or structure of a lot of record.

**Accessory Use or Structure.** A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

**Agriculture:** The employment of the land for the purpose of obtaining a profit in money by the raising, harvesting, and selling of crops and the grazing, feeding, breeding, management and sale of livestock, poultry, fur-bearing animals, or honey bees, by dairying and the sale of dairy products, animal kennels, and use of the land for fee hunting, but not including the confined feeding of livestock.

**Adjacent.** Near, close, or abutting; across a street or highway.

**Animal Unit.** One animal unit, for all purposes except animal feeding operations (RR district only), shall be interpreted as follows:

One unit = one cow/calf combination, or one slaughter/feeder cattle, or one horse, or one mature dairy cow, or one animal of similar weight and size; Two swine of 55 pounds or more, or two sows with litters, or two sheep, or two other animals of similar weight and size; Five chickens, or five ducks, or five turkeys, or five animals of similar weight and size.

**Airport.** Any area which is used or is intended to be used for the taking off and landing of aircraft, including helicopters, and any appurtenant areas which are used or are intended to be use for airport building facilities, including open space, taxiways and tie-down areas.

**Apartment House.** Same as dwelling, multiple family.

**Automobile Salvage Yard.** Same as junk yard.

**Basement.** That portion of a building between floor and ceiling, so located that the vertical distance from grade to floor below is greater than the vertical distance from grade to ceiling. A basement shall not be counted in computing the number of stories.

**Billboard.** A sign that direction attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

**Boarding or Rooming House.** A building containing a single dwelling unit and provisions for not more than five guests, where lodging is provided with or without meals for compensation.

**Board of Adjustment.** Scotts Bluff County Board of Adjustment.

**Building Inspector.** Scotts Bluff County Building Inspector.

**Building.** A structure designed or intended for the support, enclosure, shelter or protection of persons, animals, or property of any kind.

**Building, Height of.** The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to (a) the highest point of a flat roof, (b) the deck line of a mansard roof, or (c) the average height between the eaves and ridge for gable, hip, and gambrel roofs.

**Campground.** Areas used and designed to accommodate two or more transit camping parties, including tents or other camping outfits and travel trailers, but not including mobile home parks or permanent mobile homes.

**Comprehensive Development Plan.** A general plan for the improvement of Scotts Bluff County, Nebraska as adopted by the County Board of Scotts Bluff County, Nebraska.

Club or Lodge. Building or facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

Confined Livestock Feeding. The process and area used for the enclosing of livestock whereby the feed provided is not grown within the confined area on which the livestock are located and involves more than 300 head at a given time.

County. Scotts Bluff County, Nebraska.

County Board. County Board of Commissioners, Scotts Bluff County, Nebraska.

District. A zoning district established by this regulation.

Duplex. Same as dwelling, two family.

Dwelling. A building or portion thereof designed exclusively for residential occupancy.

Dwelling Unit. A group of rooms or a single room with kitchen facilities occupied or intended for occupancy as separate living quarters by a family or other group of persons living together, or by a person living alone.

Dwelling, Single Family. A detached building designed exclusively for occupancy by one family.

Dwelling, Two -Family. A detached building designed exclusively for occupancy by two families living independent of each other, under one roof.

Dwelling, Multiple-Family. A building or portion thereof designed for occupancy by three or more families living independent of each other, but under one roof.

Dwelling, Farm. A dwelling located on a farm or ranch and occupied by the owner, tenant or employee of the farm or ranch.

Event Facility (Class I). A public or privately owned structure and/or outdoor venue used commercially for weddings, receptions, parties, business events, or similar activities. Such use may include food service and alcohol when approved.

Event Facility (Class II). A public or privately owned structure and/or outdoor venue with a capacity of 300 occupants or more that is used commercially for a concert hall, convention center, sports complex, racetracks, casinos, or other similar social, recreational, or amusement purposes. Such facility shall include all uses listed in the Class I Event Facility definition. Such use may include food service and alcohol when approved.

Exotic Animal: Any vertebrate animal except fishes and amphibians that is not defined herein as livestock or a household pet.

Family. One or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house or hotel.

Fence. A tangible barrier or obstruction or any material, or a line of obstacles above the surface of the ground on each side thereof, interposed along a line between two portions of land with the purpose or intent, or having the effect of preventing passage or view across the fence line.

Farm. A tract of land, including structures there on, utilized for agricultural purposes containing forty acres or more which produces \$1000 or more of farm products each year.

Feed Lot. Same as confined livestock feeding.

Frontage. That portion of a parcel of property which abuts a public right-of-way.

Highway, State and Federal. Highways which are so designated by the State of Nebraska.

Highway, County. Highways so designated by the County Board of Scotts Bluff County.

Home Occupation: A business, profession, service or trade conducted for gain or support. Such activity shall occur entirely within a principle building or its accessory structures, except when allowed by a Conditional Use Permit.

**Junk Yard.** Any area where waste, junk, discarded or salvaged materials are bought, sold, stored, exchanged, baled or packed, disassembled or handled, including dismantling or “wrecking” of automobiles or to other vehicles or machinery, house wrecking, and structural steel materials and equipment.

**Kennel.** A commercial establishment in which dogs or domestic animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation.

**Livestock:** All cattle, bison, horses, mules, burros, sheep, goats, swine, poultry, llamas, ostriches, and elk shall be considered livestock. Additionally, any other animal or fowl which are being produced primarily for use as food or food products for human consumption shall be considered livestock.

**Lot.** A parcel of land shown on a subdivision map or a record of survey map or on a subdivision recorded in the office of the County Recorder, or a parcel described by metes and bounds, or a building site in one ownership having an area for each main building.

**Manufactured Home.** A) 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 is engineered to be at least 18’ wide when coupled together, 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 the “National Manufactured Home Construction and Safety Standards” promulgated by the U.S. Department of Housing and Urban Development (HUD); or B) a modular housing unit as defined in the statutes (Neb.Rev.Stat. 71-1557), bearing the seal of the Nebraska Department of Health and Human Services-Regulation and Licensure.

**Mobile Home.** A movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed without a permanent foundation for year-around living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but engineered to be at least 18’ wide when coupled together into one integral unit.

**Mobile Home Court.** A parcel of land which has been planned and improved for the placement of two or more mobile homes which conforms to this regulation.

**Modular (or Factory Built) Home.** A home built in a factory in sections, transported to the site upon a non-permanent moving device, placed upon a permanent foundation, the construction of which meets local building code regulations, and is generally indistinguishable from site-built homes.

**Non-Conforming Use.** Any use, whether of a building, other structure, lot, or tract of land, which does not conform to the use regulations for the district in which such non-conforming use is located, either at the effective date of this regulation or as a result of subsequent amendments which may be incorporated into this regulation.

**Parking Space.** A surfaced area, enclosed or unenclosed, sufficient in size to store one automobile not less than nine feet wide and twenty feet long, together with a driveway connecting the parking space with a street, road or alley and permitting ingress and egress of that automobile without the necessity of moving another automobile.

**Planning Commission.** Scotts Bluff County Planning Commission.

**Residence.** A building used, designed, or intended to be used as a home or dwelling place, for one or more families.

**Recreational Area, Commercial.** A non-governmental recreational area open to the public with an admission fee, intended to be a commercial profit making activity.

**Recreational Area, Private.** A non-governmental recreational area open only to members of a non-profit organization or association.

**Retail Sales & Services.** Building materials, motor vehicles, marine craft, farm and garden supplies, general convenience items, groceries, and other similar approved uses.

**Road.** Same as street.

**Sanitary Land Fill.** A type of operation in which garbage and refuse or garbage or refuse is deposited by a plan on a specified portion of land, is compacted by force applied by mechanical equipment, and then is covered by compacted suitable covering

material to a depth of at least six to twelve inches over individual cells of garbage and refuse or garbage or refuse, which are closed at the end of each day, and to a depth of at least twenty-four inches over the finished landfill.

Sign. Any device containing elements or symbols, organized or related, which is designed to inform or to attract the attention of persons not on the premises on which the sign is located, provided, however, that mailbox numbers or name, government flags or insignia, legal notices, governmental identification, information or directional signs shall not be included in the application of these regulations.

Sign, On-Site. A sign relating in its subject matter to the premises on which it is located, or to the products, accommodations, services, or activities on the premises, or to the construction, sale, lease or rental of the premises. On-site signs do not include outdoor advertising signs or billboards.

Signs, Off-site. A sign other than an on-site sign and includes an outdoor advertising sign, or device and billboard not relating in its subject matter to the use or activity of the premises on which the sign is located.

Sight Triangle: An area at a street intersection in which no buildings shall be erected or placed and no trees, bushes or shrubs shall be planted in a manner which impedes vision between a height of 2-1/2 feet and 10 feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of inter-section of the centerline of the streets, 50 feet in each direction along the centerline of the streets. At the intersection of major arterial streets, the 50-foot distance shall be increased to 100 feet for each leg of the intersection.

Site-built Home: A home fabricated primarily on the job site but which may incorporate wall panels and components fabricated elsewhere.

Story. That portion of a building included between the surface of a floor and the surface of the floor next above it, or if there is no floor above it, then the space between such floor and the ceiling next above it.

Street. Any thoroughfare or public way which has been dedicated to the public or deeded to the county or state for street or road purposes not less than fifty feet in width.

Street Center Line. The center line of a street right-of-way as established by official surveys.

Structure. Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things structures include buildings, mobile homes, walls, but not signs or fences as otherwise defined herein.

Trailer Home. Same as mobile home.

Trailer, Travel. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation use and is permanently identified Travel Trailer by the manufacturer on the trailer. When factory equipped for the road, it has a body width of not exceeding eight feet, and body length not exceeding thirty-two feet.

Yard. A required open space which is unobstructed from the ground upward except as otherwise provided in this regulation.

Yard, Front. An open space extending between side lot lines and measured horizontally from the front lot line at right angles to the nearest point of the structure.

Yard, Side. An open space between a structure and the side lot line extending from the rear line of the required front yard measured horizontally and at right angles from the side lot line to the nearest point of the building.

Yard, Rear. An open space between a structure and side yard line measured horizontally and at right angles from the rear lot line to the nearest point of the structure.

Zoning District. Same as District.

**Section 18. VIOLATIONS AND PENALTY**

- 18.1 The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile, manufactured home, or land in violation of this regulation shall be a misdemeanor. Any person, partnership, association, club, or corporation violating the provisions of this regulation or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit as required by the provisions of this regulation shall, upon conviction, be fined in any sum not exceeding two hundred and fifty dollars for each offense, and the costs of prosecution, or may hereby be confined in the county jail for a term not to exceed thirty days. In addition to other remedies, the Board or the proper county authorities of Scotts Bluff County, as well as any owners of real estate within the district effected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use to restrain, correct or abate such violation, or to prevent the illegal act, conduct, business, or use in or about the premises. Any tax payer or tax payers of Scotts Bluff County may institute proceedings to compel specific performance, by the proper official or officials, or any duty imposed by the provisions of this regulation. Any landowner who commences any work on a building, structure, plumbing or HVAC system before obtaining the required permits shall be subject to a fee established by Scotts Bluff County that shall be in addition to any regular permit fees.

**Section 19. VALIDITY**

- 19.1 Should any part of this regulation, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this regulation. All regulation or parts of regulations passed and approved prior to the passage and approval of this regulation and in conflict therewith are hereby repealed.

## **SECTION 21.0 STATUTORY AUTHORIZATION, FINDINGS OF FACT AND PURPOSES**

### **21.1 STATUTORY AUTHORIZATION**

The Legislature of the State of Nebraska has in Neb. Rev. Stat. 23-114 delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the health, safety, and general welfare. Therefore, the County Board of Commissioners of Scotts Bluff County, Nebraska, ordains as follows:

### **21.2 FINDINGS OF FACT**

#### **21.21 Flood Losses Resulting Periodic Inundation.**

The flood hazard areas of Scotts Bluff County, Nebraska, are subject to inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety and general welfare.

#### **21.22 General Causes of These Flood Losses**

These flood losses are caused by: (1) The cumulative effect of obstruction in floodways causing increases in flood heights and velocities, (2) The occupancy of flood hazard areas are by uses vulnerable to floods or hazardous to others which are inadequately elevated or otherwise protected from flood damages.

#### **21.23 Methods Used to Analyze Flood Hazards**

This ordinance uses a reasonable method of analyzing flood hazards which consists of series of interrelated steps.

(1) Selection of a base flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one year, as delineated in the official flood plain study, and illustrative materials dated June 18, 1990, as amended.

(2) Calculations of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the base flood.

(3) Computation of the floodway required to convey this flood without increasing flood heights more than 1 foot at any point.

(4) Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.

(5) Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

### **21.3 STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize those losses described in Section 21.21 by applying the provisions of the ordinance to:

21.31 Restrict or prohibit uses which are dangerous to health, safety, of property in time of flooding or causes undue increases in flood heights or velocities.

21.32 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.

21.33 Protect individuals from buying lands which are not suitable for intended purposes because of flood hazard.

21.34 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program when identified by the Federal Insurance Administration as a flood prone community.

## **SECTION 22.0 GENERAL PROVISIONS**

### **22.1 LANDS TO WHICH ORDINANCE APPLIES**

This ordinance shall apply to all lands within the jurisdiction of the Scotts Bluff County, of Nebraska (local unit name) identified on the Flood Insurance Rate Map (FIRM) as numbered and unnumbered A Zones and/or within the Zoning Districts FW and FF established in Section 24.0 of this ordinance. In all areas covered by this ordinance, no development shall be permitted except upon a permit to develop, granted by the governing body of its duly designated representative under such safeguards and restriction as they may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 25.0, 26.0, and 27.0.

### **22.2 THE ENFORCEMENT OFFICER**

The County Zoning Administrator of the Community is hereby designated as the Council's duly designated Enforcement Officer under this Ordinance.

### **22.3 RULED FOR INTERPRETATION OF DISTRICT BOUNDARIES**

The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example, where there appears to be a conflict between a mapped boundary and actual field conditions, the Enforcement Officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute. The base flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence, if he so desires.

### **22.4 COMPLIANCE**

No development located within known flood hazard of the community shall be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

### **22.5 ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this ordinance imposes greater restrictions, the provision of this ordinance shall prevail. All other ordinance inconsistent with this ordinance is hereby repealed to the extent of the inconsistency only.

### **22.6 INTERPRETATION**

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

### **22.7 WARNING AND DISCLAIMER OF LIABILITY**

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

### **22.8 SEVERABILITY**

If any section, clause, provision or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

## 22.9 APPLICATION FOR APPEAL

Where a request for a permit to develop or a variance is denied by the County Zoning Administrator, the applicant may apply for such a permit or variance directly to the Board of Adjustment. The Board of Adjustment may grant or deny such request by appropriate resolution adopted within 30 days, or as long as 60 days, after the date of such application to the Board of Adjustment.

## SECTION 23. DEVELOPMENT PERMIT

### 23.1 PERMIT REQUIRED

No person, firm or corporation shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined in Section 23.3.

### 23.2 ADMINISTRATION

- A. The County Zoning Administrator is hereby appointed to administer and implement the provisions of this ordinance.
- B. Duties of the County Zoning Administrator (local Administrator) shall include, but not be limited to:
  - (1) Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.
  - (2) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
  - (3) Notify adjacent communities and the Nebraska Natural Resources Commission, Flood Plain Management Section, prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Insurance Administration when participating in the National Flood Insurance Program.
  - (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
  - (5) Verify and record and maintain the actual elevation (in relation to mean sea level) of lowest floor to which the new or substantially improved structures.
  - (6) Verify and record and maintain the actual elevation (in relation to mean sea level) to which the new or substantially improved Structures have been flood proofed.
  - (7) When flood proofing is utilized for a particular structure, the County Zoning Administrator (local Administrator) shall be presented certification from a registered professional engineer or architect.

### 23.3 APPLICATION FOR PERMIT

To obtain a permit, the applicant shall first file an application, in writing, on a form furnished for that purpose. Every such application shall:

23.31 Identify and describe the work to be covered by the permit.

23.32 Describe the land on which the proposed work is to be done by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.

23.33 Indicate the use or occupancy for which the proposed work is intended.

23.34 Be signed by the permitted or his authorized agent who may be required to submit evidence to indicate such authority.

23.35 Give such other information as reasonably may be required by the County Zoning Administrator (official).

## **SECTION 24. ESTABLISHMENT OF FLOODWAY DISTRICTS**

The mapped flood plain areas with the jurisdiction of this ordinance are hereby divided into the two following districts: A floodway overlay district (FW) and a floodway fringe overlay district (FF) as identified in the official Flood Plain Study. Within these districts all uses not meeting the standards of this ordinance and those standards do the underlying zoning districts shall be prohibited. These zones shall be consistent with the numbered and unnumbered A Zones as identified on the official FIRM when identified in the Flood Insurance Study provided by the Federal Insurance Administration.

### **SECTION 25.0 STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT**

- 25.1 No Permit for development shall be granted for new construction, substantial improvement and other improvements, including the placement of manufactured homes within the identified flood plain unless the conditions of this Section are satisfied.
- 25.2 All areas identified as unnumbered A Zones by the Federal Insurance Administration are subject to inundation of the 100 year flood; however, the water surface elevation was not provided. The unnumbered A Zones shall be subject to all development provisions of this ordinance. If Flood Insurance Study data is not available, the community shall utilize any base flood elevation data currently available within its area of jurisdiction.
- 25.3 New construction, subdivision proposals, substantial improvement, prefabricated buildings, placement of manufactured homes and other developments shall require:
- 25.31 Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.
  - 25.32 New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
  - 25.33 Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - 25.34 All utility and sanitary facilities be elevated or flood-proofed one foot above the base flood elevation.
  - 25.35 That until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard areas unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the Flood Insurance Study.
  - 25.36 Storage of Material and Equipment
    - (1) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
    - (2) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
  - 25.37 Subdivision proposals and other proposed new development, including manufactured home parks or subdivision, be required to assure that; (a) all such proposals are consistent with the need to minimize flood damage, (b) all public utilities and facilities, such as; sewer, gas, electrical, and water systems are located, elevated and constructed to minimize or eliminate flood damage, (c) adequate drainage is provided so as to reduce exposure to flood hazards, and (d) proposals for development (including proposals for manufactured home parks and subdivisions) of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposals the regulatory flood elevation.

## SECTION 26.0 FLOODWAY FRINGE OVERLAY DISTRICT

### 26.1 PERMITTED USES

Any use permitted in Section 27.0 shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 25.0 are met.

### 26.2 STANDARDS FOR THE FLOODWAY FRINGE OVERLAY DISTRICT

- 26.21 Require new construction or substantial improvements of residential structures to have the lowest floor, including basement elevated one foot above the base flood elevation.
- 26.22 Require new construction or substantial improvements of non-residential structure to have the lowest floor, including basement, elevated one foot above the lowest floor elevation or, together with attendant utility and sanitary facilities, to be floodproofed so that below such a level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 23.2, B(7).
- 26.23 Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net areas of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- 26.24 Within AH zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.
- 26.25 Manufactured homes
- A. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchored are used, the following specific requirements (or their equivalent) shall be met:
    - 1. Over-the-top ties be provided at each of the four corners of the manufactured home with two additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one additional tie per side.
    - 2. Frame ties be provided at each corner of the home with five additional ties per side at intermediate points, and manufactures homes less than 50 feet long requiring four additional ties per side.
    - 3. All components of the anchoring system be capable of carrying a force of 4800 pounds.
    - 4. Any additions to manufactures home be similarly anchored.
  - B. Require that all manufactured homes to be placed within Zones A1-30, AH, and AE on the community's FIRM, be elevated on a permanent foundation such that the lowest floor of the manufactured home is one foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provision of Section 26.25A.

- C. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

26.26 Located within the areas of special flood hazard established in Section 22.1 are areas designed as AO Zones. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined Channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

- A. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).
- B. All new construction and substantial improvements of nonresidential structure shall:
  - 1. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one foot above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or
  - 2. Together with attendant utility and sanitary facilities be completely flood-proofed one foot above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such certification shall be provided to the official as set forth in Section 23.2B(7).
- C. Adequate drainage paths around structures on slopes shall be required in order to guide floodwater around and away from proposed structures.

## **SECTION 27.0 FLOODWAY OVERLAY DISTRICT**

### **27.1 PERMITTED USES**

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. No use shall increase the flood levels of the base flood elevation. These uses are subject to the standards of Section 25.0 and 26.0.

27.11 Agricultural uses, such as: general farming, pasture, nurseries, forestry.

27.12 Residential uses, such as: lawns, gardens, parking and play areas.

27.13 Nonresidential area, such as: loading areas, parking, airport landing strips.

27.14 Public and private recreation uses, such as: golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

### **27.2 STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT**

New structures for human habitation are prohibited. All encroachments, including fill, new construction, substantial improvements and other development must be prohibited unless certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Section 5.0 and 6.0. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, State or other sources or Section 5.6(d) of this ordinance, in meeting the standards of this section.

## SECTION 28.0 VARIANCE

- 28.1 The County Board of Adjustment (appeal board) as established by Scotts Bluff County (local unit) shall hear and decide appeals and requests for variances from the requirements of this ordinance.
- 28.2 The County Board of Adjustment (appeal board) shall hear and decide appeals when it is alleged that there is an error in any requirements, decision, or determination made by the County Zoning Administrator (local Administrator) in the enforcement or administration of this ordinance.
- 28.3 Any person aggrieved by the decision of the County Board of Adjustment (appeal board) or any taxpayer may appeal such decision to the District Court for Scotts Bluff County (name of the appropriate court) as provided in Neb. Rev. Stat. 23-168.04 (statute).
- 28.4 In passing upon such applications, the County Board of Adjustment (appeal board) shall consider all technical evaluation, all relevant factors, standards specified in other sections of this ordinance, and:
- 28.41 the danger that materials may be swept onto other lands to the injury of others;
  - 28.42 the danger to life and property due to flooding or erosion damage;
  - 28.43 the susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - 28.44 the importance of the services provided by the proposed facility to the community;
  - 28.45 the necessity to the facility of a waterfront location, where applicable;
  - 28.46 the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - 28.47 the compatibility of the proposed use with existing and anticipated development;
  - 28.48 the relationship of the proposed use with existing and anticipated development;
  - 28.49 the safety of access to the proposed use to the comprehensive plan and flood plain management program for that area;
    - (a) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, excepted at the site; and
    - (b) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities, such as: sewer, gas, electrical, and water systems, and streets and bridges.

## 28.5 CONDITIONS FOR VARIANCES

- 28.51 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (28.52-28.56 below) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- 28.52 Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- 28.53 Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- 28.54 Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- 28.55 Variances shall be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 28.56 Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

## **SECTION 29.0 NON-CONFORMING USE**

- 29.1 A structure or the use of structure or premises which was lawful before the passage or amendment of the ordinance, but which is not in conformity with the provisions of this ordinance may be continued subject to the following conditions:
- 29.11 No such use or substantial improvement of that use shall be expanded, changed, enlarged, or altered in a way which increases its nonconformity.
- 29.12 If such use is discontinued for 12 consecutive months, any future use of the building premises shall conform to this ordinance. The Utility Department shall notify the County Zoning Administrator in writing of instances of non-conforming uses where utility services have been discontinued for a period of 12 months.
- 29.13 Uses or adjuncts thereof, which are or become nuisances, shall not be entitled to continue as non-conforming uses.
- 29.2 If any residential non-conforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred within those areas identified as floodway (FW). This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.
- 29.3 If any nonresidential non-conforming use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred, except that if it is reconstructed in conformity with the provisions of this ordinance. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

## **SECTION 30. PENALTIES FOR VIOLATION**

Violation of the provision of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or special exceptions) shall constitute a Class III misdemeanor as defined in Neb. Rev. Stat. 23-114.05. Any person who violated this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be punished as this section, 23-114-05, provide; and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the Scotts Bluff County or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

## **SECTION 31. AMENDMENTS**

The regulations, restrictions, and boundaries set forth in this ordinance may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days notice of the time and place such hearing shall be published in a newspaper of general circulation in Scotts Bluff County, including the territory of 3 miles, all this defined in Neb. Rev. Stat. 23-164.

## SECTION 32. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

“Actuarial Rates” or “Risk Premium Rates” – Are those rates established by the Federal Insurance Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with 42 U.S.C. 4014 and accepted actuarial principles. Actuarial rates include provisions for operating costs and allowances.

“Appeal” – A request for a review of the County Zoning Administrator’s interpretation of any provision of this ordinance or a request for a variance.

“Area of Shallow Flooding” – A designated AO or AH zone on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard” – The land in the flood plain within a community subject to one percent of greater chance of flooding in any given year.

“Base Flood” – The flood having one percent chance of being equalled or exceeded in any given year.

“Base Flood Elevation” – Elevation indicated in the official flood plain study as the elevation of the 100-year flood.

“Base Flood Protection Elevation” – An elevation one foot higher than the water surface elevation of the base flood.

“Channel” – A natural or artificial watercourse of perceptible extent, with a definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow, thus, is that water which is following within the limits of a defined channel.

“Community” – Any state or area or political subdivision thereof, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

“Development” – Any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Existing Construction” – (For the purposes of determining rates) structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRM’s effective before that date.

“Existing Construction” may also be referred to as “existing structures”.

“Flood or Flooding” – A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

“Flood Insurance Rate Map (FIRM)” – An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

“Flood Insurance Study” – The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

“Flood Plain Management” – The operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to emergency preparedness plan, flood control works, and flood plain management regulations.

“Flood Protection System” – Those physical structural works constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard”. Such a system typically includes levees or dikes. These specialized modifying works are those constructed in conformance with sound engineering standards.

“Flood-Proofing” – Any combination of structural and non-structural additions, changes or adjustments to structures, including utility and sanitary facilities, which would preclude the entry of water. Structural components shall have the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

“Floodway (FW)” – The channel of a river or other watercourse and the adjacent portion of the flood plain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point assuming equal conveyance reduction outside the channel from the two sides of the flood plain.

“Floodway Fringe (FF)” – That area of the flood plain, outside of the floodway, that on an average is likely to be flooded once every 100 years (i.e. : that has a one percent chance of the flood occurrence in any one year).

“Freeboard” – A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditioned, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

“Highest Adjacent Grade” – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

“Lowest Floor” – The lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Historic Structure” – Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (1) By an approved state program as determined by the Secretary of the Interior or (2) Directly by the Secretary of the Interior in states without approved programs.

“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 is engineered to be at least 18’ wide when coupled together, 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 the “National Manufactured Home Construction and Safety Standards” promulgated by the U.S. Department of Housing and Urban Development (HUD); or B) a modular housing unit as defined in the statutes (Neb.Rev.Stat. 71-1557), bearing the seal of the Nebraska Department of Health and Human Services-Regulation and Licensure.

“Manufactured Home Park Or Subdivision” – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“New Construction” – Structures for which the “start of construction or substantial improvement” is commenced on or after the effective date of the FIRM.

“Overlay District” – A district which acts in conjunction with the underlying zoning district or districts.

“Recreational Vehicle” – A vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Start of Construction” – (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348) includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repairs, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as: clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does

it include excavation for a basement, footing, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as: garages or sheds not occupied as dwelling units or not part of the main structure.

“Structure” - A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

“Substantial Damage” – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” – Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure, either; (a) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either; (1) any project for improvement of a structure to comply with existing, state or local health, sanitary, or safety code specifications, which are solely necessary to assure safety living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

“Variance” – A grant relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

“100-Year Flood” – The base flood having a one percent chance of annual occurrence.

“Violation” – a failure of a structure or other development to be fully compliant with the community’s floodplain management regulations.

## **SECTION 40. WELLHEAD PROTECTION OVERLAY DISTRICT**

### **41.01 INTENT**

The Wellhead Protection Overlay District is intended to assist with the protection of public water supplies utilized by municipalities, and other entities, meeting the definition of public water systems as defined in Nebraska State Statutes. These regulations are intended to provide protection for such public water supply wells to maintain the health, safety and general welfare of Scotts Bluff County residents, the residents of adjacent counties, and the residents of non-adjacent counties participating in regional water systems in which Scotts Bluff County residents or communities are also a participant. In order to afford such protection the regulation of land uses having the potential for contamination of groundwater sources is necessary within a specified boundary of public wells.

### **41.02 PREREQUISITE REQUIREMENTS FOR APPLICATION OF THIS DISTRICT:**

Prior to the establishment of a Wellhead Protection Overlay District to any lands in Scotts Bluff County, the entity which maintains and operates public water supply well(s) as described in Section 41.01 shall make application to the County seeking the establishment of a Wellhead Protection Overlay District and shall demonstrate that it has complied with all other requirements of the Wellhead Protection Act (Neb. Rev. Stat. 46-15-1 through 46-1509). These requirements include but are not limited to the following:

1. Delineation of the Wellhead Protection Area based upon a twenty (20) year time of travel recharge zone,
2. Approval of such Wellhead Protection Area by the Nebraska Department of Environmental Quality,
3. Completion and mapping of an inventory of potential contamination sources within the Wellhead Protection Area.
4. Formulation of emergency/contingency/long-range plans in the event of disruption of supply of water from the wells in the Wellhead Protection Area,
5. Formulation of and ability to implement an on-going Public Involvement/Education Program to permit public comment in the establishment of the Wellhead Protection Program and to provide information to the public regarding the program and voluntary cooperation with said program,
6. Development of a program to install and maintain Wellhead Protection Area signs on roadways around the Wellhead Protection Area,
7. Willingness to execute an interlocal agreement with Scotts Bluff County for the administration and enforcement of the regulations of this Wellhead Protection District; willingness to accept the regulations set forth in this District; willingness to pay an administrative fee to the County which the parties involved agree; willingness to provide legal council to address any legal question or legal challenge to the Wellhead Protection District regulations, together with other terms and conditions which are acceptable to the parties involved in such agreement.

**41.03 LIMITATION ON APPLICATION OF THIS DISTRICT:** This district may be applied only to Wellhead Protection Areas officially approved by the Nebraska Department of Environmental Quality. In the event the boundaries of any such official approved Wellhead Protection Area do not follow easily identifiable boundaries such as roads, rivers creeks, section, quarter section or quarter-quarter section lines, the boundaries of such area shall be expanded to the nearest such lines to avoid confusion and added administrative costs associated with in-field determination of such boundaries.

**41.04 AMENDMENT TO OFFICIAL ZONING MAP:** Whenever the requirements of Section 41.02 of the Article have been complied with and the County board has approved the application of this overlay zoning district on land within the County, in accordance with the procedures for amendment of the Official Zoning Map set forth in this resolution, the boundaries of such overlay district shall be indicated on said Official Zoning Map.

**41.05 ALLOWABLE USES AND STRUCTURES:** Any use or structure indicated as an allowable use, a permitted use, a conditional use, or an accessory use in the primary zoning district to which this overlay district is applied shall be allowed or permitted in accordance with the zoning requirements of the primary zoning district, except when specifically prohibited by Section 41.06 of the Article, and provided all such uses further comply with the additional wellhead protection restrictions set forth in Section 41.07 of this Article.

**41.06 PROHIBITED USES AND STRUCTURES:** All other uses and structures which are not permitted in the underlying districts either as a permitted use, accessory use or conditional use are prohibited. Furthermore, the following uses and/or structures shall be specifically prohibited:

1. The expansion of existing or development of new livestock confinement facilities/ operations of more than 299 animal units without a Conditional Use Permit as specified in Section 5.101-14.
2. Landfills and other types of waste handling facilities.
3. Commercial or industrial uses which utilize or generate any materials determined by the United States Environmental Protection Agency as hazardous materials including commercial or industrial uses which store petroleum products, agricultural chemicals, anhydrous ammonia or other fertilizers in excess of fifty (50) gallons.
4. Domestic, irrigation and any other water wells closer than one-thousand (1,000) feet to the water wells being protected in this Wellhead Protection District.

**41.07 WELLHEAD PROTECTION RESTRICTIONS:** The following restrictions shall apply to uses within any area of land on which this overlay district is applied:

1. The expansion of existing or development of new livestock confinement facilities/ operations of 299 animal units or less shall conform to the requirements of Section 5.101-14 of this Resolution.
2. On-farm storage of gasoline or diesel fuel in excess of one-thousand one-hundred (1,100) gallons per above-ground storage tank for five hundred (500) gallons per underground storage tank shall be prohibited.
3. Fuel storage associated with irrigation well motors shall be equipped with a containment area in accordance with the National Fire Protection Association Code 30.
4. No fuel storage, except when associated with Item 3 (above) shall be permitted within one-thousand (1,000) feet of any water well protected under this overlay district.
5. No septic tank or tile field associated with any residential, commercial, industrial, or other type of use shall be permitted within one-thousand (1,000) feet of any municipal water well protected under this overlay district.
6. Domestic, irrigation and any other water well shall not be located closer than one-thousand (1,000) feet to any water well protected under this overlay district.
7. All storage tanks not expressly prohibited by this section shall be operated safely and maintained in an operable and serviceable condition.

**41.08 ADDITIONAL RESTRICTIONS:** All other restrictions imposed by the Scotts Bluff County Zoning Resolution, as may be amended from time to time, and not in conflict with the provisions of this section shall apply.

**41.09 PERMITS AND INSPECTIONS:** All storage tanks permitted by Section 41.07 with a capacity of at least three hundred (300) gallons shall receive a Storage Tank Permit before being placed into service. There shall be no fee for said permit, which shall be acquired from the Zoning Administrator. The Zoning Administrator, County Emergency Manager, or their designee shall inspect all storage tanks located within a Wellhead Protection District that have a capacity of at least two thousand (2000) gallons no less than once every two (2) years to verify compliance with the provisions of this Article.

## **Section 42. SOLAR ENERGY GENERATION REGULATIONS**

### **42.01 ENERGY CONVERSION SYSTEMS**

The Solar Energy Generation Regulations is intended to balance the need for clean renewable energy resources with the protection of health, safety, and welfare of the residents of Scotts Bluff County, Nebraska. The County finds these regulations are necessary in order to ensure that all solar energy conversion systems (SECS) are appropriately designed, sited and installed. These regulations pertaining to all solar energy conversion systems are intended to establish reasonable guidelines and restrictions for the installation, maintenance and decommissioning of SECS consistent with federal, state and local laws. Scotts Bluff County recognizes that this is an emerging technology and that modifications and amendments to these regulations may be reviewed and made as technology advances.

These regulations shall be consistent with Nebraska statutes, specifically Neb. Rev. Stat. § 66-913 that allows for counties having zoning or subdivision jurisdiction to include considerations for the encouragement of solar energy use and protection of access to solar energy and all applicable zoning regulations or ordinances in comprehensive development plans. Legislative findings contained in §§ 66-901 to 66-915 are incorporated herein by reference.

### **42.02 TYPES OF SOLAR CONVERSION SYSTEMS**

**CLASS 1 - Small Solar Energy Conversion System (SSECS)** - A SSECS which is incidental and subordinate to another use of the same parcel. A system is considered a small solar energy system only if it supplies energy for onsite use such as dwellings, accessory structures, small commercial operations, and irrigation/water well equipment. When a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for onsite use may be sold back to the utility company. To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding the net metering of distributed generation systems of 25 kilowatts and less. SSECS shall not require a permit.

**CLASS 2 - Commercial Solar Energy Conversion System (CSECS)** - Under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to multiple homes, or adjacent commercial entities, individually or separately owned, to be used in conformance with Nebraska Statutes. CSECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the structures and users within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

**CLASS 3 - Utility Solar Energy Conversion System (USECS)** - A USECS is a system under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. USECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the USECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

### **42.03 APPLICABILITY**

These regulations govern the siting, or enlargement of any Solar Energy Conversion System (SECS) project in Scotts Bluff County. Whenever the provisions of these regulations are found to be inconsistent with state regulations, the regulation imposing the more restrictive standard shall control.

### **42.04 PREEMPTION OR CONFLICT WITH OTHER LAWS**

Nothing in these regulations is intended to preempt other applicable local, state or federal laws, rules or regulations. In the event of any conflict, the more stringent requirement shall control.

## 42.05 SEVERABILITY

If any section or provision of the Scotts Bluff County Solar Energy Regulations, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication shall not affect any other section or provision of these regulations, or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Scotts Bluff County Commissioners declares that it would have adopted the valid portions and application of these regulations without the invalid part, and to this end the provisions of these regulations are declared to be severable.

## 42.06 DEFINITIONS

For purposes of the Zoning Regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number the plural number. The word "shall" is always mandatory, and not merely directory.

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

**Accessory Solar Energy System:** Systems which are accessory to the principal use on a property and designed to supply energy solely for the principal use.

**Battery Energy Storage System (BESS):** A type of energy storage technology that uses a group of batteries to store electrical energy from a Solar Energy Conversion System for use at times of greater need.

**Capacity:** The amount of electricity produced by the Solar Energy Conversion System measured in kilowatts (kW) or megawatts (MW).

**Commercial Solar Energy Conversion Systems (CSECS):** A system designed to supply energy for multiple homes, or adjacent commercial entities, individually or separately owned, on the distribution grid.

**FAA:** The Federal Aviation Administration, or its duly designated and authorized successor agency

**Feeder Line:** Any power line that carries electrical power from one or more solar collectors or individual transformers associated with individual solar energy collection to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems serving the SECS.

**Financial Assurance:** The reasonable assurance, at the discretion of the Scotts Bluff County Commissioners, from a credit worthy party that the costs associated with but not limited to, construction, maintenance, consequences from abandonment, or a failure to properly execute closure or post-closure care will be recoverable from any applicant, owner or operator under these regulations.

**Ground Mounted Panels:** Freestanding solar panels mounted to the ground by use of racking, piling, piers, stabilizers or similar apparatus.

**Grid-Tied Solar System:** A photovoltaic solar system that is connected to an electric circuit served by an electrical company.

**Off-Grid Solar System:** A photovoltaic solar system in which the circuits energized by the solar system are not electrically connected in any way to electric circuits served by an electric utility company.

**Height, Total System:** The height above the grade of the system including the unit and the measured highest vertical extension of any portion of the SECS.

**Nebraska Game & Parks Commission:** The commission responsible for the stewardship of the states' fish, wildlife, parks and other resources.

**Non-participating Property:** Any property that is not the subject of an agreement with the Solar Energy Conversion System Owner or Operator.

**Participating Property:** Any property that is under lease or other property agreement with the Solar Energy Conversion System Owner or Operator.

**Photovoltaic System:** An active solar energy stem that converts solar energy directly into electricity.

**Professional Engineer:** A qualified individual who is licensed as a professional engineer in the State of Nebraska.

**Permit:** Any document or approval issued by the Commissioners which authorizes a SECS Project, including substations, in Scotts Bluff County.

**Rooftop or Building Mounted Solar Energy System:** A solar energy system that is mounted to the roof or building using brackets, stands or other apparatus.

**SECS Project:** The SECS and associated support facilities including, but not limited to: roads, substations, solar array, operation and maintenance buildings, and other appurtenant equipment as specified in the siting approval application, including the project area as defined by the Owner.

**Small Solar Energy Conversion System (SSECS):** A small solar energy system designed to supply energy for onsite use, such as dwellings, accessory structures, and irrigation/water well equipment.

**Solar Array:** An on-the-ground installation of arrays of photovoltaic cell panels, supporting structures and related equipment for the production of electricity.

**Solar Collector (Accessory):** A device, structure or a part of a device or structure that the principal purpose is to transform solar radiant energy into thermal, mechanical, chemical or electrical energy.

**Solar Glare:** The glare effect that occurs when the sun reflects on the conversion system and that can affect people or near-by properties.

**Solar Energy:** Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

**Substation:** Any electrical facility utilized to convert electricity produced by a SECS for inter connection with high voltage transmission lines.

**Transmission Line:** The electrical power lines that are high voltage transmission lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**U.S. Fish and Wildlife Service:** The Bureau of the Department of the Interior that works to conserve, protect and enhance fish, wildlife and plants and their habitats.

**Utility Commercial Solar Energy Conversion System (USECS):** A system designed to supply energy to off-site customers on a wholesale basis.

**Yard, Front:** A yard extending from the front lot line of the SECS and adjoining a public street or road to the front of the SECS between side lot lines.

**Yard, Rear:** A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of the SECS.

**Yard, Side:** A yard between the SECS and the side lot line measured horizontally at right angles to the side lot line from the side lot line to the nearest point required minimum open space between the property line and the SECS.

**42.07 Class 2 - Commercial Solar Energy Conversion System (CSECS) -** A CSECS under a common or aggregated ownership that includes substations, cables/wire, convertors and other building accessories, whose main purpose is to supply electricity to on and off-site customers. CSECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CSECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

#### **General Site and Design Standards:**

##### **1. Minimum Yard Requirements:**

A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas, unless the base or footings to such structure are a least one (1) foot above such base flood elevation.

##### **B. Setbacks:**

From Public Road: CSECS solar array shall maintain a minimum setback distance from any public road of at least three hundred (300) feet measured from the county road right-of-way.

From Participating Property: No setback is required between an adjacent residence of a property participating in the same aggregated project.

From Non-Participating Property: CSECS shall maintain a minimum distance of fifty (50) feet from the solar array to a property line.

From Non-Participating Existing Dwelling: CSECS shall maintain a minimum distance of 660 feet (1/8 mile) from the solar array to a dwelling.

- C. Waiver of setback requirements: setback requirements may be waived by agreement between adjoining landowners provide that:
- a) Said agreement for waiver is made in writing;
  - b) Said agreement is presented to the Zoning Administrator upon application for conditional use permit; and
  - c) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.
2. Structures shall meet applicable industry structural codes, shall be neutral in color and shall not be used to display advertising.
  3. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.
  4. The owner of a CSECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.
  5. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.
  6. Each CSECS system application shall have a decommissioning plan outlining the means, procedure and costs of removing all related support infrastructure. This plan must be submitted with the application, and state all equipment, support structures, electrical equipment and fences will be removed upon discontinuance of the system's operation within one (1) year.
  7. The CSECS shall comply with any and/or all State and Federal regulations, if applicable.
  8. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
  9. Each Multiple User or Commercial SECS must have an E911 address.
  10. The CSECS may be required to be designed and placed in such a manner to minimize adverse visual and noise impacts on adjacent areas. Such methods as screening, fencing, vegetation, trees, shrubs and pollinator plantings may be used, and such design should be included in the application documents.
  11. Structures for the CSECS project must provide a structural analysis, stamped by a licensed engineer registered in the State of Nebraska.
  12. Reasonable measures shall be taken to mitigate specific adverse visual impacts such as potential glint or reflections which affect residences within or immediately adjacent to the project area.

**42.08 Class 3 - Utility Solar Energy Conversion System (USECS)** - A USECS which has a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. USECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the USECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

**General Site and Design Standards:**

1. Minimum Yard Requirements:

A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas, unless the base or footings to such structure are a least one (1) foot above such base flood elevation.

B. Setbacks:

From Public Road: USECS solar array shall maintain a minimum setback distance from any public road of at least three hundred (300) feet measured from the county road right-of-way.

From Participating Property: No setback is required between an adjacent property participating, in the same aggregated project.

From Non-Participating Property: USECS shall maintain a minimum of fifty (50) feet from the solar array to a property line.

From Non-Participating Existing Dwelling: USECS shall maintain a minimum distance of 660 feet (1/8 mile) from the solar array to a dwelling.

State and National Parks: USECS solar array shall maintain a minimum setback of 3,960 feet (3/4 mile) from property line.

C. Waiver of Set-back Requirements: Set-back requirements may be waived by agreement between adjoining landowners provide that:

- a) Said agreement for waiver is made in writing;
- b) Said agreement is presented to the Zoning Administrator upon application for conditional use permit; and
- c) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.

2. USECS may be required to provide visual screening. Fences, walls, berming, and vegetation or some combination thereof to provide visual screening may be used. Fencing, walls or berming may be used to supplement other screening methods, but shall not account for over fifty percent (50%) of the screening. Existing natural features, topography and vegetation may be used to achieve visual screening. Such design should be included in the application documents.

3. The owner of a USECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.

4. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.

5. The USECS shall comply with any and/or all State and Federal regulations, if applicable.
6. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
7. Each USECS must have an E911 address.

#### **42.09 Public Forum**

The owner/operator, for any SECS conditional use permit, shall conduct a public forum at a location in Scotts Bluff County, prior to submitting an application to the County, for a conditional use permit. Owner/operator shall provide notice of the public forum in all newspapers published within Scotts Bluff County. In addition, the Owner/Operator shall issue a press release to all print, television, and radio media to provide additional notice to the public. Such notice shall be mailed to all property owners within 2 miles of the proposed SECS site location. The notice shall include a request that property owners notify any tenants who have communication towers or equipment on their land of the public forum. The owner/operator shall provide information to the public at the forum concerning the location, nature and scope of the project, and how the owner/operator shall meet and comply with the requirements set forth in Sections 42.10, 42.11, 42.12 and 42.13 of these regulations.

#### **42.10 Application Requirements for Class 2 and Class 3 Solar Projects:**

The owner and operator applying for a conditional use permit for construction of a renewable energy project shall file an application with the Scotts Bluff County Zoning Administrator. The application shall include the name(s) of all property owner(s) of record; the name of the project operator; and the legal description and parcel numbers of the affected project area. The application shall be signed by all parties listed on the application.

The application shall also include the following documents:

- A. A narrative describing the proposed project including an overview of the project; proposed total rated capacity; identification of the operator/owner, including identification of any additional owners in the chain of ownership; disclosure of any foreign entity or affiliated foreign government ownership connected with the project; and disclosure of the source of financing for the project and whether any source of financing is from foreign entities or affiliated foreign governments.
- B. A survey map illustrating the following:
  1. Property lines, dimensions, acreage encompassed and contours with appropriate intervals for site evaluation;
  2. Location and elevation of all components of the proposed project;
  3. Location of any overhead or underground utility lines on the property;
  4. Location of all known communications towers within two (2) miles of the proposed project;
  5. Access roads;
- C. Provide a copy of all preliminary lease agreements, contracts, and similar related documents for each Participating Property, along with a copy of any agreement with real estate brokers representing the applicant concerning the acquisition and negotiation of any lease agreements, contracts or similar documents.
- D. Provide a map illustrating all: existing and proposed transmission lines to the utility interconnection; adjacent ownership; land uses; existing residences; schools; churches; federal, state, county or local parks; recognized historic or heritage sites; identified wildlife preserves or habitat areas to a distance of 5,280 ft (one- mile).
- E. Results of consultation regarding potential interference with existing communication facilities within the CSECS/USECS project area.

- F. Applicant shall identify potential effects in terms of constraints or benefits the solar energy facility may place on current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed and the effects on the following activities shall also be addressed:
1. Existing or proposed tourist or recreation activities;
  2. Residential activities;
  3. Industrial activities;
  4. Agricultural activities;
  5. Commercial activities.
- G. Application shall meet all requirements of NDEE, NRCS and NRD Districts in the project area. Soil erosion, sediment control and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project It shall identify plans for:
1. Grading;
  2. Construction and drainage of access roads;
  3. Design features to control dust;
  4. Design features to maintain downstream water quality;
  5. Re-vegetation to ensure slope stability;
  6. Restoring the site after temporary project activities;
  7. Disposal or storage of excavated materials;
  8. Protecting exposed soil;
  9. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized;
  10. Maintenance of erosion controls throughout the life of the project; and
  11. Must present an acceptable weed or vegetation plan at the time of permit.
- H. Applicant shall provide information regarding flora and fauna of the proposed project area including:
1. Officially listed threatened or endangered species;
  2. Critical habitat and habitat conditions;
  3. An avian study based on the U.S. Fish and Wildlife Service.
- I. A pre-construction noise and glare study shall be conducted; and shall include all property within one (1) mile (5,280 ft) of the site. Projections of any glare on a structure shall include the extent and duration of the glare on the existing structure. The protocol methodology and modeling shall be included in the study. The complete results and full study report shall be submitted to the Scotts Bluff County Planning Department for review at the time of the application.
- J. Standard drawings of the structural components of the project equipment.
- K. Certification by a registered licensed Engineer in the State of Nebraska that shows:
1. There is a substantial need for the proposed use of greater than one hundred (100) KW;
  2. All applicable local, state, and federal building, structural and electrical codes will be followed;
  3. The site is feasible for a solar project; and can be successfully operated in the climate conditions found in Scotts Bluff County;
  4. The design and safety of the proposed project equipment to withstand weather related events.
- L. A report concerning the conduct, notice, information and questions addressed at the public forum required in Section 42.09.

M. Provide proof of compliance with Nebraska Power Review Board statutory requirements (Section 70-1014.02) for a privately developed renewable energy facility.

N. In the event any of the foregoing requirements cannot be submitted at the time of the application due to external stake holder constraints or project timing requirements, those elements of the application may be submitted at a later date. The applicant shall provide written explanation for why the information cannot be provided with the application. This information may be included as a condition for approval of the application by the County Board and the information shall be submitted to the County Zoning Administrator prior to issuance of a building permit that shall be required before any work can begin at the site location.

#### **42.11 Construction and Operations (Class 3 Only)**

- A. All public roads to be used for the purpose of transporting project substation materials, cement or equipment for construction, operation or maintenance of the project systems shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction. A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. This survey shall be provided by the applicant in consultation with the Scotts Bluff County Highway Department. Those included are Applicant(s); Land Owner(s); Highway Superintendent(s) and Zoning Administrator(s). The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant's responsibility.
- B. Prior to the commencement of construction, the Applicant shall enter into an agreement with the Scotts Bluff County Highway Department regarding use of county roads during construction. The agreement shall include traffic routes, time of year use, staging areas and any other physical sites related to the project. All roads shall be constructed and maintained to allow access, at all times, by any emergency service vehicles. The project owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation or maintenance of the project. Any violation of the agreement will incur an assessment against the Applicant for damages as determined by the Applicant and the Board of Commissioners. If the parties do not agree on the assessment, the matter shall be submitted to binding arbitration at Applicant's cost.
- C. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- D. The social and economic reporting requirements shall include the following and any mitigation measures to address adverse social and economic impacts:
1. The estimated amount of property, sales and other taxes to be generated by the project in Scotts Bluff County and outside of Scotts Bluff County.
  2. Estimated local expenditures of construction materials in Scotts Bluff County.
  3. The estimated number of construction jobs and estimated construction payroll. Estimated number of local construction job opportunities.
  4. The estimate of the construction workforce spending in Scotts Bluff County.
  5. The estimated number of federal, state and local government jobs affected and added as a result of the SECS project.
  6. The estimated number of permanent jobs and estimated continuing payroll.
- E. Panels damaged for any reason, must be removed and properly recycled to a specific location identified in the decommissioning recycling plan. Removed damaged panels will be handled per EPA Regulations RCRA subtitle C and D and must not be allowed to be stored on the grounds unprotected from lead or other heavy metals seepage.

- F. Designated and declared weeds shall be controlled on permitted sites during the life of the operation and through completion of decommission. This shall be maintained to the satisfaction of the Scotts Bluff County Weed Control Authority.
- G. Design and construct structures for battery use with adequate spacing to prevent fires in one structure from affecting adjoint structures as approved by the State Fire Marshall.

#### **42.12 Safety Measures**

- A. Each project shall be equipped with both manual and automatic controls to limit the power so it does not exceed the design limits.
- B. Project location shall include no signs for advertising of any kind, except for one sign not to exceed 32 square feet posted near the entrance to the facility, and except for signs required by regulatory code. The facility entrance sign shall contain the following information:
  - 1. Warning - high voltage;
  - 2. Operator's name;
  - 3. Emergency phone number.
- C. Each project shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.
- D. The project operator shall maintain a current insurance policy which will cover liability, installation, operation and any possible damage or injury that might result from the failure of any part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The equipment shall be warranted against any system failures reasonably expected in severe weather operation. Operator shall name Scotts Bluff County as an additional interest as part of the facility insurance policy. County shall receive notice if the operator terminates or revises insurance coverage.
- E. An Emergency Operations Plan (EOP) must be placed on file and kept current with Scotts Bluff County Zoning Administrator, Region 22 Emergency Management, and Fire and Rescue Department(s) within the project jurisdiction. The plan shall include an all-hazards planning approach, based on an emergency incident or disaster of any magnitude or geographic size that may cause disruption to the function of project equipment and include contacts for notification. A preliminary EOP, as agreed upon with the applicable agencies mentioned in Section 42.16, shall be provided with the conditional use permit application
- F. Upon completion of the CSECS/USECS project the Applicant shall meet with local Fire and Rescue jurisdiction to review the Emergency Operations Plan.

#### **42.13 DISCONTINUATION AND DECOMMISSIONING PLAN**

At the expense of the permittee, a gross estimate for the decommissioning costs of this approved Solar Facility, including any estimated resale and salvage value, shall be prepared by a Nebraska licensed professional engineer. Such plan shall include the means, procedure, and costs of removing Solar Facility components.

The estimated decommissioning cost shall be guaranteed in one of the following forms of financial security: surety bond; a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash or other form of security reasonably acceptable to County. The operator of the Solar Facility shall maintain the financial security thereafter for as long as the Solar Facility is in existence, or upon discontinuance, decommissioning, and/or abandonment of the Solar Facility. Such financial security shall be

payable to Scotts Bluff County, and shall be updated every five (5) years, commencing from the date of acceptance and approval of the security by the County Board, to cover the costs associated with the updated decommissioning cost estimates. All future decommissioning cost estimates shall be prepared by a Nebraska licensed professional engineer. Failure of permittee to update the guarantee as provided above within sixty (60) days of the professional engineer's determination of future decommissioning costs shall be an automatic revocation of the Conditional Use Permit. and the County may then collect on the financial security and the County or a designated third party thereof may enter the property to physically remove the installation.

For purposes of this instrument, discontinuance, decommissioning, and/or abandonment shall mean the Solar Facility, after being commissioned as defined by Neb. Rev. Stat. § 77-6202(1), has ceased energy production for twelve (12) consecutive months. At the end of such twelve (12) month period, the operator shall have twelve (12) months to complete decommissioning of the Solar Facility. If the operator of the Solar Facility fails to remove the installation in accordance with the requirements of this instrument, or within twelve (12) months following discontinuance, decommissioning, and/or abandonment, the County may collect the financial security and the County, or a designated third party thereof, may enter the property to physically remove the installation. Exception: The operator provides substantial evidence, updated every six (6) months after initial submission of evidence, to the County Board for approval of the intent to maintain and reinstate the operation of that facility.

For the purposes of this instrument, the term decommissioning costs shall mean all costs associated with the dismantlement, recycling, and safe disposal of facility components and site reclamation activities, including but not limited to the following elements: (a) All gross labor, equipment, transportation, and disposal costs associated with the removal of Solar Facility from the facility site; (b) All decommissioning activity management, site supervision, site safety costs; (c) Any other costs, including administrative costs associated with the decommissioning and reclamation of the facility site, and shall account for inflation, cost and value changes, and advances in decommissioning technologies and approaches.

For the purposes of this instrument, the term Solar Facility components shall mean all equipment, infrastructure, fences, landscaping, etc., including but not limited to the following components: solar panels and collectors; battery energy storage systems; substations; switchyards, generators, transmission lines, and electrical wiring; cabling; conduit; racking; facility roads and fencing; and any other related supporting infrastructure to a minimum depth of three (3) feet. Such components shall not include any public utility infrastructure.

Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

#### **42.14 NOTIFICATION OF CHANGES PENDING REVIEW**

The applicant shall immediately notify the Commissioners of changes to any of the information contained in the application while it is pending review and consideration by the county. Changes to include any new or additional company involvements with all contact points as required in this regulation.

#### **42.15 FEES FOR APPLICATION**

- A. **CLASS 2:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a solar energy facility, shall charge the applicant a non-refundable fee of \$1000.00, plus \$5.00 per kilowatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents

- B. **CLASS 3:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a solar energy facility, shall charge the applicant a non-refundable fee of \$5000.00, plus \$50.00 per megawatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents.

#### **42.11 COORDINATION WITH LOCAL FIRE DEPARTMENTS**

The applicant, facility owner or operator shall submit to the local fire departments and/or the Region 22 Emergency Management Coordinator and County Sheriff as required by Neb. Rev. Stat. §§81-829.36 to 81-829.75, a copy of the site plan.

- a. Upon request by any local fire department, Fire Marshal and/or the Scotts Bluff County Emergency Management Coordinator, the facility owner or operator shall cooperate with the relevant agency to develop an emergency response plan in the event of fire in/around the facility.
- b. The facility owner/operator, at their expense, shall organize and present a yearly emergency response plan review for emergency responders which may include a physical walk through of the facility.
- c. The facility will allow access to Local Fire Districts and the Fire Marshal to inspect the fuel load within the facility when requested, and agrees to remediate any concerns with abundant fuel loads found during the walk through.
- d. The facility owner/operator will notify the local Fire Department, Fire Marshal, County Sheriff and Emergency Management Coordinator when changes to the site are made that may impede emergency response, i.e. change in manning or physical access controls, addition of batteries, change in ground maintenance or emergency response plans, addition of hazardous waste, etc.
- e. The facility owner/operator shall work with local responders to ensure they have adequate equipment, training and supplies to respond to any hazards that are introduced during the operation of the facility.
- f. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

#### **42.12 FEDERAL, STATE AND LOCAL REQUIREMENTS**

Project facilities shall be constructed to meet, and be maintained in compliance with all federal, state and local requirements. Written statements providing proof that the Project is in full compliance with these relevant requirements shall be provided to the Scotts Bluff County Zoning Office with the application.

If an issue arises at any time during the review, approval, or development process, which relates to compliance of federal, state and/or local requirements, the applicant, at the discretion of the County Commissioners may request additional studies, reports, maps and/or graphic depictions prepared by a professional qualified engineer acceptable to both party's in the relevant discipline detailing the issues, characteristics, special features, potential impact, and correction measures. Nothing in these regulations is intended to preempt other applicable federal, state and/or local laws and regulations.

- A. Federal Aviation Administration (FAA). Any applicant for a project shall comply with all applicable FAA requirements. They shall also submit a report to the County Planning Office verifying said compliance.
- B. Environmental
  1. United States Fish and Wildlife Service (USFWS). The applicant shall comply with all applicable USFWS requirements including federal endangered species regulations as established in the Federal Endangered Species Act.
  2. United States Army Corp of Engineers (COE). The applicant Project shall comply with all applicable COE requirements including the Federal Wetlands regulations as established in the Federal Clean Water Act.

3. Nebraska Department of Environmental Quality (NDEQ). The applicant shall comply with all applicable NDEQ requirements as well as with the Nebraska Game and Parks Commission (NGPC) requirements.
  4. Materials Handling, Storage and Disposal
    - a. All solid wastes related to the construction, operation and maintenance of a Project shall be removed from the site and disposed of in accordance with all federal, state and local laws. No onsite disposal shall be allowed.
- C. Nebraska Game and Parks Commission (NGPC). An applicant shall request, during initial site selection, information from NGPC on critical habitat of protected species that may be present. The applicant should obtain a letter from NGPC verifying that the applicant has coordinated with NGPC about the project site selection and describing any annual monitoring of wildlife impacts and mortalities, as recommended by the NGPC. The applicant will need to ensure access to the project area for the purposes of annual wildlife monitoring activities, if required. The applicant need not complete duplicative studies, but shall provide the County Planning Office with wildlife studies contained in existing environmental assessments and/or formal National Environmental Policy Act (NEPA) studies such as the Environmental Impact which cover the project area. NGPC will have forty-five (45) days from the date it receives the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order with the NGPC and proceed with the permitting process.
- D. Archeological and Historical Resources. Any applicant is advised to seek comments and approval from appropriate agencies for matters concerning archaeology studies, historical importance and any other relevant federal, state and local issues and to include relevant reports in the application process. The applicant need not complete duplicative studies, but shall provide the County Planning Office with relevant historical or archeological studies contained in reports required by other jurisdictions. The County Planning Office will also route the application to the Nebraska State Historical Preservation Office (SHPO) and any other relevant agencies for comment and review. These agencies shall have forty-five (45) days from the date they receive the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order and will proceed with the permitting process.
- E. Department of Defense (DoD). Any applicant for a project shall comply with all applicable DoD requirements. They shall also submit a report to the County Planning Office verifying said compliance.

#### **42.13 DECISION OF THE COUNTY COMMISSIONERS**

As required in Section 23-114.01 (4) of the Nebraska Statutes, the County Commissioners shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the applicant has met the standards required by these regulations and state statute. The decision shall be subject to the remedies provided herein. The Commissioners shall grant a permit, with conditions of approval to be satisfied by the applicant, if it determines that the proposed (SECS) complies with all standards properly adopted by the Commissioners and the standards required by these regulations. If approved, a building permit shall be issued after all conditions have been met, before any earthwork or construction may commence. No building permit shall be issued until after final approval of the complete application by the County Commissioners.

In making its findings, the County Commissioners should consider the following:

- a) Confirm application completeness;
- b) How the proposed project will positively or negatively affect the public health, safety, or general welfare of the community;
- c) Whether the project will adversely affect the public interest by overburdening services provided by Scotts Bluff County;
- d) Whether the applicant has complied with these regulations or any requests made by the Planning Commission and the County Commissioners;

- e) Whether the applicant has adequately addressed the following impacts: air quality, water quality, general nuisances to off-site property owners, soil disturbance, wildlife, cultural resources and negative economic impacts.
- f) A copy of the decision shall be served upon the applicant by certified mail, return receipt.

#### **42.14 ADDITIONAL REMEDIES FOR ENFORCEMENT**

A failure to comply with any of the Scotts Bluff County Regulations may result in a denial of a permit. A failure to comply with any of these regulations following issuance of a permit shall constitute a violation and default of the permit. Scotts Bluff County may seek any and all legal remedies to enforce these regulations including injunctive relief. Any violations may also be subject to penalties as provided in these regulations.

Scotts Bluff County, shall, in its sole discretion, provide written notice to any facility owner or operator setting forth the alleged default or violation of the permit. Such written notice shall provide the facility owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default. If Scotts Bluff County determines in its discretion that the parties cannot resolve the alleged default within this time period, Scotts Bluff County may proceed to enforce these regulations and compliance with appropriate legal remedies.

## **Section 43. WIND ENERGY GENERATION REGULATIONS**

### **43.01 ENERGY CONVERSION SYSTEMS**

The Wind Energy Generation Regulations is intended to balance the need for clean renewable energy resources with the protection of health, safety, and welfare of the residents of Scotts Bluff County, Nebraska. The County finds these regulations are necessary in order to ensure that all wind energy conversion systems (WECS) are appropriately designed, sited and installed. These regulations pertaining to all wind energy conversion systems are intended to establish reasonable guidelines and restrictions for the installation, maintenance and decommissioning of WECS consistent with federal, state and local laws. Scotts Bluff County recognizes that this is an emerging technology and that modifications and amendments to these regulations may be reviewed and made as technology advances.

These regulations shall be consistent with Nebraska statutes, specifically Neb. Rev. Stat. § 66-913 that allows for counties having zoning or subdivision jurisdiction to include considerations for the encouragement of wind energy use and protection of access to wind energy and all applicable zoning regulations or ordinances in comprehensive development plans. Legislative findings contained in §§ 66-901 to 66-915 are incorporated herein by reference.

### **43.02 TYPES OF WIND CONVERSION SYSTEMS**

**CLASS 1 - Small Wind Energy Conversion System (SWECS)** - A SWECS which is incidental and subordinate to another use of the same parcel. A system is considered a small wind energy system only if it supplies energy for onsite use such as dwellings, accessory structures, small commercial operations, and irrigation/water well equipment. When a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for onsite use may be sold back to the utility company. To be used in conformance with Nebraska State Statutes 70-2001 through 70-2005, regarding the net metering of distributed generation systems of 25 kilowatts and less. SWECS shall not require a permit, except as required in Section 5.202(4).

**CLASS 2 - Commercial Wind Energy Conversion System (CWECS)** - Under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to multiple homes, or adjacent commercial entities, individually or separately owned, to be used in conformance with Nebraska Statutes. CWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the structures and users within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

**CLASS 3 - Utility Wind Energy Conversion System (UWECS)** - A UWECS is a system under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. UWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the UWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.

### **43.03 APPLICABILITY**

These regulations govern the siting, or enlargement of any Wind Energy Conversion System (WECS) project in Scotts Bluff County. Whenever the provisions of these regulations are found to be inconsistent with state regulations, the regulation imposing the more restrictive standard shall control.

### **43.04 PREEMPTION OR CONFLICT WITH OTHER LAWS**

Nothing in these regulations is intended to preempt other applicable local, state or federal laws, rules or regulations. In the event of any conflict, the more stringent requirement shall control.

### 43.05 SEVERABILITY

If any section or provision of the Scotts Bluff County Wind Energy Regulations, or the application of that section or provision to any person, situation, or circumstance is adjudged invalid for any reason, the adjudication shall not affect any other section or provision of these regulations, or the application of the adjudicated section or provision to any other person, situation, or circumstance. The Scotts Bluff County Commissioners declares that it would have adopted the valid portions and application of these regulations without the invalid part, and to this end the provisions of these regulations are declared to be severable.

### 43.06 DEFINITIONS

For purposes of the Zoning Regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number the plural number. The word "shall" is always mandatory, and not merely directory.

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

**Accessory Wind Energy System:** Systems which are accessory to the principal use on a property and designed to supply energy solely for the principal use.

**Battery Energy Storage System (BESS):** A type of energy storage technology that uses a group of batteries to store electrical energy from a Wind Energy Conversion System for use at times of greater need.

**Capacity:** The amount of electricity produced by the Wind Energy Conversion System measured in kilowatts (kW) or megawatts (MW).

**Commercial Wind Energy Conversion Systems (CWECS):** A system designed to supply energy for multiple homes, or adjacent commercial entities, individually or separately owned, on the distribution grid.

**FAA:** The Federal Aviation Administration, or its duly designated and authorized successor agency.

**Fall Zone:** The area, defined as the furthest distance from the tower base, in which a tower will collapse in the event of a structural failure.

**Feeder Line:** Any power line that carries electrical power from one or more wind collectors or individual transformers associated with individual wind energy collection to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems serving the WECS.

**Financial Assurance:** The reasonable assurance, at the discretion of the Scotts Bluff County Commissioners, from a credit worthy party that the costs associated with but not limited to, construction, maintenance, consequences from abandonment, or a failure to properly execute closure or post-closure care will be recoverable from any applicant, owner or operator under these regulations.

**Height Hub:** The height above grade of the fixed portion of the tower, including the generation unit measured to the hub or center point of the rotor blade diameter.

**Height, Total System:** The height above the grade of the system, including the generating unit and the measured highest vertical extension of any rotor blades or rotors of the WECS.

**Meteorological Tower:** For the purposes of wind energy conversion systems, meteorological towers are those which are erected primarily to measure wind speed and direction plus other data relevant to locating a CWECS. Meteorological towers to not include towers and equipment uses by airports, the Nebraska Department of Transportation or other similar applications to monitor weather conditions.

**Nebraska Game & Parks Commission:** The commission responsible for the stewardship of the states' fish, wildlife, parks and other resources.

**Non-participating Property:** Any property that is not the subject of an agreement with the Wind Energy Conversion System Owner or Operator.

**Participating Property:** Any property that is under lease or other property agreement with the Wind Energy

Conversion System Owner or Operator.

**Professional Engineer:** A qualified individual who is licensed as a professional engineer in the State of Nebraska.

**Permit:** Any document or approval issued by the Commissioners which authorizes a WECS Project, including substations, in Scotts Bluff County.

**Rotor Diameter:** The diameter of the circle created by the outer most point of the rotor blades of the windmill.

**Shadow Flicker:** The strobe effect that occurs when the sun is horizontal to the rotor blades, which causes repetitive intermittent shadows that can affect people on near-by properties.

**Small Wind Energy Conversion System (SWECS):** A small wind energy system designed to supply energy for onsite use, such as dwellings, accessory structures, and irrigation/water well equipment.

**Substation:** Any electrical facility utilized to convert electricity produced by a CWECS for inter-connection with high voltage transmission lines.

**Total Height:** The distance measured from the ground level to the rotor blade tip when extended vertically to its highest rotation point.

**Tower:** The vertical component of a WECS that elevates the WTG and attached blades above the ground.

**Transmission Line:** The electrical power lines that are high voltage transmission lines carrying electricity over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

**U.S. Fish and Wildlife Service:** The Bureau of the Department of the Interior that works to conserve, protect and enhance fish, wildlife and plants and their habitats.

**Utility Commercial Wind Energy Conversion System (UWECS):** A system designed to supply energy to off-site customers on a wholesale basis.

**WECS Project:** The WECS and associated support facilities including, but not limited to: roads, substations, wind array, operation and maintenance buildings, and other appurtenant equipment as specified in the siting approval application, including the project area as defined by the Owner.

**Wind Turbine Generator (WTG):** The component of a wind energy system that transforms mechanical energy from the wind into electrical energy.

**Yard, Front:** A yard extending from the front lot line of the WECS and adjoining a public street or road to the front of the WECS between side lot lines.

**Yard, Rear:** A yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot to the nearest point of the WECS.

**Yard, Side:** A yard between the WECS and the side lot line measured horizontally at right angles to the side lot line from the side lot line to the nearest point required minimum open space between the property line and the WECS.

**43.07 Class 2 - Commercial Wind Energy Conversion System (CWECS) -** A CWECS under a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to on and off-site customers. CWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the CWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

#### **General Site and Design Standards:**

1. Minimum Yard Requirements:

- A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas, unless the base or footings of such structure are at least one (1) foot above such base flood elevation.

B. Setbacks:

From Public Road: CWECS wind array shall maintain a minimum setback distance from any public road of at least three hundred (300) feet or 1.25 times (whichever is greater) the total height measured from the county road right-of-way.

From Electrical Transmission Lines: CWECS shall maintain a minimum distance of 1.25 times the total height from any electrical transmission lines.

From Participating Property: No setback is required between an adjacent property participating in the same aggregate project, except that no tower shall be located closer than 1.25 times the total height from a building or structure.

From Non-Participating Property: CWECS shall maintain a minimum distance of 1.25 times the total height from property lines.

From Non-Participating Existing Dwelling: CWECS shall maintain a setback of ½ mile or 2.5 times (whichever is greater) the total height from the location of any wind tower to a dwelling.

State and National Parks: CWECS wind array shall maintain a minimum setback of 2 miles from the property line of State or National Park or historical site, as defined in the Scotts Bluff County Comprehensive Plan.

- C. Waiver of setback requirements: setback requirements may be waived by agreement between adjoining landowners provided that:
- d) Said agreement for waiver is made in writing;
  - e) Said agreement is presented to the Zoning Administrator upon application for conditional use permit;
  - f) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.
2. Structures shall meet applicable industry structural codes, including the American Clean Power Associates, shall be neutral in color (white or gray) and shall not be used to display advertising.
  3. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.
  4. The owner of a CWECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.
  5. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.
  6. Each CWECS system application shall have a decommissioning plan outlining the means, procedure and costs of removing all related support infrastructure. This plan must be submitted with the application, and state all equipment, support structures, electrical equipment and fences will be removed upon discontinuance of the system's operation within one (1) year.
  7. The CWECS shall comply with any and/or all State and Federal regulations, if applicable.
  8. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
  9. Each Multiple User or Commercial WECS must have an E911 address.

10. The noise produced by commercial wind energy conversion systems shall not exceed fifty (50) decibels as measured at the closest dwelling unit. Noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
11. Structures for the CWECs project must provide a structural analysis, stamped by a licensed engineer registered in the State of Nebraska.
12. A detailed description of the potential shadow-flicker producing features of each of the proposed wind turbines at the proposed site, including an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker, and the manufacturer's technical documentation relating to shadow flicker. Calculations shall be from each proposed wind turbine at the proposed site to each occupied dwelling. Calculations shall be based on Scottsbluff-Gering National Climate Data Source. Shadow flicker on any occupied structure on a property shall not exceed thirty (30) minutes per day and thirty (30) hours per year.

**43.08 Class 3 - Utility Wind Energy Conversion System (UWECS)** - A UWECS which has a common or aggregated ownership that includes substations, cables/wire, converters and other building accessories, whose main purpose is to supply electricity to be sold to off-site customers on a wholesale basis. UWECS may be included as an aggregated project, such as those projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the UWECS within a larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity, but are also part of the aggregated project.

#### **General Site and Design Standards:**

##### 1. Minimum Yard Requirements:

- A. No structure shall be placed within the high-water mark of waterways in designated district, as identified by the Flood Insurance Rate Map (FIRM) as Special Flood Hazard Areas, unless the base or footings to such structure are a least one (1) foot above such base flood elevation.

##### B. Setbacks:

From Public Road: UWECS wind array shall maintain a minimum setback distance from any public road of at least three hundred (300) feet or 1.25 times (whichever is greater) the total height measured from the county road right-of-way.

From Electrical Transmission Lines: UWECS shall maintain a minimum distance of 1.25 times the total height from any electrical transmission lines.

From Participating Property: No setback is required between an adjacent property participating in the same aggregate project, except that no tower shall be located closer than 1.25 times the total height from a building or structure.

From Non-Participating Property: UWECS shall maintain a minimum distance of 1.25 times the total height from property lines.

From Non-Participating Existing Dwelling: UWECS shall maintain a setback of ½ mile or 2.5 times (whichever is greater) the total height from the location of any wind tower to a dwelling.

State and National Parks: UWECS wind array shall maintain a minimum setback of 2 miles from the property line of State or National Park or historical site, as defined in the Scotts Bluff County Comprehensive Plan.

- C. Waiver of Set-back Requirements: Set-back requirements may be waived by agreement between adjoining landowners provided that:
- a) Said agreement for waiver is made in writing;
  - b) Said agreement is presented to the Zoning Administrator upon application for conditional use permit;
  - c) Said agreement shall be recorded in the Scotts Bluff County Register of Deeds Office, indexed to the affected properties.
2. Structures shall meet applicable industry structural codes, including the American Clean Power Associates, shall be neutral in color (white or gray) and shall not be used to display advertising.
  3. All ground mounted electrical and control equipment must be labeled and secured to prevent unauthorized access.
  4. The owner of a UWECS shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone, internet or television signals caused by the facility.
  5. Construction sites must be designed to minimize environmental impacts, and an earthworks plan must be submitted with the application.
  6. Each UWECS system application shall have a decommissioning plan outlining the means, procedure and costs of removing all related support infrastructure. This plan must be submitted with the application, and state all equipment, support structures, electrical equipment and fences will be removed upon discontinuance of the system's operation within one (1) year.
  7. The UWECS shall comply with any and/or all State and Federal regulations, if applicable.
  8. The Scotts Bluff County Planning Commission and Scotts Bluff County Board of Commissioners may impose other requirements, prior to approval, as deemed necessary.
  9. Each UWECS must have an E911 address.
  10. The noise produced by utility wind energy conversion systems shall not exceed fifty (50) decibels as measured at the closest dwelling unit. Noise level may be exceeded during short term events such as utility outages and/or severe wind storms.
  11. Structures for the UWECS project must provide a structural analysis, stamped by a licensed engineer registered in the State of Nebraska.
  12. A detailed description of the potential shadow-flicker producing features of each of the proposed wind turbines at the proposed site, including an analysis of conditions that may cause shadow flicker, the methodology used to evaluate shadow flicker, and the manufacturer's technical documentation relating to shadow flicker. Calculations shall be from each proposed wind turbine at the proposed site to each occupied dwelling. Calculations shall be based on Scottsbluff-Gering National Climate Data Source. Shadow flicker on any occupied structure on a property shall not exceed thirty (30) minutes per day and thirty (30) hours per year.

#### **43.09 Public Forum**

The owner/operator, for any WECS conditional use permit, shall conduct a public forum at a location in Scotts Bluff County, prior to submitting an application to the County, for a conditional use permit. Owner/operator shall provide notice of the public forum in all newspapers published within Scotts Bluff County. In addition, the Owner/Operator shall issue a press release to all print, television, and radio media to provide additional notice to the public. Such notice shall be mailed to all property owners within 2 miles of the proposed WECS site location.

The notice shall include a request that property owners notify any tenants who have communication towers or equipment on their land of the public forum. The owner/operator shall provide information to the public at the forum concerning the location, nature and scope of the project, and how the owner/operator shall meet and comply with the requirements set forth in Sections 42.10, 42.11, 42.12 and 42.13 of these regulations.

**43.10 Application Requirements for Class 2 and Class 3 Wind Projects:**

The owner and operator applying for a conditional use permit for construction of a renewable energy project shall file an application with the Scotts Bluff County Zoning Administrator. The application shall include the name(s) of all property owner(s) of record; the name of the project operator; and the legal description and parcel numbers of the affected project area. The application shall be signed by all parties listed on the application.

The application shall also include the following documents:

- A. A narrative describing the proposed project including an overview of the project; proposed total rated capacity; identification of the operator/owner, including identification of any additional owners in the chain of ownership; disclosure of any foreign entity or affiliated foreign government ownership connected with the project; and disclosure of the source of financing for the project and whether any source of financing is from foreign entities or affiliated foreign governments.
- B. A survey map illustrating the following:
  - 1. Property lines, dimensions, acreage encompassed and contours with appropriate intervals for site evaluation;
  - 2. Location and elevation of all components of the proposed project;
  - 3. Location of any overhead or underground utility lines on the property;
  - 4. Location of all known communications towers within two (2) miles of the proposed project;
  - 5. Access roads;
- C. Provide a copy of all preliminary lease agreements, contracts, and similar related documents for each Participating Property, along with a copy of any agreement with real estate brokers representing the applicant concerning the acquisition and negotiation of any lease agreements, contracts or similar documents.
- D. Provide a map illustrating all: existing and proposed transmission lines to the utility interconnection; adjacent ownership; land uses; existing residences; schools; churches; federal, state, county or local parks; recognized historic or heritage sites; identified wildlife preserves or habitat areas to a distance of 5,280 ft (one- mile).
- E. Results of consultation regarding potential interference with existing communication facilities within the CWECS/UWECS project area.
- F. Applicant shall identify potential effects in terms of constraints or benefits the wind energy facility may place on current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed and the effects on the following activities shall also be addressed:
  - 1. Existing or proposed tourist or recreation activities;
  - 2. Residential activities;
  - 3. Industrial activities;
  - 4. Agricultural activities;
  - 5. Commercial activities.

- G. Application shall meet all requirements of NDEE, NRCS and NRD Districts in the project area. Soil erosion, sediment control and storm water runoff plan shall address what types of erosion control measures will be used during each phase of the project It shall identify plans for:
1. Grading;
  2. Construction and drainage of access roads;
  3. Design features to control dust;
  4. Design features to maintain downstream water quality;
  5. Re-vegetation to ensure slope stability;
  6. Restoring the site after temporary project activities;
  7. Disposal or storage of excavated materials;
  8. Protecting exposed soil;
  9. Stabilizing restored material and removal of silt fences or barriers when the area is stabilized;
  10. Maintenance of erosion controls throughout the life of the project; and
  11. Must present an acceptable weed or vegetation plan at the time of permit.
- H. Applicant shall provide information regarding flora and fauna of the proposed project area including:
1. Officially listed threatened or endangered species;
  2. Critical habitat and habitat conditions;
  3. An avian study based on the U.S. Fish and Wildlife Service.
- I. A pre-construction noise study shall be conducted; and shall include all property within one (1) mile (5,280 ft) of the site. The protocol methodology and modeling shall be included in the study. The complete results and full study report shall be submitted to the Scotts Bluff County Planning Department for review at the time of the application.
- J. Standard drawings of the structural components of the project equipment.
- K. Certification by a registered licensed Engineer in the State of Nebraska that shows:
1. There is a substantial need for the proposed use of greater than one hundred (100) KW;
  2. All applicable local, state, and federal building, structural and electrical codes will be followed;
  3. The site is feasible for a wind project; and can be successfully operated in the climate conditions found in Scotts Bluff County;
  4. The design and safety of the proposed project equipment to withstand weather related events.
- L. A report concerning the conduct, notice, information and questions addressed at the public forum required in Section 42.09.
- M. Provide proof of compliance with Nebraska Power Review Board statutory requirements (Section 70-1014.02) for a privately developed renewable energy facility.
- N. In the event any of the foregoing requirements cannot be submitted at the time of the application due to external stake holder constraints or project timing requirements, those elements of the application may be submitted at a later date. The applicant shall provide written explanation for why the information cannot be provided with the application. This information may be included as a condition for approval of the application by the County Board and the information shall be submitted to the County Zoning Administrator prior to issuance of a building permit that shall be required before any work can begin at the site location.

### 43.11 Construction and Operations (Class 3 Only)

- A. All public roads to be used for the purpose of transporting project substation materials, cement or equipment for construction, operation or maintenance of the project systems shall be identified and applicable weight and size permits from the impacted road authority(ies) shall be obtained prior to construction. A pre-construction survey must be conducted with the appropriate jurisdictions to determine existing road conditions. This survey shall be provided by the applicant in consultation with the Scotts Bluff County Highway Department. Those included are Applicant(s); Land Owner(s); Highway Superintendent(s) and Zoning Administrator(s). The survey shall include photographs and a written agreement to document the conditions of the public roads and facilities. All expenses of the survey shall be the Applicant's responsibility.
- B. Prior to the commencement of construction, the Applicant shall enter into an agreement with the Scotts Bluff County Highway Department regarding use of county roads during construction. The agreement shall include traffic routes, time of year use, staging areas and any other physical sites related to the project. All roads shall be constructed and maintained to allow access, at all times, by any emergency service vehicles. The project owner shall be responsible for immediate repair of damage to public roads and drainage systems stemming from construction, operation or maintenance of the project. Any violation of the agreement will incur an assessment against the Applicant for damages as determined by the Applicant and the Board of Commissioners. If the parties do not agree on the assessment, the matter shall be submitted to binding arbitration at Applicant's cost.
- C. Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
- D. The social and economic reporting requirements shall include the following and any mitigation measures to address adverse social and economic impacts:
1. The estimated amount of property, sales and other taxes to be generated by the project in Scotts Bluff County and outside of Scotts Bluff County.
  2. Estimated local expenditures of construction materials in Scotts Bluff County.
  3. The estimated number of construction jobs and estimated construction payroll. Estimated number of local construction job opportunities.
  4. The estimate of the construction workforce spending in Scotts Bluff County.
  5. The estimated number of federal, state and local government jobs affected and added as a result of the WECS project.
  6. The estimated number of permanent jobs and estimated continuing payroll.
- E. Blades or generators damaged for any reason, must be removed and properly recycled to a specific location identified in the decommissioning recycling plan. Removed damaged blades or generators will be handled per EPA Regulations RCRA subtitle C and D and must not be allowed to be stored on the grounds unprotected from lead or other heavy metals seepage.
- F. Designated and declared weeds shall be controlled on permitted sites during the life of the operation and through completion of decommission. This shall be maintained to the satisfaction of the Scotts Bluff County Weed Control Authority.
- G. Design and construct structures for battery use with adequate spacing to prevent fires in one structure from affecting adjoint structures as approved by the State Fire Marshall.

### **43.12 Safety Measures**

- A. Each project shall be equipped with both manual and automatic controls to limit the power so it does not exceed the design limits.
- B. Project location shall include no signs for advertising of any kind, except for one sign not to exceed 32 square feet posted near the entrance to the facility, and except for signs required by regulatory code. The facility entrance sign shall contain the following information:
  - 1. Warning - high voltage;
  - 2. Operator's name;
  - 3. Emergency phone number.
- C. Each project shall be properly grounded to safely sustain natural lightning strikes in conformance with the National Electric Code.
- D. The project operator shall maintain a current insurance policy which will cover liability, installation, operation and any possible damage or injury that might result from the failure of any part or parts of the generation and transmission facility. The amount of said policy shall be established as a condition of approval. The equipment shall be warranted against any system failures reasonably expected in severe weather operation. Operator shall name Scotts Bluff County as an additional interest as part of the facility insurance policy. County shall receive notice if the operator terminates or revises insurance coverage.
- E. An Emergency Operations Plan (EOP) must be placed on file and kept current with Scotts Bluff County Zoning Administrator, Region 22 Emergency Management, and Fire and Rescue Department(s) within the project jurisdiction. The plan shall include an all-hazards planning approach, based on an emergency incident or disaster of any magnitude or geographic size that may cause disruption to the function of project equipment and include contacts for notification. A preliminary EOP, as agreed upon with the applicable agencies mentioned in Section 42.16, shall be provided with the conditional use permit application
- F. Upon completion of the CWECS/UWECS project the Applicant shall meet with local Fire and Rescue jurisdiction to review the Emergency Operations Plan.

### **43.13 DISCONTINUATION AND DECOMMISSIONING PLAN**

At the expense of the permittee, a gross estimate for the decommissioning costs of this approved Wind Facility, including any estimated resale and salvage value, shall be prepared by a Nebraska licensed professional engineer. Such plan shall include the means, procedure, and costs of removing Wind Facility components.

The estimated decommissioning cost shall be guaranteed in one of the following forms of financial security: surety bond; a letter of credit from a financial institution reasonably acceptable to the County which shall be irrevocable unless replaced with cash or other form of security reasonably acceptable to County. The operator of the Wind Facility shall maintain the financial security thereafter for as long as the Wind Facility is in existence, or upon discontinuance, decommissioning, and/or abandonment of the Wind Facility. Such financial security shall be payable to Scotts Bluff County, and shall be updated every five (5) years, commencing from the date of acceptance and approval of the security by the County Board, to cover the costs associated with the updated decommissioning cost estimates. All future decommissioning cost estimates shall be prepared by a Nebraska licensed professional engineer. Failure of permittee to update the guarantee as provided above within sixty (60) days of the professional engineer's determination of future decommissioning costs shall be an automatic revocation of the Conditional Use Permit. and the County may then collect on the financial security and the County or a designated third party thereof may enter the property to physically remove the installation.

For purposes of this instrument, discontinuance, decommissioning, and/or abandonment shall mean the Wind Facility, after being commissioned as defined by Neb. Rev. Stat. § 77-6202(1), has ceased energy production for twelve (12) consecutive months. At the end of such twelve (12) month period, the operator shall have twelve (12) months to complete decommissioning of the Wind Facility. If the operator of the Wind Facility fails to remove the installation in accordance with the requirements of this instrument, or within twelve (12) months following discontinuance, decommissioning, and/or abandonment, the County may collect the financial security and the County, or a designated third party thereof, may enter the property to physically remove the installation. Exception: The operator provides substantial evidence, updated every six (6) months after initial submission of evidence, to the County Board for approval of the intent to maintain and reinstate the operation of that facility.

For the purposes of this instrument, the term decommissioning costs shall mean all costs associated with the dismantlement, recycling, and safe disposal of facility components and site reclamation activities, including but not limited to the following elements: (a) All gross labor, equipment, transportation, and disposal costs associated with the removal of Wind Facility from the facility site; (b) All decommissioning activity management, site supervision, site safety costs; (c) Any other costs, including administrative costs associated with the decommissioning and reclamation of the facility site, and shall account for inflation, cost and value changes, and advances in decommissioning technologies and approaches.

For the purposes of this instrument, the term Wind Facility components shall mean all equipment, infrastructure, fences, landscaping, etc., including but not limited to the following components: wind panels and collectors; battery energy storage systems; substations; switchyards, generators, transmission lines, and electrical wiring; cabling; conduit; racking; facility roads and fencing; and any other related supporting infrastructure to a minimum depth of three (3) feet. Such components shall not include any public utility infrastructure.

Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

#### **43.14 NOTIFICATION OF CHANGES PENDING REVIEW**

The applicant shall immediately notify the Commissioners of changes to any of the information contained in the application while it is pending review and consideration by the county. Changes to include any new or additional company involvements with all contact points as required in this regulation.

#### **43.15 FEES FOR APPLICATION**

A. **CLASS 2:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a wind energy facility, shall charge the applicant a non-refundable fee of \$1000.00, plus \$5.00 per kilowatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents

B. **CLASS 3:** Scotts Bluff County, upon receipt of an application under these regulations for the permitting of a wind energy facility, shall charge the applicant a non-refundable fee of \$5000.00, plus \$50.00 per megawatt. Scotts Bluff County shall charge the applicant these permit fees to cover the anticipated administrative costs of processing and considering the application, conducting public hearings, issuing a permit and overseeing compliance with the permit conditions and requirements. If the costs exceed the principal non-refundable fee, additional fees may be charged and collected. These costs shall include fees incurred by the County for consultants and engineers to review the application and related documents.

#### **43.16 COORDINATION WITH LOCAL FIRE DEPARTMENTS**

The applicant, facility owner or operator shall submit to the local fire departments and/or the Scotts Bluff County Emergency Management Coordinator and County Sheriff as required by Neb. Rev. Stat. §§81-829.36 to 81-829.75, a copy of the site plan.

- a. Upon request by any local fire department, Fire Marshal and/or the Scotts Bluff County Emergency Management Coordinator, the facility owner or operator shall cooperate with the relevant agency to develop an emergency response plan in the event of fire in/around the facility.
- b. The facility owner/operator, at their expense, shall organize and present a yearly emergency response plan review for emergency responders which may include a physical walk through of the facility.
- c. The facility will allow access to Local Fire Districts and the Fire Marshal to inspect the fuel load within the facility when requested, and agrees to remediate any concerns with abundant fuel loads found during the walk through.
- d. The facility owner/operator will notify the local Fire Department, Fire Marshal, County Sheriff and Emergency Management Coordinator when changes to the site are made that may impede emergency response, i.e. change in manning or physical access controls, addition of batteries, change in ground maintenance or emergency response plans, addition of hazardous waste, etc.
- e. The facility owner/operator shall work with local responders to ensure they have adequate equipment, training and supplies to respond to any hazards that are introduced during the operation of the facility.
- f. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

#### **43.17 FEDERAL, STATE AND LOCAL REQUIREMENTS**

Project facilities shall be constructed to meet, and be maintained in compliance with all federal, state and local requirements. Written statements providing proof that the Project is in full compliance with these relevant requirements shall be provided to the Scotts Bluff County Zoning Office with the application.

If an issue arises at any time during the review, approval, or development process, which relates to compliance of federal, state and/or local requirements, the applicant, at the discretion of the County Commissioners may request additional studies, reports, maps and/or graphic depictions prepared by a professional qualified engineer acceptable to both party's in the relevant discipline detailing the issues, characteristics, special features, potential impact, and correction measures. Nothing in these regulations is intended to preempt other applicable federal, state and/or local laws and regulations.

##### **A. Federal Aviation Administration (FAA)**

Any applicant for a project shall comply with all applicable FAA requirements. They shall also submit a report to the County Planning Office verifying said compliance.

##### **B. Environmental**

1. United States Fish and Wildlife Service (USFWS). The applicant shall comply with all applicable USFWS requirements including federal endangered species regulations as established in the Federal Endangered Species Act.
2. United States Army Corp of Engineers (COE). The applicant Project shall comply with all applicable COE requirements including the Federal Wetlands regulations as established in the Federal Clean Water Act.
3. Nebraska Department of Environmental Quality (NDEQ). The applicant shall comply with all applicable NDEQ requirements as well as with the Nebraska Game and Parks Commission (NGPC) requirements.
4. Materials Handling, Storage and Disposal
  - a. All solid wastes related to the construction, operation and maintenance of a Project shall be removed from the site and disposed of in accordance with all federal, state and local laws. No onsite disposal shall be allowed.

C. Nebraska Game and Parks Commission (NGPC). An applicant shall request, during initial site selection, information from NGPC on critical habitat of protected species that may be present. The applicant should obtain a letter from NGPC verifying that the applicant has coordinated with NGPC about the project site selection and describing any annual monitoring of wildlife impacts and mortalities, as recommended by the NGPC. The applicant will need to ensure access to the project area for the purposes of annual wildlife monitoring activities, if required. The applicant need not complete duplicative studies, but shall provide the County Planning Office with wildlife studies contained in existing environmental assessments and/or formal National Environmental Policy Act (NEPA) studies such as the Environmental Impact which cover the project area. NGPC will have forty-five (45) days from the date it receives the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order with the NGPC and proceed with the permitting process.

D. Archeological and Historical Resources. Any applicant is advised to seek comments and approval from appropriate agencies for matters concerning archaeology studies, historical importance and any other relevant federal, state and local issues and to include relevant reports in the application process. The applicant need not complete duplicative studies, but shall provide the County Planning Office with relevant historical or archeological studies contained in reports required by other jurisdictions. The County Planning Office will also route the application to the Nebraska State Historical Preservation Office (SHPO) and any other relevant agencies for comment and review. These agencies shall have forty-five (45) days from the date they receive the application to provide the County Planning Office with its comments concerning the application. If no comments are received within forty-five (45) days, the County Planning Office will assume the application is in order and will proceed with the permitting process.

E. Department of Defense (DoD)

Any applicant for a project shall comply with all applicable DoD requirements. They shall also submit a report to the County Planning Office verifying said compliance.

#### **42.18 DECISION OF THE COUNTY COMMISSIONERS**

As required in Section 23-114.01 (4) of the Nebraska Statutes, the County Commissioners shall make complete findings, issue an opinion, render a decision upon the record either granting or denying the application and state whether or not the applicant has met the standards required by these regulations and state statute. The decision shall be subject to the remedies provided herein. The Commissioners shall grant a permit, with conditions of approval to be satisfied by the applicant, if it determines that the proposed (WECS) complies with all standards properly adopted by the Commissioners and the standards required by these regulations. If approved, a building permit shall be issued after all conditions have been met, before any earthwork or construction may commence. No building permit shall be issued until after final approval of the complete application by the County Commissioners.

In making its findings, the County Commissioners should consider the following:

- a) Confirm application completeness;
- b) How the proposed project will positively or negatively affect the public health, safety, or general welfare of the community;
- c) Whether the project will adversely affect the public interest by overburdening services provided by Scotts Bluff County;
- d) Whether the applicant has complied with these regulations or any requests made by the Planning Commission and the County Commissioners;
- e) Whether the applicant has adequately addressed the following impacts: air quality, water quality, general nuisances to off-site property owners, soil disturbance, wildlife, cultural resources and negative economic impacts.
- f) A copy of the decision shall be served upon the applicant by certified mail, return receipt.

#### **42.19 ADDITIONAL REMEDIES FOR ENFORCEMENT**

A failure to comply with any of the Scotts Bluff County Regulations may result in a denial of a permit. A failure to comply with any of these regulations following issuance of a permit shall constitute a violation and default of the permit. Scotts Bluff County may seek any and all legal remedies to enforce these regulations including injunctive relief. Any violations may also be subject to penalties as provided in these regulations.

Scotts Bluff County, shall, in its sole discretion, provide written notice to any facility owner or operator setting forth the alleged default or violation of the permit. Such written notice shall provide the facility owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default. If Scotts Bluff County determines in its discretion that the parties cannot resolve the alleged default within this time period, Scotts Bluff County may proceed to enforce these regulations and compliance with appropriate legal remedies.