

HOLT COUNTY ZONING REGULATIONS

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HOLT COUNTY, NEBRASKA

ZONING REGULATIONS

RESOLUTION NO. 19

ZONING REGULATIONS RESTRICTING THE USE OF LAND AND THE USE AND LOCATION OF BUILDINGS AND STRUCTURES. ADOPTING A MAP OF THE COUNTY SHOWING BOUNDARIES OF DISTRICTS AND THE CLASSIFICATION OF SUCH DISTRICTS; DEFINING CERTAIN OF THE TERMS USED IN SAID REGULATIONS; ESTABLISHING AN APPEALS BOARD; PROVIDING FOR CHANGES AND AMENDMENTS TO THE SAID REGULATIONS; PRESCRIBING PENALTIES FOR THE VIOLATION OF IT'S PROVISIONS; AND REPEALING THE EXISTING ZONING RESOLUTION AND AMENDMENTS THERETO.

BE IT RESOLVED BY THE GOVERNING BODY THAT:

TITLE

SECTION 1. These regulations shall be known and may be cited as the Zoning Regulations for Holt County, Nebraska.

INTERPRETATION AND SCOPE

SECTION 1. In the interpretation and application, the provisions of this regulation shall be held to be the minimum requirements adopted for the promotion of the public health, safety and welfare. Where this regulation imposes a greater restriction upon land, buildings or structures than is imposed or required by existing provisions of law, contract or deed, the provisions of this regulation shall control.

SECTION 2. The Regulations shall apply to those areas within Holt County outside any extraterritorial jurisdiction of any municipality.

PURPOSE

SECTION 1. The purpose of these regulations is to promote health, safety, morals, and the general welfare of the County, and to secure safety from fire, flood, and other dangers. These regulations are designed to lessen the congestion on streets, roads, and highways, to provide light and air, to prevent overcrowding of lands, to avoid undue concentration of populations, and to facilitate the adequate provisions of transportation, water, clean air, services, schools, parks, and other public requirements.

ARTICLE 1

RULES AND DEFINITIONS

SECTION 1. RULES. For the purpose of this Zoning Regulation, the following rules shall apply.

1. Words and numbers used singularly shall include the plural and the plural shall include the singular. Words used in the present tense shall include the future.
2. The word “person” shall mean any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision, or public agency, or any other legal entity.
3. The word “shall” is mandatory.
4. The word “use”, “occupy” or “occupied” as applied to any land or building shall be construed to include the words “intended”, “arranged” or “designed” to be used or occupied.

SECTION 2. DEFINITIONS. For the purpose of the Zoning Regulation, certain terms or words used herein shall be interpreted or defined as follows, unless the context clearly indicates otherwise.

1. **AGRICULTURAL OPERATION:** The planting, cultivating, harvesting and storage of grains, hay or plants commonly associated with farming and ranching in Holt County, Nebraska, with the necessary uses for treating or storing the produce and the feeding of livestock as prescribed hereunder, provided such accessory uses do not include the feeding of garbage or offal to swine or other animals. This is in contrast to a **CONFINED LIVESTOCK OPERATION (CLO)**, as defined herein.
2. **AGRONOMIC RATES:** The matching of the available nitrogen and phosphorus content of animal wastes to the nutrient requirements of the crop.
3. **ALTERATION:** Alteration as applied to a structure is a change or rearrangement in the structural parts of an existing structure. Enlargement, whether by extending a side, increasing the height, or the moving from one location or position to another, shall be considered as an alteration. For the purpose of these definitions, the following shall not be considered as an alteration:
 - a) Attachment of a new front where structural supports are not changed.
 - b) Addition of fire escapes where structural supports are not changed.
 - c) New windows or doors where lintels and support walls are not materially changed.
 - d) Repair or replacement of non-structural members; including, but not limited to such things as reshingling or residing.

4. **ANIMAL UNITS (A.U.):** Animal equivalents are as follows:
 - One (1) A.U. = One (1) Slaughter or feeder cattle @ one thousand (1,000) pounds;
 - One (1) A.U. = One (1) Horse;
 - One (1) A.U. = One (1) Seven-tenths (.7) Dairy Cow;
 - One (1) A.U. = Two (2) sows with or without litters, or two (2) lactating gilts;
 - One (1) A.U. = Three and four-tenths (3.4) hogs (includes swine that are 55 pounds or heavier, excluding producing sows);
 - One (1) A.U. = Twenty-five (25) nursery pigs (includes weaned pigs up to 55 pounds);
 - One (1) A.U. = Ten (10) Sheep;
 - One (1) A.U. = Fifty-five (55) Turkeys;
 - One (1) A.U. = One hundred (100) Layers;
 - One (1) A.U. = Two hundred (200) Broilers;
 - One (1) A.U. = Four hundred (400) Pullets.
5. **BEST MANAGEMENT PRACTICES:** Livestock management techniques and practiced as set forth by various agencies, including the Nebraska Department of Environmental Quality, that encourage and protect the environment and public.
6. **BOARD:** The Board of Adjustment which has been created by the governing body having Jurisdiction and which has the statutory authority to hear and determine appeals, exceptions and variances to the zoning regulations.
7. **CONDITIONAL USE PERMIT:** A permit issued by authorization of the Planning Commission and/or County Board to allow the conditional use of property in accordance with the requirements of these Regulations as well as any additional requirements imposed by the Planning Commission and/or County Board.
8. **CONFINED LIVESTOCK OPERATION (CLO):** A use related to agriculture for the feeding, farrowing or raising of cattle, swine, sheep, poultry, or other animal units (A.U.'s), in a confined area where grazing is not possible, and where the confined area is for more than eight (8) consecutive months, and where the number of animals so maintained exceeds one thousand two hundred (1,200) Animal Units (A.U.) as defined herein. The confined area of the Confined Livestock Operation shall include the pens, corrals, structures, feed storage areas, waste disposal ponds, lagoons, pits, and related facilities. Two or more Confined Livestock Operations under common ownership are deemed to be a single Confined Livestock Operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock wastes.

An Agricultural Operation, as defined herein, shall be considered a Confined Livestock Feeding Operation for the purpose of these regulations if the Agricultural Operation exceeds the following:

- (1) One (1) Animal Unit (A.U.), as defined herein, per acre for a parcel of land less than forty (40) acres in size in a confined area where grazing is not possible for more than eight (8) consecutive months;
- (2) One and one-half (1½) A.U. per acre for a parcel of land greater than forty (40) acres, but less than eighty (80) acres in a confined area where grazing is not possible for more than eight (8) consecutive months; or

- (3) Two (2) A.U. per acre for parcels of land over eighty (80) acres in a confined area where grazing is not possible for more than eight (8) consecutive months. The following are related definitions: *FACILITY*; *LIVESTOCK FEEDING*; *FEEDLOT*; *LAGOON*; *LIQUID MANURE*; *OPEN LOTS*; *OPERATOR*; and *SITE*.
9. **CONSTRUCTION:** Includes the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing structure has been substantially begun preparatory to reconstruction, such excavation or demolition or removal shall be deemed to be construction, provided that work shall be carried on diligently.
 10. **DISTRICT OR ZONING DISTRICT:** Areas as designated on the Official Zoning District Map, within the jurisdiction of the County, where the regulations and requirements of this Resolution covering the use, height, bulk, area, size and intensity of use of structures and land are uniform.
 11. **EASEMENT:** A notarized, written consent from a landowner which authorizes a person, government agency, or public utility company to use public or private land for a specific purpose.
 12. **FACILITY, LIVESTOCK FEEDING:** All buildings, structures and other necessary accommodations of a confined livestock operation (CLO) shall constitute the Livestock Feeding Facility.
 13. **FARM PRODUCTS:** Usual products produced on an Agricultural Operation in Holt County such as hay, vegetables, fruit, grain, and plants as well as raising thereon of animal units (A.U.'s) as defined within these regulations.
 14. **GOVERNING BODY (COUNTY BOARD):** The Holt County Board of Supervisors.
 15. **HAZARDOUS MATERIAL:** Materials or substances that, by reason of their toxic, caustic, corrosive, explosive, abrasive, radioactivity, infectious properties, or other characteristics, that cause or may be detrimental or harmful to the health of any person or to the environment. For specific and more detailed information, current definitions used by federal and state agencies shall be relied upon.
 16. **LAGOON:** An impoundment made by constructing an excavated pit, dam, embankment or combination of these for the treatment of livestock waste by anaerobic, aerobic or facultative digestion.
 17. **LIQUID MANURE STORAGE PITS OR TANKS:** Earthen or lined pits or tanks located wholly or partially beneath a Livestock Feeding Facility or at some removed location used to collect animal waste production.
 18. **LOT OF RECORD:** A lot or parcel of land whose existence, location, and dimensions have been legally recorded in a deed or on a plat in the office of the Holt County Register of Deeds prior to the effective date of the zoning regulations in the area where the lot or parcel of land is located.
 19. **NONCONFORMING USE:** The use of any dwelling, building, lot, land or premises, or part thereof, which was legally existing at the time of the effective date of this resolution and which does not conform with the provisions of the Resolution and any amendments thereto.
 20. **OWNER/OPERATOR:** Includes a person, firm, partnership, association, corporation, limited liability company, or other organization who either owns real or personal property or operates there from.

21. **PERMANENTLY ATTACHED:** A building or structure attached to real estate in such a way as to require dismantling, cutting away or unbolting from permanent foundation in order to relocated it on another site.
22. **PERMANENT FOUNDATION:** The base on which a building or structure rests, constructed from either poured concrete or a laid masonry block or brick on a footing located below ground level.
23. **SIGN:** Any device which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of, an advertisement or announcement which directs attention to an object, product, place, activity, person, institution, organization or business but shall not include any display of official notice or official flag.
24. **DISTANCE (method of measuring):** The distance from the nearest edge of any Livestock Feeding Facility to the nearest edge of another Livestock Feeding Facility or to the nearest edge of a neighbor's dwelling.
25. **STRUCTURAL ALTERATION:** Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders or any complete rebuilding of the roof or the exterior walls.
26. **STRUCTURE:** Anything constructed or erected, the use of which requires permanent location on or in the ground or attachment to something having a permanent location on the ground. But not including: fences, driveways and surfacing or public items such as utility poles, street light fixtures and street signs.
27. **ZONING AREA:** Zoning districts as delineated on the Official Zoning District Map filed of record.
28. **ZONING REGULATIONS:** The term zoning regulations or this or these regulations shall mean the requirements stipulated in the regulations within this Resolution.

SECTION 3. Words or terms not herein defined shall have their ordinary meaning in relation to the context.

ARTICLE 2

APPLICATION OF DISTRICT REGULATIONS

These regulations shall be minimum regulations and shall apply uniformly to each class or kind of structure of land, except as hereinafter provided:

1. No structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered except in conformity with all the regulations herein specified for the district in which it is located.

ARTICLE 3

DISTRICTS, BOUNDARIES AND MAPS

SECTION 1. PURPOSE: The purpose of this regulation is to encourage the most appropriate use of land, to promote the highest and best use and conserve and stabilize property

values, to aid in providing space for public uses and to promote orderly growth, public health, safety and general welfare.

SECTION 2. MAP: This zoning regulation divides the county into districts designated on the Official Zoning District Map and described in specific articles herein.

SECTION 3. DISTRICTS: The boundaries of the district are shown on the map and/or sections thereof attached hereto and made a part of the regulation, which map is designated as the “Official Zoning District Map”. The Official Zoning District Map and all the notations, references and other information shown thereon are a part of this regulation and have the same force and effect as if said map and all the notations, references and other information shown thereon were all fully set forth or described herein. The Official Zoning District Map is properly attested and is on file in the office of the County Clerk.

SECTION 4. ANNEXATION RULE: All territory which may hereafter become the zoning jurisdiction of the County as a result of a city or village jurisdiction boundary change, shall be in the “Open-Zone” District and be confirmed by amending the Official Zoning District Map following the procedures outlined by these regulations. Should the use of the property not conform to the permitted use in the “Open-Zone” District, the property shall be considered a legal and non-conforming use and shall remain so until rezoned to the appropriate zoning district following the rezoning procedures outlined in these regulations.

SECTION 5. RULES WHERE UNCERTAINTY MAY ARISE: Where uncertainty exists with respect to the boundaries of the various districts as shown on the map accompanying and made a part of this regulation, the following rules apply:

1. The district boundaries are the centerline of either streets, roads or alleys unless otherwise shown.
2. Where the property has been or may hereafter be divided into blocks and lots, the district boundaries shall be construed to be the lot lines, and where the districts designated on the map accompanying and made a part of this regulation are bounded approximately by lot lines, the lot lines shall be construed to be the boundary of the district unless the boundaries are otherwise indicated on the map.
3. In un-subdivided property, the district boundary line on the map accompanying and made a part of this regulation shall be determined by the use of the scale appearing on the map.
4. Boundaries indicated as approximately following municipal boundaries shall be construed as following municipal boundaries.

ARTICLE 4

“OPEN-ZONE” DISTRICT

SECTION 1. INTENT AND PURPOSE OF DISTRICT. It is the intent of the “Open-Zone” District to protect agricultural uses in the Zoning Area through control of land use and land coverage and major roadways, and to establish a healthful environment for Holt County residents.

SECTION 2. DISTRICT USE REGULATIONS. In the “Open-Zone” District, no structure or land shall be used and no structure altered, enlarged or erected, which is arranged, intended or designed for other than the uses listed below:

PERMITTED USES:

1. Agricultural Operations, as defined in these regulations.
2. All other uses are permitted except those listed herein as a Condition Use.

CONDITIONAL USES:

The Governing Body may, by Conditional Use Permit, authorize the following uses subject to such conditions as the Governing Body deems necessary, to include, but not restricted to proper setbacks, landscaping, screening, fencing, maintenance provisions and other similar requirements as provided for within these regulations.

1. Confined Livestock Operation (CLO), subject to the license requirements, and waste disposal requirements, and recommendations of the State of Nebraska and its agencies, and to the following related conditions and any additional conditions imposed by a Resolution of the Governing Body:

- a) The Conditions Use Permit shall establish a length of time for the operation, which shall be subject to being renewed, and establish the maximum number of A.U.'s allowed.
- b) A Best Management Practice document shall be prepared by the applicant and submitted with the application and become a condition of the Permit as approved by the governing body.
- c) No new or expanded Confined Livestock Operation (CLO) shall be located within one (1) mile of a residence or within one (1) mile of another CLO, nor shall a new residence be located closer than one (1) mile of a CLO, unless the new residence is under the same ownership as the CLO. These setback distances may be waived pursuant to Section 3, subparagraph 2 of this Article.
- d) Manure shall be removed, disposed of or stored in any one (1) or more of the following manners:
 - 1) Applied on land specifically designated in the Conditional Use Permit, the applicant's DEQ permit, and/or subject to conditions set forth by the County Board in granting the Conditional Use Permit.
 - A) Surface runoff shall be so controlled that no amount of soil or manure is carried into any roadway ditch or drainage area where it will deposit and form sludge banks where flies and mosquitoes can breed.
 - B) When waste water is pumped from lagoons or other structures it is required to either disconnect from the system from the well or use a back-flow check valve.
 - 2) In lagoons, which are clay-based, with plastic liners, the manufacturer must certify that the product used meets USDA and NRCS Guidelines for animal waste and in locations designated in the Conditional Use Permit.
 - 3) In liquid manure storage tanks or other structures, and/or subject to conditions set forth by the County Board in granting the Conditional Use Permit.
 - 4) In no event shall manure or other liquid waste be applied on any land designated as wetlands pursuant to the U.S. Army Corps of

Engineer's designation and/or subject to conditions set forth by the County Board in granting the Conditional Use Permit.

- e) Monitoring Wells: A minimum of one well extending to water-flow. Location of said well shall be determined by the local Natural Resource District (NRD).
 - f) Insect and rodent control:
 - 1) Removal of manure and disposal as outlined above.
 - 2) Use chemical sprays and poisons in accordance with their label instructions, and procedures and recommendations outlined and followed by best management practices.
2. Wholesale and storage houses for the commercial warehousing and storage of hazardous material either in mass or bulk.

SECTION 3. SETBACK REGULATIONS.

- 1. Buildings or any other structure shall not be permitted within one Hundred (100) feet of the center of an intersection ~~or~~ of any public street, road or highway.
On October 31, 2014 the Holt County Board of Supervisors voted to correct the word change.
- 2. A waiver signed by the owner (and tenant, if applicable) if under the (1) one mile setback requirement set forth in Section 2, subparagraph c), may be made a condition of obtaining a Conditional Use Permit.

SECTION 4. SIGN REGULATIONS.

Any sign that may be allowed by the Nebraska Department of Roads, Rules and Regulations relating to the Control of Advertising in areas Adjacent to the Interstate and Federal-Aid Primary Highways, as it may be amended from time to time, shall be permitted. For purposes of these sign regulations, all real property located within the "open zone" zoning district shall be considered as zoned commercially for the purpose of complying with the sign regulations as allowed by the Nebraska Department of Roads as set forth above.

ARTICLE 5

ADDITION TO HOLT COUNTY ZONING REGULATIONS

Wind Energy Conversion Facilities

Amended November 16, 2022

Wind Energy Installation

In any zoning district, a conditional use permit may be granted to allow wind energy conversion systems, including such devices as wind charger, windmill, or wind turbine; subject to the regulations established in this section.

Small Wind Energy Systems

A. Purpose

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

B. Definitions

The following are defined for the specific use of this section.

1. *Small Wind Energy System* shall mean a wind energy conversion electricity generating system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100kW and which is intended to primarily reduce on-site consumption of utility power.
2. *Tower Height* shall mean the height above grade of the hub portion of the tower, excluding the wind turbine itself.

C. Requirements

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

1. *Tower Height*
 - a. For property sizes between ½ acre and one acre, the tower height shall be limited to 80 feet.
 - b. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.
2. *Noise*
 - a. Small wind energy systems shall not exceed 60dBA, as measured at the closest neighboring inhabited dwelling.
 - b. The noise level may be exceeded during short-term events such as utility outages and/or severe windstorms.
3. *Approved Wind Turbines*
 - a. Small wind turbines must have been approved under the Emerging Technologies program of the California Energy Commission or any other small wind certification program recognized by the American Wind Energy Association.
4. *Compliance with FAA Regulations*
 - a. Small wind energy systems must comply with applicable FAA and FCC regulations, including any necessary approvals for installations close to airports.
5. *Compliance with National Electrical Code*
 - a. Permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for determination that the manner of installation conforms to the National Electrical Code.
6. *Utility Notification*
 - a. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator.
 - b. Off-grid systems shall be exempt from this requirement.

Commercial/Utility Grade Wind Energy Systems

A. Purpose

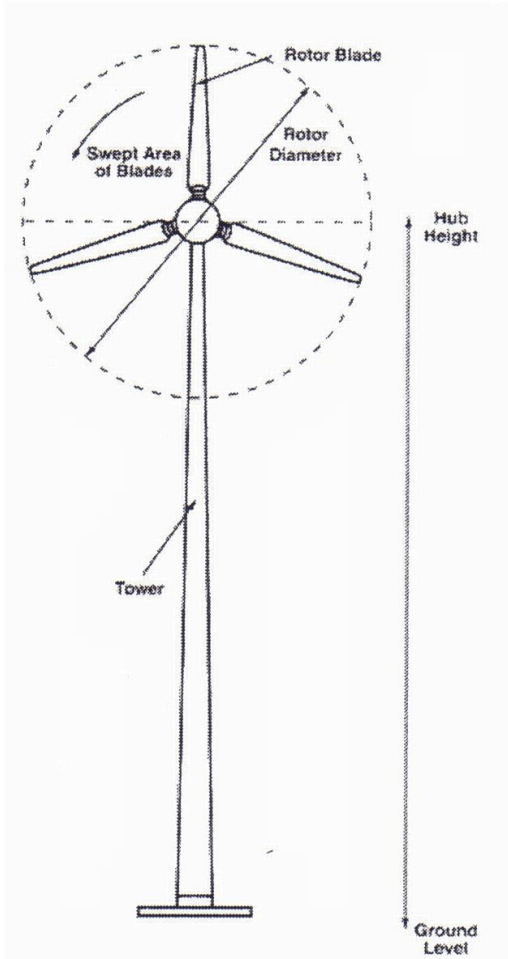
It is the purpose of this regulation to promote the safe, effective and efficient use of commercial/utility grade wind energy systems within Holt County.

B. Definitions

The following are defined for the specific use of this section.

1. *Aggregate Project* shall mean projects that are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual

- WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also part of the aggregated project.
2. Aircraft Detection Lighting System (ADLS): A radar-activated obstruction lighting system designed to turn blinking lights atop wind turbines and tall towers on or off, based on the presence or absence of aircraft in the vicinity. This technology allows “lights out” for up to 98% of the night which significantly reduces the towers’ visual impacts on surrounding communities. #2 Added November 16, 2022
 3. *Commercial WECS* shall mean a wind energy conversion system of equal to or greater than 100kW in total nameplate generating capacity.
 4. *Fail Zone* shall mean the area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.
 5. *Feeder Line* shall mean any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the wind energy conversion system.
 6. *Meteorological Tower* shall mean, for purposes of this regulation, a tower which is erected primarily to measure wind speed and directions plus other data relevant to siting a Wind Energy Conversion System. All permanent towers must be an un-guyed monopole design. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions and all communication towers.
 7. *Public Conservation Lands* shall mean land owned in fee title by State or Federal agencies and managed specifically for conservation purposes, including but not limited to State Wildlife Management Areas, State Parks, federal Wildlife Refuges and Waterfowl Production Areas. For purposes of this regulation, public conservation lands will also include lands owned in fee title by non-profit conservation organizations and will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.
 8. *Rotor Diameter* shall mean the diameter of the circle swept by the moving rotor blades as shown in figure 1 below.



9. *Substations* shall mean any electrical facility to convert electricity produced by wind turbines to a voltage greater than 35,000 volts (35 KV) for interconnection with high voltage transmission lines.
10. *Total Height* shall mean the highest point, above ground level, reached by a rotor tip or any other part of the Wind Energy Conversion System.
11. *Tower* shall mean the vertical structures that support the electrical, generator, rotor blades, or meteorological equipment.
12. *Tower Height* shall mean the total height of the Wind Energy Conversion System from grade to the hub.
13. *Transmission Line* shall mean the electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnected and supplying electric energy to retail customers.
14. *Wind Energy Conservation System* shall mean an electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to; power lines, transformers, substations and meteorological towers that operate by converting the kinetic energy of wind into electrical energy. The energy may be used on-site or distributed into the electrical grid.
15. *Wind Turbines* shall mean any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy using airfoils or similar devices to capture the wind.

C. Requirements

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

1. The name(s) of project applicant.
2. The name of the project owner.
3. The legal description and address of the project.
4. A description of the project including; number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the feeder lines.
5. Site layout, including the location of property lines, wind turbines, electrical grid, and all related accessory structures. This site layout shall include distances and be drawn to scale.
6. Engineer’s certification.
7. Documentation of land ownership or legal control of the property.
8. The latitude and longitude of individual wind turbines.
9. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other Wind Energy Conversion System not owned by the applicant, within 5 rotor distances from the proposed Wind Energy Conversion System.
10. Location of wetlands, scenic, and natural areas (including bluffs) within 1,320 feet of the proposed Wind Energy Conversion System.
11. An Acoustical Analysis
12. ~~A Flicker Study on building sites within 1 mile of proposed site.~~ A Flicker Study on all inhabitable dwellings within 1 mile of each tower.
13. FAA Permit
14. Location of all known Communication Towers within five miles of the proposed Wind Energy Conversion System.
15. Decommissioning Plan
16. Description of potential impacts on nearby Wind Energy Conversion Systems and wind resources on adjacent properties not owned by the applicant.
17. All new commercial wind turbine facilities requiring a new Conditional Use Permit shall incorporate an FAA approved ADLS to minimize the impact of the wind turbine lighting.
18. All existing commercial wind facilities shall be required to install an FAA approved ADLS system upon any new repowering agreement.

#17 & #18 added November 16, 2022

D. Aggregated Projects

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

E. Setbacks

All towers shall adhere to the setbacks as measured from the hub established in the following table:

	Wind Turbine Non Commercial	WECS; Wind Turbine Commercial/Utility WECS	Meteorological Towers
Property Lines	Diameter	One-Half Diameter	1.1 times the total height
Neighboring Dwelling Units*	Diameter	One-Half Mile 1 mile (5280 feet) Changed November 16, 2022	1.1 times the total height
Road Rights-Of-Way**	Diameter	One-Half Diameter	1.1 times the total height
Other Rights-Of-Way	Diameter	One-Half Diameter plus applicable	1.1 times the total height

		building setback	
Public Conservation Lands including Wildlife Management Areas and State Recreation Areas	N/A	Diameter	1.1 times the total height
Wetlands, USFW Types III, IV and V	N/A	300 feet	1.1 times the total height
Other structures not on the applicant's Site	N/A	One-Half Diameter	1.1 times the total height
Other existing WECS under different Ownership	N/A	To be considered based on: Relative size of the existing and proposed WECS; Alignment of the WECS relative to the predominant winds; Topography; Extent of wake interference impacts on existing WECS; Other setbacks required; waived for internal setbacks in multiple turbine projects including aggregated projects	N/A
River Bluffs of over 15 feet	N/A	One-Half Diameter	N/A

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

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

F. Special Safety and Design Standards

All towers shall adhere to the following safety and design standards:

1. All new projects requiring a new Conditional Use Permit shall be equipped with an FAA approved ALDS system. **#1 Added November 16, 2022**
2. All existing commercial wind facilities shall be required to install an FAA approved ADLS system upon any new repowering agreement. **#2 Added November 16, 2022**
3. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
4. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
5. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
6. All wind turbines and towers that are part of a commercial/utility WECS shall be white, gray or another non-obtrusive color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective.
7. Lighting, including lighting intensity and frequency of strobe, shall adhere to but are not required to exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. Red pulsating incandescent lights should be avoided.
8. All communications and feeder lines installed as part of a WECS shall be buried, where feasible. Feeder lines installed as part of a WECS shall not be considered an essential service.
9. Discontinuation and Decommissioning

- a. A WECS shall be considered a discontinued use after one year without energy production, unless a plan is developed and submitted to the Zoning Administrator outlining the steps and schedule for returning the WECS to service. All WECS and accessory facilities shall be removed to 5 feet below ground level, or as negotiated between landowner and developer, within 90 days, weather permitting, of the discontinuation of use.
 - b. Each commercial/utility WECS shall have a decommissioning plan outlining the anticipated means and cost of removing WECS at the end of their serviceable life or upon being discontinued in use. The cost estimates shall be made by a competent party; such as a professional engineer, a contractor capable of decommissioning, or a person with suitable expertise or experience with decommissioning. The plan shall also identify the financial resources that will be available to pay for decommissioning and removal of the WECS and accessory facilities.
10. No Commercial/Utility WECS shall exceed 50dBA at the nearest structure or occupied dwelling.
11. The applicant shall minimize or mitigate interference with electromagnetic communications, such as radio, telephone, microwaves, or television signals caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the county for permits.
12. Applicants shall:
- a. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.
 - b. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility.
 - c. Be responsible for restoring the road(s) and bridges to pre-construction conditions.
13. The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

~~A waiver signed by owner (and tenant, if applicable) if under the setback/distance requirements may be made a part of the terms.~~

****In the event owner (and tenant, if applicable) agree to a minimum different than prescribed by this provision, a waiver must be signed by the owner (and tenant, if applicable) and agreed to, in writing, by the operator. **Added November 16, 2022**

ARTICLE 6

PIPELINE CONSTRUCTION, INSTALLATION, LOCATION, AND MAINTENANCE ABOVE GROUND AND BELOW GROUND IN HOLT COUNTY

APPROVED 10/15/2010

Amended November 16, 2022

Section 1. Definitions.

- (1) Applicant. As used herein, "Applicant" shall mean any entity that applies for a Pipeline Construction Permit and shall include any successor,

employee, agent, representative, assignee, contractor, lessee, or sublessee, Applicant, licensee, invitee, guest, or permittee of Applicant, or any other person or entity that has obtained or hereafter obtains rights or interests from Applicant, or Property Owner to Property Owner's land.

(2) Property Owner. Property Owner, as used herein, shall mean the owner of the land over which or through which, the pipeline will ultimately go, together with his, her, or its heirs, successors and/or assigns,

(3) Pipeline. "Pipeline" means a pipe with a nominal diameter of eight inches or more, located in the county, that is used to transport all petroleum products, including crude oil and tar sands, natural gas, effluents, or water, but does not include a pipe used to transport or store petroleum products, including crude oil and tar sands, natural gas, effluents, or water within a refining, storage, or manufacturing facility. Amended November 16, 2022

(4) Pipeline, Permitted Uses. The following uses are permitted in Holt County and are exempt from the provisions of this Ordinance:

(a) Pipeline within a Property Owner's property lines, for personal and/or agricultural use.

(b) New, or replacement, sewer and/or water lines located and installed by a public utility or municipality in conformance with state approved sewer and/or water guidelines.

(c) New sewer and/or water lines whose principal function is to provide service to a new development that is approved either by the State of Nebraska, County of Holt or local municipality.

(d) New sewer and/or water lines for the purpose of addressing a health emergency documented by the State or County Health Officer.

Section 2. Pipeline Construction Permit.

Section 2.1. Pre-Construction Filing Requirements.

(1) Applicant must file with the Planning and Zoning Committee the Pipeline Construction Permit Form including all associated plans of the proposed Pipeline, including the Construction, Mitigation and Reclamation Plan, and submit property owners names and addresses, for acquired easements or leases, State approval documentation, if any, proposed County Road crossings, proposed County haul routes and voluntary submittal of other information that would assist the Planning and Zoning Committee in evaluation of the proposed Pipeline project as Pre-Construction Requirements.

(2) Applicant shall further file with the Planning and Zoning Committee the location of the Pipeline right-of-way or easement area by recording a "Notice of Location" referring to the right-of-way and setting forth the legal description of the right-of-way and the location of the pipeline contained therein, which description shall be set forth by map attached to the Notice of Location. A copy of the Notice of Location shall promptly be

delivered to the Property Owner. No construction or installation of the Pipeline shall occur until the Notice of Location has been filed with the Planning and Zoning Committee and delivered to the Property Owner. Prior to construction, Property Owner will be contacted by Applicant's project manager or designated agent to review the timing of construction and discuss site-specific issues and implementation of mitigation and reclamation measures.

(3) Each Pipeline Construction Permit application shall be accompanied by at least two (2) sets of plans showing dimension and locations of the Pipeline, related items or facilities within the subject right-of-way or easement, and all proposed lift stations, pumps or other service structures related to such Pipeline, and the location, type and size of all existing utilities, drainage, right-of-way, and roadway improvements. Also required for submittal are:

(a) Cross-section drawings for all public street right-of-way and easement crossings;

(b) The maximum design capacity of the proposed transmission facility;

(c) Changes in flow in the transmission facilities connected to the proposed facility; and

(d) The proposed maximum operating pressure, expressed in pounds per square inch gauge (psig), not to exceed the manufacturer's recommended operating pressure.

Section 2.2. Hearings.

(1) Appearance before the Planning and Zoning Committee is required for the Pipeline project. The Planning and Zoning Committee will review the permit information and will recommend approval or denial, and require any modifications and/or conditions, to the Holt County Board of Supervisors. The Pipeline Construction Permit must be reviewed by the Holt County Board of Supervisors in any case at their next scheduled meeting following the Planning and Zoning Committee's decision.

(2) After a review of the Pipeline Construction Permit along with accompanying documents and maps, a Public Hearing date will be set by the Holt County Board of Supervisors. Two (2) weeks prior to the Public Hearing date, a notice shall be published in a legal newspaper of the County and written notification of the hearing shall be mailed to all affected Property Owners, at a cost to the Applicant.

(a) The Applicant must have the public notice approved by the Holt County Board of Supervisors or its designee prior to publishing said notice.

(b) An affidavit of publication must be presented during the Public Hearing.

(3) The Applicant has the burden of proof to establish that the proposed Pipeline complies with all applicable ordinances along with applicable laws and regulations;

Section 2.3. One Pipeline.

No more than one pipeline may be placed, installed or constructed upon or in the Pipeline right-of-way or easement area without an easement for same.

Section 2.4. Topsoil.

Applicant at its own expense shall, unless otherwise requested by Property Owner, abide by all guidelines and recommendations of the local or regional field office of the United States Natural Resources Conservation Service or the Construction, Mitigation and Reclamation Plan, whichever is more stringent, regarding the removal, storage, and replacement of top soil.

(1) At a minimum, the applicant shall strip the topsoil from the ditch line in the Pipeline right-of-way or easement area and segregate all topsoil from the other excavated soil material, prior to construction and installation of any section of the Pipeline placed in the Pipeline right-of-way or easement area. Following the construction and installation of each section of the Pipeline, the top soil shall be replaced, to the extent feasible, as near as practicable to its original location and condition. Topsoil deficiency shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the Property. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement in accordance with recommendations of the United States Natural Resources Conservation Service.

Section 2.5. Trash Cleanup.

Construction related debris and material which is not an integral part of the Pipeline will be promptly removed from the Property Owner's property at Applicant's expense. Such material to be removed includes all litter generated by Applicant's employees, agents, contractors, or invitees, including construction crews. Following the completion of Applicant's construction activities on the Property Owner's property, Applicant shall keep the Property Owner's property clean and free of all trash and litter which may have been produced or caused by Applicant or its employees, agents, contractors or invitees or its operations on the property. Under no circumstances will Applicant bury or burn any trash, debris or foreign material of any nature on the Property Owner's property.

Section 2.6. Pipeline Depth.

Except for above-ground piping facilities, such as mainline block valves, pump stations, etc., the Pipeline will be installed and maintained at a depth of no less than four (4) feet below surface to top of the pipe. **Installation of pipeline under any moving, running or standing water shall be completed by boring under said water at least 5 feet below the bed of the water. Added November 16, 2022**

Section 2.7. Location of Pipeline.

If the Pipeline passes within a distance of ~~two hundred and fifty (250)~~ **three hundred** feet or less from a residence, **Changed November 16, 2022** then Applicant shall implement the following protections:

- (a) To the extent feasible, Applicant shall coordinate construction work schedules with affected residential owners prior to the start of construction in the area of the residences.
- (b) Applicant shall maintain access to all residences at all times, except for periods when it is infeasible to do so or except as otherwise agreed between Applicant and the occupant. Such periods shall be restricted to the minimum duration possible and shall be coordinated with affected residential owners and occupants, to the extent possible.
- (c) Applicant shall install temporary safety fencing, when reasonably requested by the owner or occupant, to control access and minimize hazards associated with an open trench and heavy equipment in a residential area.
- (d) Applicant shall notify affected residents in advance of any scheduled disruption of utilities and limit the duration of such disruption.
- (e) Applicant shall separate topsoil from subsoil and restore all areas disturbed by construction to at least their preconstruction condition.
- (f) Except where practicably infeasible, final grading and topsoil replacement, installation of permanent erosion control structures and repair of fencing and other structures shall be completed in residential areas within ten (10) days after backfilling the trench. In the event that seasonal or other weather conditions, extenuating circumstances, or unforeseen developments beyond Applicant's control prevent compliance with this time frame, temporary erosion controls and appropriate mitigating measures shall be maintained until conditions allow completion of cleanup and reclamation.
- (g) Should a water well, or water supply, be damaged (diminishment in quantity or quality) by pipeline installation or operations, a comparable water supply will be immediately provided to the owner of the well and the water well shall be restored or replaced at Applicant's expense.

Section 2.8. Reclamation Obligations.

Following the completion of the Pipeline construction, or upon removal of the Pipeline at the expiration, termination, or surrender of the Pipeline, Applicant will restore the area disturbed by construction as best as practicable to its original preconstruction topsoil, vegetation, elevation, and contour.

Section 2.9. Abandonment of Pipeline.

Abandonment of the Pipeline in Holt County shall occur if Applicant ceases to operate the Pipeline for the transportation of petroleum products, natural gas, or water, **and fails to obtain or retain necessary state and federal permits**, for a period of ~~ten (10) years~~ **twelve (12) consecutive months**. Upon the abandonment of the Pipeline, Applicant, at its option shall: **Additions and Changes November 16, 2022**

- (1) Remove the Pipeline from the lands, with full reclamation of the property; or

(2) Surrender to the Property Owner the right-of-way or easement area with the written consent of the Property Owner.

Section 2.10. Change of Location of Pipeline.

Property Owner and Applicant acknowledge that the actual location of the Pipeline right-of-way or easement area may change because of various engineering factors, and Property Owner agrees to execute and deliver to Applicant, without additional compensation, and, where necessary, in recordable form, any additional documents needed to correct the legal description of the right-of-way to conform with the actual location of the Pipeline. Applicant does not need Property Owner's permission to alter the location of the Pipeline so long as the change of the right-of-way or easement area is less than twenty-five (25) feet in any direction. In the event the Pipeline right-of way or easement area will be moved more than twenty-five (25) feet in any direction, Applicant must obtain written approval from the Property Owner and give written notice to the Planning and Zoning Committee, and shall amend the Pipeline Construction Permit application to reflect such changes. Said document and amendments to the Pipeline Construction Permit, as required, will be prepared by Applicant at its expense. Once installation of the Pipeline is complete, Applicant will deliver to the Planning and Zoning Committee within six (6) months of completion, an "as-built" map that will show exactly where the Pipeline is located, in addition to any other improvements or facilities, whether located above-ground or below-ground, and further to include any modifications to any improvements or facilities owned by Property Owner, such as waterlines or fences.

Section 2.11.

This would add an entire new paragraph to the article.

Applicant shall maintain a set back from all wells, registered and unregistered, no matter the use of said water supply, of at least 300 feet. Applicant shall be responsible to locate all unregistered wells, and all drainage tile, upon property and work in cooperation with the landowner to locate wells and tile. **2.11 Added November 16, 2022**

Section 3. Indemnification.

The pipeline owner(s) and/or operator(s) shall indemnify, defend and hold harmless Holt County and any Property Owners from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Holt County and/or the Property Owner in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of the pipeline and/or related facilities, and the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any law, including all applicable environmental laws. This shall be true in all instances except for those individuals or companies who intentionally, or by negligence, damage the Pipeline or related facility. No Property Owner or tenant thereof will be held responsible for a Pipeline leak that occurs as a result of his/her normal farming practices over the top of or near the Pipeline, provided no tillage or other agricultural method is used which penetrates the soil by more than two (2) feet from the undisturbed surface and they do not physically strike or impact the surface structures such as valves, etc. with machinery, equipment or other objects. This shall in no way relieve any Property Owner or tenant, agent or contractor of such Property Owner from their obligation to comply with the Nebraska One-Call Notification

System Act and any amendments thereto (See Revised Reissued Statutes of Nebraska Sections 76-2301 to 76-2330), or relieve them of liability for their failure to do so. As between the Pipeline operator, the Property Owner or its tenant, a Pipeline leak which is not caused by a violation of the above provisions or other tortious conduct by Property Owner or its tenant shall not be the responsibility of said Property Owner or tenant, as the case may be.

Section 4. Protection of Proprietary Information.

Holt County will keep detailed information filed (not including the plans or Pipeline Construction Permit) restricted from public access for security purposes, to protect proprietary information, and to protect the commercial interests of the Applicant.

Section 5. Compliance with Applicable Laws.

Pipeline owners, operators and/or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state and federal laws and regulations in construction and operation of the Pipeline.

Section 6. Variances.

Section 6.1. Hardship.

Where the Planning and Zoning Committee finds that extraordinary hardships, due to unusual topographic or other conditions, beyond the control of the Applicant, may result from strict compliance with these regulations, they may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variation will not have the effect of nullifying the intent or purpose of the Pipeline Construction Permit, and will not be detrimental to the public health, safety or welfare or injurious to other property in the territory in which Pipeline is situated.

Section 6.2. Application Required.

(1) The Holt County Planning and Zoning Committee shall hear and decide appeals and requests for variances from the terms of this Ordinance. The Planning and Zoning Committee shall base their determination on technical justifications, and has the right to attach such conditions to variances as they deem necessary to further the purposes and objectives of this Ordinance. Applications for any such variance shall be submitted in writing by the Applicant at the time the Pre-Construction Requirements are filed with the Planning and Zoning Committee, and shall state fully and clearly all facts relied upon by the Applicant and shall be supplemented with maps, plans or other additional data which may aid the Planning and Zoning Committee in the analysis of the proposed project.

(2) Applications for the variance shall be considered with the Pipeline Construction Permit application, and the Planning and Zoning Committee will render their decision on the applied-for variance no later than thirty (30) days after the meeting at which the proposed Pipeline project application and request for variance was submitted.

Section 6.3. Conditions.

(1) In granting any variance, modification, and approvals, the Planning and Zoning Committee may require such conditions as will, in their judgment, secure substantially the objectives or the standards and requirements so varied, modified, or approved. In granting any variance, the Planning and Zoning Committee shall prescribe only conditions that they deem necessary to, or desirable for, the public interest. These conditions may include, without being limited to personal, surety, performance, or maintenance bonds, or other legal instruments.

(2) In making their findings, as required herein, the Planning and Zoning Committee shall take into account the nature of the existing use of the land in the vicinity of the Pipeline right-of-way or easement area, and any probable effects of the proposed Pipeline on the health, safety and welfare of the surrounding residents and environment.

(3) The Planning and Zoning Committee must ensure the preservation and enjoyment of the property rights of the Property Owner.

Section 6.4. Requirements for Granting a Variance.

The Board of Supervisors shall have the final authority to grant or deny a variance under this section. For each variance application, the Planning and Zoning Committee shall report to the Holt County Board of Supervisors their findings and recommendations. The Holt County Board of Supervisors, in conjunction with their regularly scheduled monthly meetings, shall set aside time for a public hearing on all proposed variances under this Section.

Section 7. Severability and Separability.

Should any portion of this act be deemed unlawful for any reason or conflict with any existing state or federal law, that fact shall not affect any other portion or section of this act and any unaffected sections or portions of this act shall stand in effect.

Section 8. Effective Date.

This Ordinance shall take effect and be in force from and after the date of adoption by the Holt County Board of Supervisors.

Section 9. All of Section 9 Added November 16, 2022

CARBON DIOXIDE RECOVERY PIPELINE OVERLAY DISTRICT - Purpose

The Holt County Planning Commission and the Board of County Supervisors recognize 1) the carbon dioxide recovery pipeline is important to the long-term economic survival of ethanol plants in Nebraska and other states, and that 2) Holt County can implement safety measures to protect its citizens and sensitive environmental areas within the borders of Holt County though Nebraska State Statutes §23-174 and §81-543.

The Holt County Planning Commission and the Board of County Supervisors recognize 1) that third-party damage and pipeline right of way (ROW) encroachment are significant threats to pipeline safety; 2) that transmission pipelines may pose a risk to public safety and or the environment if ruptured or damaged; 3) that certain land use

practices can reduce the likelihood of accidental damage to carbon dioxide pipelines and reduce adverse impacts of pipeline failures located within Holt County.

The purpose of the Carbon Dioxide Recovery Pipeline Overlay District is to protect the public health and safety by reducing the likelihood of pipeline damage and reducing the adverse impact of pipeline failures through risk-based land management decisions. It is the intent to accomplish this, as much as possible by public education, early consultation among stakeholders and securing public cooperation.

The Carbon Dioxide Recovery Pipeline Overlay District will be incorporated into Holt County Geographic Information Systems (GIS) mapping and used primarily when issuing Zoning and Building permits to facilitate discussions among developers, landowners, and pipeline operators.

The CORPOD will enhance and not preclude the requirement of the Nebraska Call Before You Dig System.

Holt County reserves the right to implement the CORPOD on new direct pipelines constructed for non-agricultural and non-residential facilities such as power plants. Appropriate land use regulations will be imposed, however, which are in addition to those imposed in the underlying zoning districts or in other county regulations.

DEFINITIONS (to be incorporated into existing definitions)

Carbon Dioxide: a chemical compound occurring as a colorless gas with a density about 53 % higher than that of dry air. Carbon dioxide molecules consist of a carbon atom covalently double bonded to two oxygen atoms. It occurs naturally in Earth's atmosphere as a trace gas. Carbon dioxide has a sharp and acidic odor and generates the taste of soda water in the mouth, but at normally encountered concentrations it is odorless.

CFR. Code of Federal Regulations

Consultation zone: An area extending a minimum of 500 feet from each side of the transmission pipeline.

Development Permit: For the purposes of this section, a development permit shall mean any Conditional Use Permit required for the development of the CORP including development activity that involves construction, grade modification, excavation, blasting, land clearing, or the deposit of earth, rocks or other materials that places an additional load upon the soil within the Consultation Zone. Construction that involves work totally within an existing building footprint and does not involve excavation, such as residential remodeling projects, is specifically exempted from these Consultation Zone requirements.

Easement: (1) A legal instrument giving a transmission pipeline operator a temporary or permanent right to use a right-of-way for the construction, operation, and maintenance of a pipeline. It may also include temporary permits, licenses, and other agreements allowing the use of one's property. (2) An easement is an acquired privilege or rights, such as a right of-way, afforded a person or company to make limited use of another person or company's real property. For example, the municipal water company may have an encasement across your property for the purpose of installing and maintaining a water line. Similarly, oil and natural gas pipeline companies acquire easements from property owners to establish rights-of-way for construction, maintenance, and operation of their pipelines. (3) A legal right, acquired from a property owner, to use a strip of land for installation, operation and maintenance of a

transmission pipeline. (4) A legal right defined by Nebraska law including the rights acquired through the use of eminent domain.

Encroachment: (1) A human activity, structure, facility or other physical improvement that intrudes onto a transmission pipeline right-of-way. (2) Encroachment refers to the unauthorized use of a right-of-way in violation of the easement items.

Ethanol Plant: An agricultural processing facility which converts corn or other plants into ethanol for use in powering motorized vehicles. **Excavation:** Any operation in which earth, rock or other material, in or on the ground, within 12 inches of grade level is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes, without limitation, back-filling, grading, trenching, digging, ditching, drilling, pulverizing, rubbleizing, well-drilling, augering, boring, tunneling, scraping, cable or pipe plowing, plowing-in, pulling-in, ripping, driving, and demolition of structures, except that, the use of mechanized tools and equipment to break and remove pavement and masonry down only to the depth of such pavement or masonry. The tiling of soil for agricultural or seeding purposes shall not be deemed excavation.

Habitable Structure: Any building or structure used by people for residential purposes or for the purpose of conducting a commercial or industrial business.

Nebraska One Call Notification (also known as Diggers Hotline or 811): to protect underground facilities, the excavating public, and the general public. Creates one point of communication between the excavating public and the Nebraska member underground utilities regarding any upcoming excavation projects in the State of Nebraska.

Person: Any individual, firm, joint venture, legal entity, partnership, corporation, association or cooperative, public or private.

Petroleum: an oily flammable bituminous liquid that may vary from almost colorless to black, occurs in many places in the upper strata of the earth, is a complex mixture of hydrocarbons with small amounts of other substances, and is prepared for use as gasoline, naphtha, or other products by various refining processes.

Pipeline: An underground or above ground system of pipes for the transmission of liquids or gases from one point to another.

Pipeline Facility: Means all parts of those physical facilities through which gas, hazardous liquids, or carbon dioxide are moved.

Planning Zone: An area around a transmission pipeline.

Potable Water: Water that is satisfactory for drinking, culinary, domestic, and livestock purposes.

Pump Station: A facility tied into the pipeline in order to push a product to a desired location.

Right-of-Way (ROW): (1) A piece of property, usually consisting of a narrow, unobstructed strip or corridor of land of a specific width, which a company and the fee simple landowner both have legal rights to use and occupy. (2) A defined strip of land on which an operator has the right to construct, operate and maintain a specific use. The operator may own a right-of-way outright or an easement may be acquired for specific use of the right -of-way.

Right-of-Way agreement: see easement.

Rural: An area outside the limits of any incorporated or unincorporated city, town, village or any other designated residential or commercial area such as a subdivision, a business or shopping center or community development.

Establishment and Delineation of Carbon Dioxide Recovery Pipeline Overlay

Districts Boundaries for the Carbon Dioxide Recovery Pipeline Overlay Districts (CORPOD) are shown on published maps entitled "Holt County Carbon Dioxide Recovery Pipeline Zone Map" dated _____ as produced by Holt County Geographic Information Systems (GIS). This map, as updated, will show the overlay district on each pipeline and Consultation Zone. Said map is hereby adopted by reference as part of this regulation as if the map is fully described herein. The overlay district will be utilized by the Zoning Office and Planning Commission for the purpose of issuing all zoning permits, any variances that come before the Board of Adjustment and in the enforcement of the Holt County Comprehensive Plan and Zoning Regulations.

Compliance with Applicable Laws Pipeline owners, operators and / or contractors, and their employees, agents, contractors, and invitees, must comply with all applicable local, state, and federal laws and regulations in Construction and operation of the Pipeline 1. Federal Regulations. The provisions of the of 49 CFT Part 195 are hereby incorporated by reference. 2. To the extent any regulation within this section conflicts with state or federal regulations or law, then state and/or federal regulations shall take precedence over these regulations. **Depth of pipelines** Except for above-ground piping facilities, such as mainline block valves, pump stations, etc., the pipeline will be installed and maintained at a depth that meets or exceeds the requirements of 49 CFR 195.248 All new pipelines built after the adoption of this regulation shall be maintained at a depth of at least five feet. 1. The pipeline owner shall be notified by any landowner when any type of erosion is noticed in order to repair the minimum cover.

Setback from habitable structures The Pipeline right-of -way must be consistent with 49 CFR 195.210 such that the location is selected to avoid, as far as practicable, areas containing private dwellings, industrial buildings, and places of public assembly." 1. All new pipelines shall maintain a separation distance of 300 feet from the pipe to any existing habitable structures.

A waiver signed by owner (and tenant, if applicable) if under the setback/distance requirements may be made a part of the terms.

2. Said Overlay District shall be 150-feet on each side of the centerline of the pipeline location. 3. All new structures and/or potable water wells constructed by the private landowner after the establishment of the CORPOD shall also maintain a 150-foot separation from the overlay district.

Special Criteria for CO2 Pipelines 1. Each operator must prepare, follow, and maintain written procedures to carry out the requirements laid out in 49 CFR 195.210. 2. All existing structures within 500 feet of the CO2 pipeline shall be equipped with exterior grade battery operated CO2 detectors. Batteries beyond the initial installation shall be the responsibility of the property owner. 3. The pipeline owner shall be required to establish a Countywide Emergency Response Plan with the local Emergency Management Officer. The plan shall include: a. Training procedures for local Fire Departments and EMS providers. b. Schedules of necessary safety equipment needed to engage a CO2 leak and/or rupture. c. Knowledge of the equipment being used to monitor the pressure of said pipeline. 4. Individual landowners shall be allowed

to plant crops in the overlay district: however, if a leak or rupture occurs the pipeline company shall remove the minimum number of crops to access and repair the leak or rupture. Payment for the lost crop shall be determined by an independent appraiser or crop adjuster. 5. These provisions shall be supplemented by any future legislation passed by the Nebraska Unicameral and signed into law by the Governor. 6. The construction of the CO2 pipeline shall maintain a minimum of 300 feet from all known and disclosed potable water wells. Landowner shall disclose all relevant potable water wells to the Company seeking Right-Of-Way agreement.

A waiver signed by owner (and tenant, if applicable) if under the setback/distance requirements may be made a part of the terms.

*****In the event owner (and tenant, if applicable) agree to a minimum different than prescribed by this provision, a waiver must be signed by the owner (and tenant, if applicable) and agreed to, in writing, by the operator.***

Severability Should any article, section or provision of this regulation be declared invalid, such decision shall not affect the validity of this regulation as a whole or any other part thereof.

Abandonment of Pipeline: Abandonment of the pipeline in Holt County shall occur in applicant ceases to operate the pipeline for the transportation of Carbon Dioxide and fails to obtain or retain necessary state and federal permits, for a period of 5 years.

Section 9 – Added November 16, 2022

ARTICLE 7 – RESERVED

ARTICLE 8

NONCONFORMING LOTS, NONCONFORMING USES OF LAND,

NONCONFORMING STRUCTURES, NONCONFORMING USES OF

STRUCTURES AND PREMISES

SECTION 1. INTENT AND PURPOSE.

Within the district established by these regulation or amendments that may later be adopted there exist:

1. Uses of land;
2. Uses of structures, and
3. Structures;

which were existing and lawful before the 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 nonconformities to continue until they are removed, but not to encourage their survival. It is further the intent of this regulation that these nonconformities shall not be enlarged upon, expanded or extended, nor be used as ground for adding other structures for uses prohibited elsewhere in the same district.

Nonconforming uses are declared by this regulation to be incompatible with permitted uses in the district involved. A nonconforming use of a structure or a nonconforming use of land shall not be extended or enlarged after passage of this regulation or by the addition of other uses of a nature which would be prohibited generally in the district involved.

SECTION 2. NONCONFORMING USES.

The use of a building, structure or land, existing and lawful at the time of the enactment of a zoning regulation, or at the time of an amendment of a regulation, may, except as provided in this section, be continued, although such use does not conform with the provisions of such regulation or amendment, and such use may be extended throughout the same building or structure if no structural alteration of such building is proposed or made for the purpose of such extension. If such nonconforming use is in fact discontinued for a period of twelve (12) consecutive months, such right to the nonconforming use shall be forfeited and any future use of the building, structure, or premises shall conform to the regulation.

SECTION 3. NON-CONFORMING USES OF LAND.

Where at the time of passage of these regulations lawful use of land exists which would not be permitted by this regulation, the use may be continued so long as it remains otherwise lawful, provided:

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 uses shall be moved in whole or in part to any position of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this regulation;
3. If any such non-conforming use of land ceases, for any reason, for a period of more than twelve (12) consecutive months, any subsequent use of such land shall conform to the regulations specified for the district in which such land is located;
4. No additional structure or structures not conforming to the requirements of this regulation shall be erected in connection with such non-conforming use of land.

SECTION 4. USES UNDER CONDITIONAL USE PROVISIONS NOT NONCONFORMING USES.

Any use which is permitted as conditional use in a district under the terms of this regulation shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

ARTICLE 9

BOARD OF ADJUSTMENT

SECTION 1. FORMATION.

A Holt County Board of Adjustment is hereby created in accordance with State Statutes governing such creation. The Holt County Board of Supervisors shall appoint a Holt County Board of Adjustment which shall consist of five (5) members, plus one (1) additional member designated as an alternate who shall serve only when one (1) of the

regular members is unable to attend for any reason, each to be appointed for a term of three (3) years and be removable for cause by the appointing authority upon written charges and after public hearing. No member of the Holt County Board of Adjustment shall be a member of the Holt County Board of Commissioners or Holt County Board of Supervisors. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One (1) member only of the Holt County Board of Adjustment shall be appointed by the Holt County Board of Supervisors from the membership of the Holt County Planning Commission by such member shall also result in his immediate loss of membership on the Holt County Board of Adjustment and the appointment of another Holt County Planning Commissioner to the Holt County Board of Adjustment. The Holt County Board of Supervisors shall appoint members of the Holt County Board of Adjustment based upon geographic areas with one (1) member from each rural supervisor's district if possible. The Holt County Board of Adjustment shall adopt rules of procedure as may be necessary and proper to govern its own proceedings; such rules shall not be in conflict with other laws, ordinances or resolutions. Meeting of the Holt County Board of Adjustment shall be held at the call of the Chairman and at other times as the Holt County Board of Adjustment may determine. The Holt County Board of Adjustment shall keep minutes of its proceedings, showing the description of evidence presented, the findings of fact by the Holt County Board of Adjustment, the decision of the Holt County Board of Adjustment and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Holt County Board of Adjustment immediately and shall be a public record.

SECTION 2. POWERS AND JURISDICTIONS. The Holt County Board of Adjustment shall have the following powers and jurisdictions:

1. Appeals: To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Holt County Zoning Administrator in the enforcement of these regulations.
 - a) Appeals to the Holt County Board of Adjustment may be taken by the person aggrieved, or by any officer, department, agency or Bureau of the government affected by any decision of the Holt County Zoning Administrator. Such appeal shall be perfected by filing with the Holt County Zoning Administrator and with the Secretary of the Holt County Board of Adjustment a notice of appeal specifying the grounds thereof. The Holt County Zoning Administrator shall forthwith transmit to the Secretary of the Holt County Board of Adjustment all papers constituting the record upon which the action appealed from is taken.
 - b) An appeal stays all proceedings in furtherance of the action appealed from, unless the Holt County Zoning Administrator certifies to the Holt County Board of Adjustment after the Notice of Appeals shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Holt County Board of Adjustment or by a Court of record on application and notice to the Holt County Zoning Administrator of good cause shown.

2. Variance: To authorize in specific cases a variance from the specific terms of these regulations where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in undue hardship. The spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done.
 - a) The applicant must show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of this specific piece of property at the time of the effective date of the District Zoning Regulations or where by reason of exceptional topographical conditions or other extraordinary or exceptional circumstances that the strict application of the terms of the zoning regulations actually prohibit the use of this property in the manner similar to that of other property in the zoning district where it is located.
 - b) A request for a variance may be granted, upon a finding of the Holt County Board of Adjustment that all of the following conditions have been met. The Holt County Board of Adjustment shall follow the criteria set forth in ~SS~23-168.03 N.R.S. 1943, as the same way from time to time be amended, and make a determination on each condition found there in. Each such finding shall be entered in the record.
 - 1) The strict application of the provisions of the zoning regulations from which the variance is requested will constitute undue hardship upon the property owner represented in the application. The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or applicant.
 - 2) Such hardship is not generally shared other properties in the same zoning district and the same vicinity.
 - 3) The granting of the permit for the variance will not be of substantial detriment or adversely affect the rights of adjacent property owners or residents, and the character of the district will not be changed by the granting of the variance.
 - 4) The granting of the variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.
 - 5) 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 zoning regulations.
3. Interpretation: To hear and decide, in accordance with the provisions of this regulation, requests for interpretation of any map.
4. Conditions of Determination: In exercising the foregoing powers, the Holt County Board of Adjustment, in conformity with the provisions of this act, may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination, and to that end shall have all the powers of the

officer from where the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit. A majority of the Holt County Board of Adjustment shall constitute a quorum for the transaction of business, however, the concurring vote of four (4) members of the Holt County Board of Adjustment shall be necessary to reverse any order, requirements, decision or determination of the Holt County Zoning Administrator, or to decide in favor of the applicant upon any matter which it is required to pass upon under any such regulation, or to affect or grant any variation in such regulation. Upon the hearing, any party may appear in person or by agent or by attorney.

SECTION 3. APPLICATION.

1. The procedure for requesting a hearing before the Holt County Board of Adjustment shall be as follows:
 - a) All applications to the Holt County Board of Adjustment shall be in writing on forms provided by the Holt County Board of Adjustment.
 - b) The Holt County Board of Adjustment shall fix a reasonable time for the hearing of an application and notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the Governing Body) at least ten (10) days prior to the date fixed for the public hearing. A copy of the notice of public hearing shall be sent to each party of interest and to the Holt County Planning Commission.
 - c) At least ten (10) days prior to the date fixed for the public hearing, the Holt County Board of Adjustment shall notify the following interested parties by United States Return Receipt mail:
 - 1) All neighboring property owners of property located within two (2) miles of the property in question if said neighboring property is located within county zoning Jurisdiction.
 - 2) The applicant shall provide the Holt County Board of Adjustment with a list of the names and addresses of all neighboring property owners that are to be notified pursuant to subparagraph 1) above. Said list shall be certified by a registered land abstractor.
 - d) An applicant shall be responsible for all costs of the permit.
2. In addition to the above requirements, certain applications require additional information as follows:
 - a) Appeals:
 - 1) An application for an appeal shall be filed within thirty (30) days after a ruling has been made by the Holt County Zoning Administrator.
 - 2) A copy of the order, requirement, decision or determination of the Holt County Zoning Administrator which the appellant believes to be in error.
 - 3) A clear and accurate, written description of the proposed use, work or action in which the appeal is involved and a statement justifying the appellant's position.

- 4) Where necessary, a plot plan, drawn to scale, in duplicate showing existing and proposed plans for the area in question shall be submitted.
- b) Variances:
- 1) The applicant shall submit a statement, in writing, justifying the variance requested; indicating specifically the enforcement provisions of the zoning regulations from which the variance is requested, and outlining in detail the manner which is believed that this application will meet each of the five (5) conditions as set out in Section 2, subparagraph 2 b) of this Article.
 - 2) The applicant shall prepare and submit in duplicate at the time of filing the application, a detailed plot plan drawn to scale, showing all existing and proposed structures, property lines with dimensions, points on ingress and egress, driveways and any other information which would be helpful to the Holt County Board of Adjustment in consideration of the application.

SECTION 4. PERFORMANCE. In making any decision varying or modifying any provisions of the zoning regulations or in granting an exception to the district regulations, the Holt County Board of Adjustment shall impose such restrictions, terms, time limitations, landscaping and other appropriate safeguards to protect adjoining property.

ARTICLE 10

CONDITIONAL USE PERMITS

SECTION 1. PROCEDURES. The Governing Body may grant conditional use permits to the zoning regulations, but only in those instances where the Governing Body is specifically authorized to grant such conditional use permits by the zoning district regulations. In no event shall a conditional use permit be granted where the use or exceptions contemplated is not specifically listed as a conditional use in the Zoning District Regulations. Further, under no conditions shall the Governing Body have the power to grant a conditional use permit when the provisions or conditions as established by these regulations, are not found to be present.

Final Action on an application for a Conditional Use Permit shall be taken only after public hearings by the Holt County Planning Commission and the Governing Body have been held and a recommendation received from the Holt County Planning Commission.

In considering an application for a Conditional Use Permit hereunder, the Governing Body shall give consideration to the Comprehensive Plan, the health, safety, morals, comfort and general welfare of the inhabitants of the county including, but not limited to, the following factors:

1. The stability and integrity of the zoning district.
2. Conservation of property values.
3. Traffic generation, road and/or bridge classification and load limits.
4. Provision of providing for clean air.

5. Provision of over-crowding and excessive intensity of land uses.
6. Provision of providing for clean ground and surface waters.
7. Encouragement of improvements and land uses in keeping with overall planning.

SECTION 2. APPLICATION: The procedure for requesting a hearing for a Conditional Use Permit are as follows:

1. All applications shall be in writing on forms provided by the Holt County Zoning Administrator. Actual cost of the permit shall include, but not be limited to; notification, publication, abstracting and mailing. All costs shall be paid by the Applicant.
2. A notice of the time, place and subject of each hearing shall be published in the official newspaper (as designated by the Governing Body) at least ten (10) days prior to the date fixed for the public hearing. A copy of the notices of public hearings shall be sent to each party of interest. ~~¹Article 5 and Article 6 are exempt from this requirement.²~~
3. The applicant shall provide the Holt County Zoning Administrator with a list of the names and addresses of all neighboring property owners that are within two (2) miles of the property in question to be notified pursuant to subparagraphs 1 and 2 above. Said list shall be certified ~~to be~~ by a registered land abstractor. ~~¹Article 5 and Article 6 are exempt from this requirement.²~~
4. At least ten (10) days prior to the public hearings, the Holt County Zoning Administrator shall notify the following interested parties by Certified United States Mail, Return Receipt Requested:
 - a) neighboring property owners of property located within two (2) miles of the property in question.
 - ~~b) ¹Article 5 and Article 6 are exempt from this requirement.²~~
5. Conditional Use Permits shall not be transferable. If the property or use is sold or transferred to someone or some entity other than the permit holder, the new owner or transferee shall be required to apply for a new Conditional Use Permit pursuant to this Article.

¹Article 5 and Article 6 are exempt from this requirement. This wording was approved by the Holt County Board of Supervisors on January 16, 2013.

²On May 16, 2013 the Holt County Board of Supervisors voted to remove the wording: Article 5 and Article 6 are exempt from this requirement.

SECTION 3. In addition to the above requirements, certain conditional uses have special conditions and applications that require additional information as follows:

1. Confined Livestock Operations:

a) Application:

1. The application shall include a written copy of the permit application which is to be or has been submitted to the Nebraska Department of Environmental Quality, the Nebraska Department of Water Quality, the State of Nebraska Department of Health and Human Services, and any other agency of the State of Nebraska having permit requirements which the applicant must comply with. Said application shall show the

plans for the proposed confined livestock operation including the method and location of the disposal of livestock waste so the planning commission and governing body can review the same to insure the clean air, soil, and ground and surface waters of the county will be protected.

2. The application shall include a plan showing the location and size of all existing and proposed improvements such as lagoons, pens, buildings and necessary information that will explain in detail the entire proposed operation.
3. The application shall include a map showing the location of the confined feeding facilities.

2. Governmental Review:

1. The Governing Body, after public hearing and a recommendation of the Holt County Planning Commission may:
 - a) Set a time limit on the operation, subject to renewal and/or limit the number of livestock to be held in confinement.
 - b) Limit the confinement to a specific area.
 - c) Limit the location and size for the disposal of livestock waste. This may be limited to property owned by the applicant. Or upon land where the applicant has obtained an easement.
 - d) Limit the amount of waste spread over lands. Place such conditions as may be deemed necessary to protect the general welfare of the present and future citizens of the County.

SECTION 4. PERFORMANCE. The Governing Body may impose such restrictions, terms, time limitations, landscaping and other appropriate safeguards to protect adjoining property as may be necessary.

The Conditional Use Permit may be revoked at any time should the Governing Body find that any conditions imposed in the Conditional Use Permit have not been met, after notice and a public hearing, as provided by these regulations, being held specifically for the purpose of revoking the same.

SECTION 5. RENEWAL. After the Conditional Use Permit is obtained; the applicant must diligently proceed to finalize construction of the approved facility within (36) thirty-six months, or the Conditional Use Permit will expire, and reapplication will be necessary.

ARTICLE 11

AMENDMENTS

SECTION 1. PROCEDURES. The Governing Body may from time to time supplement, change or generally revise the boundaries or regulations contained in these zoning regulations by the amending procedure set out below.

1. No such amendment, restriction or change of zoning shall become effective until after public hearings are held by both the Holt County Planning Commission and Holt County Board of Supervisors in relation thereto, when its parties in interest and citizens shall have an opportunity to be heard. Notice of

the time and place of such hearing shall be given by the publication thereof in a legal newspaper of general circulation in such county, and in the local newspaper of any county which has territory within three (3) miles of the property affected by such action of the Holt County Board of Supervisors, one (1) time at least ten (10) days prior to such hearing. Notice of the time and place of such hearing shall also be given in writing to the chairman of any municipal, county or joint Planning Commission which has jurisdiction over land within three (3) miles of the property affected by such action. In the absence of a Planning Commission, such notice shall be given to the clerks of units of local government having jurisdiction over land within (3) miles of the property affected by such action. (See, Section 23-164 R.R.S. Nebraska 1943).

ARTICLE 12

ENFORCEMENT, VIOLATION AND PENALTY

SECTION 1. ENFORCEMENT. It shall be the duty of the Holt County Zoning Administrator to enforce this regulation. Appeal from the decision of the Holt County Zoning Administrator may be to the Holt County Board of Adjustment.

SECTION 2. VIOLATION AND PENALTY. Any person, partnership, limited liability company, association, club, or corporation violating any of the provisions of this resolution shall be guilty of a Class III misdemeanor and subject to the penalty set forth in ~SS~28-106 R.R.S. 1943, as the same may from time to time be amended. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. (*State Law Ref. ~SS~23-114.05 R.R.S.*)

The owner shall be required to disclose to the Holt County Zoning Administrator, upon request, the specific individual person (name, address and telephone number) responsible for the day to day operation of any Confined Livestock Operation which violates these zoning regulations.

In case any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land is used in violation of this regulation, the appropriate authorities of said area, in addition to other remedies, may institute injunction, mandamus or other appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation or to prevent the occupancy of said building, structure or land.

ARTICLE 13

VALIDITY AND SEVERABILITY

SECTION 1. If any section, subsection, sentence, clause or phrase of this regulation is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this regulation.

PASSED AND APPROVED by the Holt County Board of Supervisors on the 18th day of September, 2000.

~ss~ Robert J. Young
Chairman

ATTEST:

~ss~ Gary Devall
County Clerk

(SEAL)