

RESOLUTION NO 2988 OF THE SEWARD COUNTY BOARD OF COMMISSIONERS

WHEREAS, Seward County Board of Commissioners desires to amend its Zoning Regulation as attached, and

WHEREAS, The Public Notice setting forth the Notice of Public Hearing by the Seward County Planning Commission on the attached amendments incorporated by reference herein, was published in the Seward County Independent, Milford Times on June 13, 2012 as required by law, and

WHEREAS, the Planning Commission held a public hearing on the attached amendments incorporated by reference herein, on June 25, 2012 opening at 7:32pm and closing at 7:52pm, and

WHEREAS, the Planning Commission recommended Approval of the attached amendments incorporated by reference herein, with a vote of 7 in favor, 0 against, and 2 absent and not voting.

WHEREAS, The Public Notice setting forth the Notice of Public Hearing by the Seward County Board of Commissioners on the attached amendments incorporated by reference herein, was published in the Seward County Independent, Milford Times on July 18, 2012 as required by law, and

WHEREAS, the Seward County Board of Commissioners held a public hearing on the attached amendments incorporated by reference herein, on July 31, 2012 opening at 9:30am.

WHEREAS, ☒ No one appeared to oppose said amendments
____ Individuals appeared to oppose said amendments
☒ No one appeared to support said amendments
____ Individuals appeared to support said amendments, and

NOW, THEREFORE BE IT RESOLVED that the Seward County Board of Commissioners do hereby ☒ approve the adoption of or ____ deny the adoption of the attached amendments, incorporated by reference herein.

MOTION BY: Miller

SECONDED BY: Koci

ROLL CALL

AYES: David Miller

NAYS: _____

Mary Koci

Diana L. Herske

Scott

Larry J. Reder

Chairman, Board of Commissioners

Chairman, Board of Commissioners

October 23, 2012

ATTEST: Sherry Schweitzer

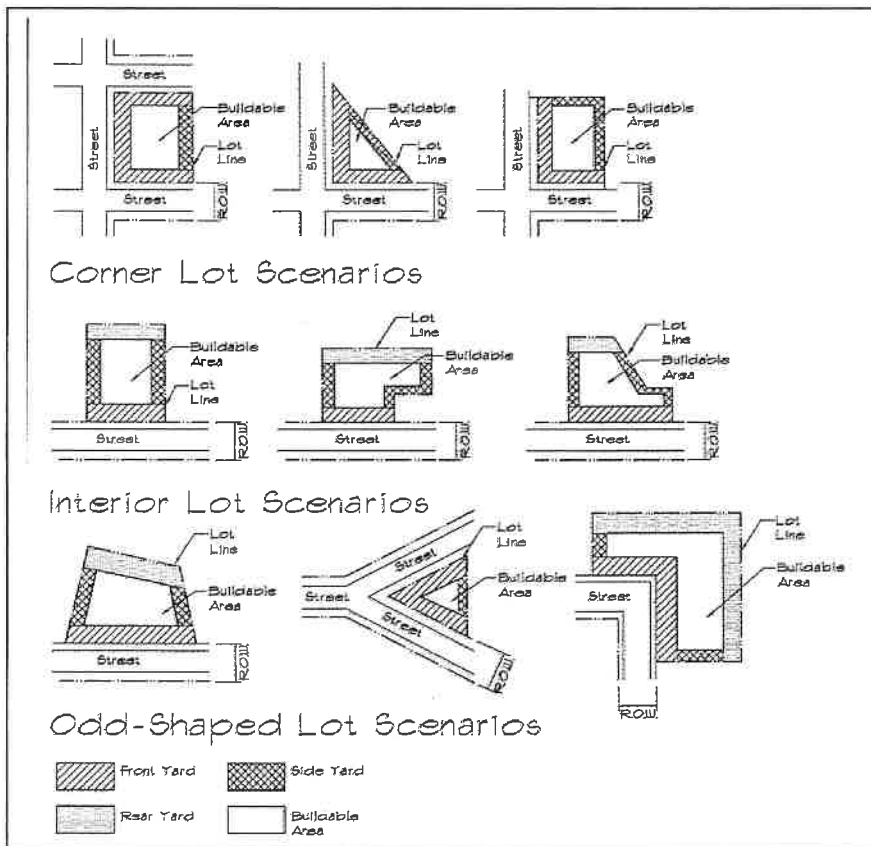
Sherry Schweitzer, Seward County Clerk

immediate or future. The term shall also include the division of residential, commercial, industrial, agricultural, or other land whether by deed, metes, and bounds description, lease, map, plat, or other instrument.

- 2.03.439 **SUBSTANTIAL IMPROVEMENT** shall mean any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either,
1. Before the improvement or repair is started, or
 2. If the structure has been damaged, and is being restored before the damage occurred. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any alteration to comply with existing state or local health, sanitary, building or life safety codes or regulations.
- 2.03.440 **SURFACE WATER CLASS A -- PRIMARY CONTACT RECREATION** shall mean surface waters which are used, or have a high potential to be used, for primary contact recreational activities. Primary contact recreation includes activities where the body may come into prolonged or intimate contact with the water, such that water may be accidentally ingested and sensitive body organs (e.g. eyes, ears, nose, etc.) may be exposed. Although the water may be accidentally ingested, it is not intended as a potable water supply unless acceptable treatment is supplied. These waters may be used for swimming, water skiing, canoeing, and similar activities.
- 2.03.441 **SURFACE WATERS** shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, springs, canal systems, drainage systems, and all other bodies or accumulations of water, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.
- 2.03.442 **TAVERN** (See Bar.)
- 2.03.443 **TEMPORARY STRUCTURE** shall mean a structure without a permanent foundation or footing and removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.
- 2.03.444 **TEMPORARY USE** shall mean a use intended for limited duration to be located in a zoning district not permitting such use.
- 2.03.445 **TOWER** shall mean a structure situated on a site that is intended for transmitting or receiving television, radio, or telephone communications. **See 8.01.02 Definitions** (Also, see Antenna.)
- 2.03.446 **TRANSFER STATION** shall mean a fixed facility where solid waste from collection vehicles is consolidated and temporarily stored for subsequent transport to a permanent disposal site. This does not include an infectious waste incineration facility.
- 2.03.447 **TRADING AREA** shall mean the area served by an existing commercial development or to be served by the proposed commercial development and from which said development draws its support.
- 2.03.448 **TRAILER, AUTOMOBILE** shall mean a vehicle without motive power, designed and constructed to travel on the public thoroughfares and to be used for human habitation or for carrying property, including a trailer coach.
- 2.03.449 **TRANSIENT** shall mean a person who is receiving accommodations for a price, with or without meals, for a period of not more than 180 continuous days in any one year.
- 2.03.450 **TRANSITIONAL USE** shall mean a permitted use or structure that, by nature or level and scale or activity, acts as a transition or buffer between two or more incompatible uses.
- 2.03.451 **TRANSMISSIVITY** shall mean the ability of an aquifer to yield a certain output of groundwater over a set period of time.

5. **Human disposal systems** shall comply with the requirements of Title 124 at the Nebraska Department of Environmental Quality or subsequent agencies.
- 2.03.467 **WASTE, INDUSTRIAL** shall mean any material resulting from a production or manufacturing operation having no net economic value to the source producing it.
- 2.03.468 **WASTEWATER LAGOON** (See Lagoon)
- 2.03.469 **WATERS OF THE STATE** shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water surface or underground, material or artificial, public or private, situated wholly within or bordering upon the state.
- 2.03.470 **WATER SYSTEM, REGIONAL** shall mean a water system which has been constructed for the expressed purpose of supplying potable water to densely populated areas. A regional system shall be an extension of an existing municipal system and shall not be dependent upon individual wellfields or other water source other than those serving the municipality.
- 2.03.471 **WATER DISTRICT, RURAL** shall mean a water district, as defined by the State of Nebraska, which has been constructed for the expressed purpose of supplying potable water to densely populated areas and/or rural residents. A rural system shall include independent wellfields, pressurization systems, and storage.
- 2.03.472 **WATER TABLE** shall mean the upper limit of the portion of the soil that is completely saturated with water. The seasonal high water table is the highest level to which the soil is saturated.
- 2.03.473 **WETLAND** shall mean an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that, under normal circumstances, does support, a prevalence of vegetation typically adapted for life in saturated soiled conditions, commonly known as hydrophytic vegetation.
- 2.03.474 **WHOLESALE ESTABLISHMENT** shall mean an establishment for the on-premises sales of goods primarily to customers engaged in the business of reselling the goods.
- 2.03.475 **WHOLESALE TRADE** shall mean a use primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, farm or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. The principal types of establishments included are: Merchant wholesalers; sales branches and sales offices (but not retail stores) maintained by manufacturing enterprises apart from their plants for the purpose of marketing their products; agents, merchandise or commodity brokers, and commission merchants; petroleum bulk storage, assemblers, buyers, and associations engaged in cooperative marketing of farm products. The chief functions of uses in wholesale trade are selling goods to trading establishments, or to industrial, commercial, institutional, farm and professional; and bringing buyer and seller together. In addition to selling, functions frequently performed by wholesale establishments include maintaining inventories of goods; extending credit; physically assembling, sorting and grading goods in large lots, breaking bulk and redistribution in smaller lots; delivery; refrigeration; and various types of promotion such as advertising and label designing.
- 2.03.476 **WIND ENERGY SYSTEMS Commercial Grade** See 8.04.02 Definitions
- 2.03.477 **XERISCAPING** shall mean landscaping characterized by the use of vegetation that is drought-tolerant or a low water use in character.
- 2.03.478 **YARD** shall mean any open space on the same lot with a building or a dwelling group, which open space is unoccupied and unobstructed from the ground upward to the sky, except for building projections or for accessory buildings or structures permitted by this Regulation.
- 2.03.479 **YARD, FRONT** shall mean a space between the front yard setback line and the front lot line or highway setback line, and extending the full width of the lot.

- 2.03. **480 YARD, REAR** shall mean a space between the rear yard setback line and the rear lot line, extending the full width of the lot.
- 2.03. **481 YARD, SIDE** shall mean a space extending from the front yard or from the front lot line where no front yard is required by this Regulation, to the rear yard, or rear lot line, between a side lot line and the side yard setback line.
- 2.03. **482 ZONE OF AREATION** shall mean the underground, above the zone of saturation, where both air and moisture are found in the spaces between soil and rock particles.
- 2.03. **483 ZONE OF SATURATION** shall mean the area underground where every pore space between rock and soil particles are saturated with water.
- 2.03. **484 ZONING ADMINISTRATOR** shall mean the person or persons authorized and empowered by the county to administer and enforce the requirements of this chapter.
- 2.03. **485 ZONING DISTRICT** shall mean the same as "District".
- 2.03. **486 ZONING DISTRICT, CHANGE OF** shall mean the legislative act of removing one or more parcels of land from one zoning district and placing them in another zoning district on the zone map of the County



15. Commercial/Utility Grade Wind Energy systems and are subject to the requirements of Section 8.04 of the Supplemental Regulations.
16. Community sewage disposal facilities.
17. Mobile homes are permitted only when the land is used or intended to be used only for agricultural operations. All mobile homes require a one-year permit which must be renewed annually and which shall be subject to the conditions of the permit. Mobile homes shall be placed on a permanent foundation.
18. Sanitary landfill or expansion conducted in a manner and method approved by the County Board of Commissioners, provided said landfill is not closer than **1/2 mile** to a municipal well and/or **1/2 mile** to any village or city limits or any subdivision, addition or residence platted as of the effective date of this resolution, see Section 8.05 of the Supplemental Regulations.
19. Lawn and Garden Nurseries.
20. Commercial Kennels and facilities for the raising, breeding and boarding of dogs and other small animals, including exotic, non-farm and non-domestic animals, provided that all buildings and facilities be at least 100 feet from the property line and 300 feet from any neighboring residence.
21. The spreading, stockpiling, or composting of dead livestock, sludge, by-products from manufacturing or any processing plant, and/or paunch manure on agricultural land by municipalities or operations inside or outside of the County.
22. The application of livestock manure in Seward County by operations located outside the County.
23. Anhydrous ammonia, bulk fuel, propane, chemical or liquid fertilizer commercial storage, provide the following requirements, at a minimum, are met:
 - a. The outer boundaries of the lot line of said storage facility shall not be closer than ¼ mile to the centermost point of a residential use not of the same property.
 - b. No such structure or uses shall be established within one mile of any church, school or public facility use.
 - c. Any expansion of existing facilities shall be at least a ¼ mile from any residential use not of the property.
 - d. Applicant shall provide the County with a certified list of all landowners and residents within ¼ mile so that said individuals can receive notice of the public hearing.
24. Livestock Feeding Operations, subject to the license requirements, waste disposal requirements and recommendations of the State of Nebraska and the Land Use specifications.

4.03.04 Standards for Livestock Feeding Operations

1. Agricultural Operations less than 1,000 A.U. are considered a farm as defined in these Regulations and do not require a Conditional Use Permit.
2. A Conditional Use Permit may be approved after public notice has been given and public hearing is conducted as required by law.
3. All existing LFO's that have been granted a conditional use permit may expand within their designated level, provided that required separation distances can be met; except for operations with 20,000 A.U.'s or more which will be required to get a new Conditional Use Permit for each expansion beyond 20,000 A.U.'s.
4. All new LFO's and those expanding to the next level shall require a Conditional Use Permit and shall be located no less than a distance from non-farm residences or other residences not on an owner's property in any affected Zoning District as hereafter described:
 - a. Small Confined Feeding Operation = considered a farming operation;
 - b. Medium Confined Feeding Operation = 301 A.U.'s to 999 A.U.'s;
 - c. Large Confined Feeding Operation I = 1,000 A.U.'s to 4,999 A.U.'s;
 - d. Large Confined Feeding Operation II = 5,000 A.U.'s to 9,999 A.U.'s
 - e. Large Confined Feeding Operation III = 10,000 A.U.' to 19,999 A.U.'s
 - f. Large Confined Feeding Operation IV = 20,000 A.U.'s or more

TABLE 1: LFO SPACING AND DISTANCE (Distances given in miles)

Size of Proposed LFO in Animal Units/real numbers (as indicated).	Non-farm or Other Residence and Other LFO's (feet)
Small Confined Feeding Operation	1,320
Medium Confined Feeding Operations	2,640
Large Confined Feeding Operations I	3,300
Large Confined Feeding Operations II	3,960
Large Confined Feeding Operations III	5,280
Large Confined Feeding Operations IV	5,280 + 12 inches for each additional animal unit above 20,000.

5. LFO's shall locate at a distance as specified under Table 1 from a residence not on the property, platted residential area, public park, recreational area, church, cemetery, religious area, Interstate 80, school, historical site, and/or residential district.
6. Measurements shall be from the nearest point of any LFO to the nearest point of the other use/structure including other LFO's. When there are two or more LFO's of different size, the separation distance for the larger LFO shall be applied. The setback is not intended to be measured from property line to property line.
7. All LFO's over 20,000 Animal Units shall be required to obtain a new Conditional Use Permit prior to any expansion, unless it meets the standards of the exceptions in the Exceptions Section.
8. The producer shall have a Pre-submission meeting with the Seward County Zoning Administrator to discuss tentative plans and layouts prior to formal submission of any application.
 - a. New waste handling facilities for LFO's defined as any class of Large Confined Feeding Operation shall either be synthetically lined or be a concrete structure.
 - b. A proposed site plan and conditions or requirements of this regulation pending approval of application for a proposed operation and waste disposal plan from the Nebraska Department of Environmental Quality (NDEQ) or any other applicable State Agency.
 - c. The applicant shall submit all pertinent materials and designs, as per the Conditional Use Permit Application for Livestock Feeding Operations.
 - d. The applicant shall file a copy of the proposed Operation and Maintenance Plan and proposed Manure Management Plan. The approved plans shall be submitted after NDEQ approval if different from the proposed. Said plans shall be filed with the Seward County Zoning Administrator.
 - e. Shall also file a copy of all approved NDEQ plans and permits with the Seward County Zoning Administrator within 30 days after they are issued by the NDEQ.
 - f. An annual manure management plan shall be submitted to the Seward County Zoning Administrator which shall follow "best possible management practices" as specified by NDEQ in order to protect the environment, as well as the health, safety and general welfare of the public and their property values.
 - g. If stockpiling of animal waste and/or composting of dead carcasses, as per State Statutes, are part of the manure management plan, the waste shall be maintained in an area as outlined in Table 1 of this Section. Said area shall also be located on the proposed site plan indicated in number (1) above.
 - h. All ground surfaces within outside livestock pens shall be maintained to insure proper drainage of animal waste and storm or surface runoff in such a manner as to minimize manure from being carried into any roadway ditch, drainage area or onto a neighbor's property.
 - i. In no event shall any manure storage unit or system be constructed where the bottom of the unit or system is either in contact with or below the existing water table where the unit or system is to be constructed. Application of manure in flooded areas of standing water shall be prohibited.
 - j. All runoff or waste generated by an LFO facility shall be contained within the associated farming operation, or, on the premises upon which the confined feeding facility or feedlot is located. The applicant must verify that all runoff control ponds, lagoons, methods of manure disposal and dust control measures are designed to minimize offer and air pollution, and avoid surface or groundwater contamination as regulated by the State of Nebraska.
9. Exceptions:
 - a. The modification of any existing waste handling system as required by either or both EPA and/or NDEQ for purposes of compliance with State and Federal regulations shall be allowed to be modified outright and shall not require any conditional use permit.

4.03.05 Permitted Accessory Uses

The following accessory buildings and uses are permitted in the A-1 District.

1. Buildings and uses customarily incidental to the permitted and conditional uses.
2. Home occupation as provided for in Section 8.07 and 8.08.
3. Temporary buildings and uses incidental to construction work which shall be removed upon the completion or abandonment of the construction work.
4. Small Wind Energy Systems as provided for in Section 8.03.

4.03.06 Lot Requirements and Intensity of Use

The following table lists the minimum lot requirements and maximum building requirements in an A-1 District. These requirements shall be followed unless otherwise modified by this Resolution

Uses	Min Lot Area (acres)	Min. Lot Width (feet)	Setbacks			Max. Lot Coverage (%)	Max. Building Height (feet)
			Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)		
Permitted Uses	<u>5</u>	100	35	35	20	10	<u>50</u> ¹
Conditional Uses	<u>5</u>	100	35	35	20	10	
Agricultural uses	1	100	35	35	20	10	

¹ for structures intended for human occupancy, all other structures have no restrictions.

4.03.07 Supplementary Regulations

1. No new building shall be hereafter erected or any existing building structurally altered with any portion of said building nearer than 120 feet from the R.O.W. line of a U. S. or State designated highway, and not nearer than 90 feet from the centerline of a County road.
2. Residential dwelling units on non-agricultural land existing at the time of passage of these regulations, may construct accessory structures, make repairs, replace, remodel, rebuild or replace the residential structure in case of damage regardless of the percent of damage or extent of structural change provided the use does not change.
3. New non-farm residences shall be located no less than at the following distances and those shown in Table 2: Non-farm Residence Spacing and Distance, from an existing agricultural operation having between 50 and 300 animal units and an LFO based upon the type of operation.

TABLE 2: NON-FARM RESIDENCE SPACING AND DISTANCE (Distances given in feet)

	SIZE OF EXISTING AGRICULTURAL OPERATION AND LFO IN A.U.					
New Non-Farm Residence	300 and less	301-1,000	1,001 -4,999	5,000 – 9,999	10,000-19,999	20,000+
	2,640	5,280	6,600	7,920	10,560	13,200

4.04.05 Area and Intensity Regulations

In the TA-1 Transitional Agricultural District the height of buildings, the minimum dimensions of lots and yards, and the minimum lot area per family permitted on any lot, shall be as follows:

The following table lists the minimum lot requirements and maximum building requirements in an **TA-1** District. These requirements shall be followed unless otherwise modified by this Resolution

Uses	Min. Lot Area (acres)	Min. Lot Width (feet)	Setbacks			Max. Lot Coverage (%)	Max. Building Height (feet)
			Front Yard (feet)	Rear Yard (feet)	Side Yard (feet)		
Permitted Uses	<u>5</u>	200	30	25	15	25	<u>50</u> ¹
Conditional Uses	<u>5</u>	200	30	25	15	25	
Accessory Uses	-	-	30	5	5	10	

¹ for structures intended for human occupancy, all others no restrictions.

4.04.06 Other Applicable Provisions

No new building shall be hereafter erected or any existing building structurally altered with any portion of said building nearer than 120 feet from the R.O.W. line of a U. S. or State designated highway, and not nearer than 90 feet from the centerline of a County road.

Section 4.13 GWC Groundwater Conservation District

4.13.01 Intent

The intent of this overlay district is to protect the environmentally sensitive lands and the limited supply of groundwater found within the approximate eastern 1/3 of Seward County. The overlay is not intended to eliminate specific uses from this portion of Seward County but to limit uses, especially those that are water intensive. Water intensive uses shall include but are not limited to residential development(s) and confined feeding operations.

4.13.02 Purpose

The purpose of this overlay district is to provide additional criteria in the eastern 1/3 of Seward County. This overlay district does not limit specific uses; these shall be controlled by the underlying districts. This overlay only works to prescribe certain conditions in regard to groundwater availability, drawdown, and usage. Applicants are required to demonstrate specific conditions prior to approval of any requested use including any uses that are considered as permitted and/or as conditional uses.

The requirements of this overlay district include a number of mechanical testing and monitoring techniques as well as common sense practical conservation methods. The combination of these two approaches is intended to create an area of Seward County where a mixture of desirable uses can be established and/or expanded, while maintaining and conserving a current depleting natural resource of the area, groundwater.

4.13.03 Specific Conditions Required

The following are specific requirements and guidelines for placing any water intensive use within this overlay district.

1. Subdivisions for purposes of this district shall mean anytime a rezoning is approved for the purpose of increasing the density in a "A-1" Agricultural Preservation District or the "TA-1" Transitional Agricultural District for purposes of platted or establishing four or more lots within the same or adjoining ¼ sections.
2. No new subdivisions shall be platted within this overlay unless developments of four or more lots per ¼ section are supplied by a regional system or rural water district and are required to construct a central distribution system to supply water to the individual lots of the development.
 - a. The central water system shall meet all county, state, and federal guidelines.
 - b. The developer shall demonstrate that the proposed central water system will not create an impact upon existing properties and wells surrounding the development.
 - c. The central water system shall be designed to provide fire protection flows to the development.
3. Subdivision developments will be required to maintain a minimum of 15% of the development in green space or crop ground, as defined in 4.13.03 (1) above.
 - a. Subdivisions shall meet all requirements in the Subdivision Regulations and the items within this Section.
 - b. A subdivision may clear 15% of all tree cover and/or natural ground cover such as prairie grasses for individual lots that are constructing a structure or structures. The necessary ground cover may be disturbed for constructing streets and infrastructure.
 - c. The developer shall provide the County with a site plan and construction plan for such developments.
 - d. All required green space will be required to be held in a conservation easement and made part of a homeowner's association agreement, the developer, or another authorized organization or agency.
4. Parcels with residential dwellings shall maintain a maximum of 50% of their property in drought sensitive grass and landscaping materials unless it is maintained in cropland and/or rangeland. The remaining portion of the property shall be in drought tolerant grasses and landscaping including xeriscaping.
 - a. The drought sensitive portion of the property shall not exceed ¼-acre 60 foot perimeter of ground immediately surrounding the dwelling unit and any nearby accessory structures.
 - b. Underground sprinklers shall not be allowed in this overlay district. unless the Sprinkler system incorporates Smart Water Application Technologies (SWAT). The SWAT system shall include the controller and an on-site sensor to monitor weather conditions and estimate the daily reference evapotranspiration (ETo). The weather sensor shall suspend irrigation instantly if rainfall is detected and measure and account for effective rainfall to prevent over watering.
5. Parcel where 15% or more of the land area is in tree cover and/or natural ground cover such as prairie grasses, only 15% of the sites tree cover and/or ground cover may be disturbed for purposes of constructing a structure or structures.
6. All other uses including commercial and industrial developments shall be required to meet the requirements of this Section.
7. No construction on slopes of 15% or more shall be allowed in this overlay district.
8. Wetlands within this area shall not be disturbed or mitigated and shall be maintained and conserved as part of any construction project.

9. Only small CAFOS shall be allowed within the overlay district, but all confined pens and shelters shall be for purposes of short term confinement including back grounding and calving. The open grazing of livestock within this overlay is highly encouraged.

10. No new wells shall be drilled within this overlay for purposes of filling existing or new ponds or swimming pools. Installers and Contractors that knowingly violate this standard are subject to

Section 4.13.05 Fines and Penalties.

11. New residences shall be required to implement all forms of water conservation procedures including sinks, water closets, showers and other interior water uses.

12. Replacement wells for existing residences shall meet all regulations of the Nebraska Department of Natural Resources, subsequent agencies.

13. All new or replacement wells for residential ~~use only purposes~~, within this overlay shall not exceed a pumping capacity of ~~15 to 20~~ gallons per minute. Installers and Contractors that DO NOT design to this standard are subject to Section 4.13.05 Fines and Penalties.

14. All ground source heat pump systems shall be a closed loop system.

15. All rural water districts shall be required to construct all wells outside of this overlay district.

4.13.04 Approval

Approval of an application within this overlay district shall only occur upon the applicant complying with and meeting the requirements of this Section. Failure to meet the requirements and conditions of this Section shall result in an application being denied.

4.13.05 Fines and Penalties

Violation of the section, once an application is approved, or no application was given by Seward County shall be considered a violation of this regulation and shall constitute a misdemeanor. Any person who violates this regulation or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 per offense, with each day resulting in a separate offense, and in addition, shall pay all costs and expenses involved in the case.

Section 5.01 General Provisions

The County Board of Commissioners may, by conditional use permit after a Public Hearing and referral to and recommendation from the Planning Commission (with specific findings of fact), authorize and permit conditional uses as designated in the district use regulations. Approval shall be based on findings that the location and characteristics of the use will not be detrimental to the health, safety, morals, and general welfare of the area.

Allowable uses may be permitted, enlarged, or altered upon application for a conditional use permit in accordance with the rules and procedures of this resolution. The County Board of Commissioners may grant or deny a conditional use permit in accordance with the intent and purpose of this resolution. In granting a conditional use permit, the County Board of Commissioners will authorize the issuance of a conditional use permit and shall prescribe and impose appropriate conditions, safeguards, and a specified time limit for the performance of the conditional use permit.

A request for a conditional use permit or modification of a conditional use permit may be initiated by a property owner or his or her authorized agent by filing an application with the County. The application shall be accompanied by any necessary drawing(s) or site plan and other such plans and data showing the dimensions, arrangements, descriptions data, and other materials constituting a record essential to an understanding of the proposed use and proposed modifications in relation to the provisions set forth herein. A plan as to the operation and maintenance of the proposed use shall also be submitted.

Any approval or denial of a conditional use permit shall be accompanied by specific findings of fact.

Section 5.02 Public Hearing

Before issuance of any conditional use permit, the County Board of Commissioners will consider the application for the conditional use permit together with the recommendations of the Planning Commission at a public hearing after prior notice of the time, place, and purpose of the hearing has been given by publication in a legal paper of general circulation in Seward County, one time at least 10 days prior to such hearing.

Any notification and signing of property shall be per State Statutes and by specific procedures established by Seward County.

Section 5.03 Decisions

A majority vote of the County Board of Commissioners shall be necessary to grant a conditional use permit. In the case of no action on the permit, the County Board of Commissioners, unless a longer period was specifically granted, the conditional use permit shall become invalid after a period of 12 months from the date of such order,

Section 5.04 Standards

~~No conditional use permit shall be granted unless~~ The Planning Commission and County Board of Commissioners has found: **shall review the following points before voting on a conditional use permit.**

1. The use shall in all other respects conform to the applicable regulations of the district in which it is located, unless specifically authorized by the Board.
2. The use shall have adequate water, sewer, and drainage facilities.
- ~~3. The use shall be in harmony with the character of the area and the most appropriate use of the land.~~
- 3-4. That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, and safety, moral, comfort, or general welfare of the county of the surrounding properties.**
- 4-5. That the conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, nor substantially diminish and impair property values within of the neighborhood. surrounding properties.**
- 5-6. That the establishment of the conditional use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.**
- 6-7. That adequate utilities, access roads, and drainage facilities have been or are being provided.**
- 7-8. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.**
- 8-9. The use shall not include noise, which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled. The use is sufficiently compatible or separated by distance and/ or screening from agricultural or residential zoned or land use.**

- ~~9~~ 10. The use shall not involve any pollution of the air by fly-ash, dust, vapors or other substance which is harmful to health, animals, vegetation or other property or which can cause soiling, discomfort, or irritation.
- ~~10~~ 11. The use shall not involve any malodorous gas or matter, which is discernible on any adjoining lot or property.
- ~~11~~ 12. The use shall not involve any direct or reflected glare, which ~~is visible from any~~ **adversely effects any** adjoining property, ~~or from any~~ Public Street, road, or highway.
- ~~12~~ 13. The use shall not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
- ~~13~~ 14. The use shall not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

Section 5.05 Conditions

In addition to the Standards listed in Section 5.04, the Planning Commission may recommend, and the County Board of Commissioners may adopt such other conditions as may be necessary or desirable to address such concerns as the most appropriate use of the land, the conservation and stabilization of the value of property, the provision of adequate open space for light and air, concentration of populations, congestion of public streets, and the promotion of the general health, safety, welfare, convenience, and comfort of the public. The County Board of Commissioners may require such conditions and restrictions upon the Conditional Use Permit as may be deemed necessary for the protection of the public interest and to secure compliance with this resolution.

Section 5.06 Protests

In case of protest against such conditional use permit, signed by the owners of 20 percent or more of either of the area of the lots included in such proposed change, or of those immediately adjacent, such conditional use permit shall not become effective except by the favorable vote of 4/5 of all the members of the County Board. **Any**

Protest Petition that is to be heard by the County Board has to be filed with the Seward County Clerk by 4:00 pm the day before the Public Hearing.

Section 5.07 Annual Renewal/Review, where required

Where annual review of a conditional use permit is required, the applicant shall file with the zoning administrator an application and fee as may be prescribed. The zoning administrator shall review the application for compliance with conditions set in the original approval. The administrator shall renew such permit unless there is a request by the applicant to modify provisions of the original permit or the administrator finds that the use is not in conformance with the original provisions. Where such modification or noncompliance exists, the administrator shall forward the application to the Planning Commission for hearing and action. A public hearing shall be held by the planning Commission and County Board prior to issuance of the permit. An application for and approval of a renewal certificate shall be required of each owner on a yearly basis. Each applicant shall provide a site plan which shows where structures, boundaries, etc. will be located.

12. **TOWER** shall mean a self-supporting lattice, guyed, or monopole structure that supports Telecommunications Facilities. The term Tower shall not include non-commercial amateur radio operators equipment as licensed by the FCC or structure supporting an earth station antenna serving residential premises or dwelling units exclusively.
13. **TOWER DEVELOPMENT PERMIT** shall mean a permit issued by the County upon approval by the County Board of an application to develop a tower within the zoning jurisdiction of the County; which permit shall continue in full force and effect for so long as the tower to which it applies conforms to this Section. Upon issuance, a Tower Development Permit shall be deemed to run with the land during the permits duration and may be transferred, conveyed, and assigned by the applicant to assigns and successors-in-interest.
14. **TOWER OWNER** shall mean any person with an ownership interest of any nature in a proposed or existing tower following the issuance of a Tower Development Permit.

8.01.03 Location of Towers and Construction Standards

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

8.01.04 Application to develop a Tower

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

1. Name, address, and telephone number of the owner and if applicable, the lessee of the tract of land upon which the tower is to be located. Applicants shall include the owner of the tract of land and all persons having an ownership interest in the proposed tower. The application shall be executed by all applicants.
2. The legal description and address of the tract of land on which the tower is to be located.
3. The names, addresses and telephone numbers of all owners of other towers or useable antenna support structures within a one mile radius of the proposed tower, including publicly and privately owned towers and structures.
4. An affidavit attesting to the fact that the applicant has made diligent but unsuccessful efforts to obtain permission to install or collocate the applicants telecommunications facilities on a tower or useable antenna support or written technical evidence from an engineer that the applicants telecommunications facilities cannot be installed or collocated on another tower or useable antenna support structure.
5. Written technical evidence from an engineer that the proposed tower will meet the established Building Code, and all other applicable construction standards set forth by the County Board and federal and state and ANSI standards.
6. Color photo simulations showing the proposed location of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the nearest residentially used and / or zoned property and nearest roadway, street or highway.
7. Descriptions and diagrams of the proposed tower, telecommunications facilities and/or antenna, manufacturers literature, appurtenances such as buildings, driveways, parking areas, and fences or other security enclosures with significant detail to allow persons reviewing the application to understand the kind and nature of the proposed facility.
8. Seward County shall require an appropriate space for its operational and emergency services communication equipment at no cost to the County as negotiated between the tower owner and the County.

8.01.05 Tower Development Permit: Procedure

After receipt of an application for a Tower Development Permit, the Zoning Administrator shall schedule a public hearing before the Planning Commission, following all statutory requirements for publication and notice, to consider such application. The Planning Commission shall receive testimony on the Tower Development Permit and shall make a recommendation to the County Board. Upon the completion of the Planning Commission Public Hearing the Zoning Administrator shall schedule a public hearing before the County Board, following all statutory requirements for publication and notice, to consider such application and the recommendation of the County Planning Commission. Notice, for each Public Hearing, shall be made at least one time and at least 10 days prior to such hearing. In addition, the Zoning Administrator shall cause a notice to be posted in a conspicuous place on the property on which action is pending. Such notice shall conform to the notice requirements in Section 5.01 of this regulation. The Planning Commission and County Board may approve the Tower Development Permit as requested in the pending application with any conditions or safeguards it deems reasonable and appropriate based upon the application and / or input received at the public hearings or deny the application. In all zoning districts in which towers are a permitted conditional use of land, the Tower Development Permit shall be deemed a conditional use permit for said tract of land.

8.01.06 Setbacks and Separation or Buffer Requirements

1. All towers up to 50 feet in height shall be setback on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 50 feet in height shall be set back one additional foot for each foot of tower height in excess of 50 feet. The height of the tower shall be measured from the grade at the foot of the base pad to the top of any telecommunications facilities or antennas attached thereto. Setback requirements shall be measured from the base of the tower to the property line of the tract of land on which it is located.
2. Towers exceeding 100 feet in height may not be located in any residentially zoned district and must be separated from all residentially zoned districts and occupied structures other than those utilized by the tower owner, by a minimum of 200 feet or 100% of the height of the proposed tower, whichever is greater.
3. Towers of 100 feet or less in height may be located in residentially zoned districts provided said tower is separated from any residential structure, school, church, and/or occupied structures other than those utilized by the tower owner, by a minimum of 100% of the height of the tower.
4. Towers must meet the following minimum separation requirements from other towers:
 - a. Monopole tower structures shall be separated from all other towers, whether monopole, self-supporting lattice, or guyed by a minimum of 750 feet.
 - b. Self-supporting lattice or guyed towers shall be separated from all other self-supporting lattice or guyed towers by a minimum of 1,500 feet.

8.01.07 Structural Standards for Towers Adopted

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

8.01.08 Illumination and Security Fences

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

8.01.09 Exterior Finish

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

8.01.10 Landscaping

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

	Wind Turbine – Non Commercial WECS	Meteorological Towers
Property Lines	One times the total height	One times the tower height.
Neighboring Dwelling Units*		One times the tower height.
Road Rights-of-Way**	One times the tower height.	One times the tower height.
Other Rights-of- Way	One times the tower height.	One times the tower height.
Wildlife Management Areas and State Recreational Areas	NA	600 feet
Wetlands, USFW Types III, IV, and V	NA	600 feet
Other structures adjacent to the applicant's sites	NA	One times the tower height.
Other existing WECS not owned by the applicant	NA	
River Bluffs		

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

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

Section 8.04 Commercial/Utility Grade Wind Energy Systems

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

8.04.02 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. **COMMERCIAL WECS** shall mean a wind energy conversion system of equal to or greater than 100 kW in total name plate generating capacity.
3. **HUB HEIGHT** shall mean the distance from ground level as measured to the centerline of the rotor.
4. **FALL ZONE** shall mean the area, defined as the furthest distance from the tower base, in which a guyed or tubular tower will collapse in the event of a structural failure. This area may be less than the total height of the structure.
5. **FEEDER LINE** shall mean any power line that carries electrical power from one or more wind turbines to the point of interconnection with the project distribution system, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the wind energy conversion system.
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. Meteorological towers do not include towers and equipment used by airports, the Nebraska Department of Roads, or other applications to monitor weather conditions.
7. **PROPERTY LINE** shall mean the boundary line of the area over which the entity applying for a Wind Energy Conversion System permit has legal control for the purpose of installing, maintaining and operating a Wind Energy Conversion System.
8. **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, Public conservation lands will also include private lands upon which conservation easements have been sold to public agencies or non-profit conservation organizations.
9. **ROTOR DIAMETER** shall mean the diameter of the circle described by the moving rotor blades.
10. **SMALL WIND ENERGY SYSTEM** shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

Way		
Wildlife Management Areas and State Recreational Areas	600 feet	600 feet
Wetlands, USFW Types III, IV, and V	600 feet	600 feet
Other structures and cemeteries adjacent to the applicant's sites	One times the tower height.	One times the tower height.
Other existing WECS not owned by the applicant.	6,000 lineal feet	
River Bluffs	1,320 feet	

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

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

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

1. Clearance of rotor blades or airfoils must maintain a minimum of 12 feet of clearance between their lowest point and the ground.
2. All Commercial/Utility WECS shall have a sign or signs posted on the tower, transformer and substation, warning of high voltage. Other signs shall be posted on the turbine with emergency contact information.
3. All wind turbines, which are a part of a commercial/utility WECS, shall be installed with a tubular, monopole type tower.
4. Consideration shall be given to painted aviation warnings on all towers less than 200 feet.
5. Color and finish: All wind turbines and towers that are part of a commercial/utility WECS shall be white, grey, or another non-obtrusive color. Blades may be black in order to facilitate deicing. Finishes shall be matte or non-reflective.
6. Lighting: Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by the FAA permits and regulations. Red strobe lights shall be used during nighttime illumination to reduce impacts on neighboring uses and migratory birds. ~~Red-White~~ pulsating-incandescant lights should **shall** be avoided.
7. Other signage: All other signage shall comply with the sign regulations found in these regulations.
8. Feeder Lines: All communications and feeder lines associated with the project distribution system installed as part of a WECS shall be buried, where physically feasible. Where obstacles to the buried lines create a need to go above ground, these lines may be placed above ground only to miss the obstacle. All distribution and/or transmission lines outside of the project distribution system may be above ground.
9. Waste Disposal: Solid and Hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site promptly and disposed of in accordance with all applicable local, state and federal regulations.
10. Discontinuation and Decommissioning:
 - a. 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 four feet below ground level within 180 days of the discontinuation of use. The 180 days may be extended if proof of weather delays is provided.
 - 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 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.
11. Noise: No Commercial/Utility WECS shall exceed 50 dBA at the nearest structure or use occupied by humans.
12. Interference: The applicant shall minimize or mitigate interference with any commercial or public safety electromagnetic communications, such as radio, telephone, microwaves, or television signals

caused by any WECS. The applicant shall notify all communication tower operators within five miles of the proposed WECS location upon application to the county for permits.

13. Roads: Applicants shall:
 - a. Identify all county, municipal or township roads to be used for the purpose of transporting WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the WECS and obtain applicable weight and size permits from the impacted jurisdictions prior to construction.
 - b. Conduct a pre-construction survey, in coordination with the appropriate jurisdictions to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public road.
 - c. Be responsible for restoring the road(s) and bridges to preconstruction conditions.
14. Drainage System: The applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the WECS.

Section 8.05 Waste Disposal Sites and Landfills

A Conditional Use Permit may be granted for any waste material disposal, garbage disposal or land fill operations in the designated zoning district; provided the following special conditions shall be considered:

1. The effects on the adjacent property, traffic, and
2. The public necessity and advantage.
3. The maintenance of access routes related to all weather conditions and droppings of rubbish and liter
4. The effects on underground water quality.
5. The immediate and long term effects on the environment and the public.
6. The concerns for public safety.
7. The application shall include documents to indicate conformance to all applicable governmental regulations and standards.
8. The application shall include affidavits or permits from the Environmental Protection Agency and/or the Nebraska Department of Environmental Quality, in the event an approval is required by these agencies.

Section 8.06 Sanitary Requirements

1. It shall be unlawful to occupy a residential structure or any building for living purposes that does not have an approved waste system. For purposes of this Article, an approved system shall meet or be equivalent to criteria as defined by "Rules and Regulations for the Design, Operation and Maintenance of Septic Tank Systems in Nebraska," as published by the Nebraska Department of Environmental Quality (NDEQ).
2. Soil percolation tests shall be conducted in the area where the system will be located. ~~for those soils having severe limitations for such systems as identified by the Seward County Soil Survey and Seward County Comprehensive Plan.~~
3. A waste disposal system evaluation shall be required for septic systems serving all new residences. Evaluations shall be on forms furnished by the office of the Zoning Administrator.

Section 8.07 Home Occupations and Home Based Businesses in Residential Districts

- 8.07.01 *Intent:* A home occupation or home based business shall be permitted when said occupation or business is conducted on residentially used and/or zoned property and is considered customary, traditional, and incidental to the primary use of the premises as a residence, and shall not be construed as a business.
- 8.07.02 *Procedure:*
 1. Home Occupations: An application for a home occupation, within residentially zoned areas shall be made to the Seward County Zoning Administrator on a form provided. Said application shall be approved, provided the performance criteria are met.
 2. Home Based Businesses: An application for a home based business, within residentially zoned areas shall be made to the Seward County Zoning Administrator on a form provided. Said application shall be approved, provided the performance criteria are met.
- 8.07.03 *Permitted home occupations:*
 1. Workrooms for dressmaking, millinery, sewing, weaving, tailoring, ironing, washing, jewelry making, custom home furnishings work, carpentry work, and furniture repair.
 2. Offices for professionals such as, but not limited to, attorneys, architects, engineers, planners, real estate agents, insurance, notary public, manufacturer's representative, clergy, journalists, painters, photographers, dentists, doctors, draftspersons, insurance agents, accountants, editors, publishers, psychologists, contract management, graphic design, construction contractors, landscape design, surveyors, cleaning services, salespersons, and travel agents.