

**CHAVES COUNTY
PLANNING & ZONING COMMISSION
JUNE 7, 2022 AT 5:30 P.M.
COMMISSION CHAMBERS
CHAVES COUNTY ADMINISTRATIVE CENTER
#1 ST. MARY'S PLACE, ROSWELL, NM**

A G E N D A

I. CALL TO ORDER

II. ROLL CALL

III. CONSIDERATION OF MINUTES: May 3, 2022

IV. NEW BUSINESS

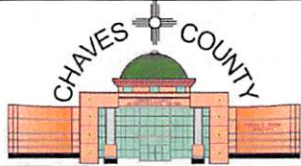
1. **Case Z 2022-07:** Request for a Special Use Permit for a Community Solar Array Facility in the SE4SE4 S19 and W2W4SW4 S20, T10S, R25E, at 3800 block of Zinnia Rd, Roswell; owner-Blackwell Revocable Trust; applicant-Ameresco
2. To consider amendments to Articles II, III and IV of the Chaves County New Mexico Zoning Ordinance No.7

V. OTHER BUSINESS

UNSCHEDULED COMMUNICATION LIMITED TO THREE MINUTES PER VISITOR. NO FORMAL ACTION TAKEN BY THE COMMISSION.

VI. ADJOURNMENT

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Planning & Zoning Department at 624-6606 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Planning & Zoning Department at 624-6606 if a summary or other type of accessible format is needed.

<p align="center">Chaves County Planning & Zoning Commission</p>	<p align="center">Chaves County</p>	
<p>Meeting Date: May 3, 2022</p>	<p align="center"><i>Meeting Minutes</i></p>	<p align="center">Created By: Julia A. Torres</p>

Members Present:

Mark Lewis
Valli West
Brian Archuleta
Dale Rogers

Members Absent:

Andy Morley

Guests:

Carson Weinand, CVE North America
Jim Mitchell, JHTC Investments
Tom Jennings
Reyna Vasquez

Staff Present:

Louis Jaramillo
Julia A. Torres

The Regular Meeting of the Chaves County Planning & Zoning Commission was held in the Commission Chambers at the Chaves County Administrative Center on May 3, 2022, beginning at 5:30PM.

MINUTES

The minutes of the April 5, 2022, meeting were approved unanimously as submitted.

NEW BUSINESS

1. Case Z 2022-04

Request for a Special Use Permit for a Community Solar Array Facility in the N2NE4NW4 S10 T12S R25E aka Tract 1 and Tract 2 Seward-Hubble Boundary Survey, 334 Tumbleweed Rd., Dexter; owner-Thomas Warren; applicant-CVE North America, Inc.

Louis Jaramillo gave a brief description of this case. Should the request receive favorable consideration, Staff recommended nine (9) Conditions of Approval and three (3) Findings of Fact listed on the Staff Report.

Commissioner West asked if the property owner lived in Chaves County and if the property was in a “designated” flood area. Mr. Jaramillo stated that he did not live in Chaves County. According to the 2009 FIRM maps, the property was not in a designated flood hazard area, although staff was cautious since this area was prone to flooding and ponding. The last flooding in the area was reported in 2021, although there were no major flooding damages reported in this specific area.

Carson Weinand, Senior Business Developer at CVE North America Inc. provided some information on the solar energy facility project application including their decommissioning plan.

Commissioner Lewis wanted to know how long was the equipment good for and if Mr. Weinand had talked to the neighbors. Mr. Weinand responded that the equipment was good for about 35 years and that they had not talked to the neighbors, but did note that the property was in an isolated area. He also stated that they are willing to have conversations with the neighbors about the project.

Commissioner Archuleta asked Mr. Weinand to explain how the customers would be able to sign up for the services. Mr. Weinand explained that only Xcel customers in and outside Chaves County would be able to apply and that CVE North America Inc would take into consideration customers with a 650 credit score or above. Some of those households will need to be low income.

Mr. Weinand had some questions about the Conditions of Approval. One of them was regarding the setback requirements. Mr. Jaramillo responded that the setback requirements applied to the perimeter property lines and did not apply to the interior property lines since there were two (2) parcels. Mr. Weinand mentioned that they might need to access Shadow Rd. during construction. Mr. Jaramillo stated that they would be able to access the 660' width of the parcels, to which Mr. Weinand responded that it was fine. He also questioned the current condition of Tumbleweed Rd. compared to Chaves County Road Standards. Mr. Jaramillo explained that it was probably currently at a lower standard than the Chaves County Road Standard. Mr. Weinand concluded his comments by stating that they are willing to provide a topography study to address any floodplain issues in the area. He did state that solar panels do not trigger floodplain analysis since they are elevated a couple of feet off the ground.

Nobody spoke in favor nor against the application.

There were some comments from the Commissioners about notifying additional neighbors about this proposed project. Mr. Jaramillo stated that staff notifies neighbors within 100 feet as required by the Zoning Ordinance. If the Commission so wishes, they can add a Condition of Approval requiring additional neighbors to be notified by staff. If so, the Commission needs to specify what neighbors they would like for staff to send notifications to. An additional Condition of Approval will be added that will require Staff to send notification to the 3 additional properties to the south of the proposed solar facility. The one just south of the property was already notified since it was within 100 feet. The letter will also contain contact information for Mr. Weinand.

Commissioner Lewis made a motion to recommend approval of Case Z 2022-04 with the Conditions of Approval including the additional one mentioned above and the Findings of Fact. Commissioner West seconded the motion. Motion carried by a 4-0 roll call vote. This case is scheduled to be heard by the Chaves County board of Commissioners on May 26, 2022 at 9:00 a.m.

2. Case Z 2022-05

Request for a Rezone to Industrial to allow an aggregate and crushing operation in T14S R25E Sec 2 NW4; Sec 3 NE4, SW4, N2NW4, SE4 less .12 acres; Sec 10 N2 @ 108 E. Chickasaw Rd., Hagerman; owner-JHTC Investments, LLC; applicant-Jim Mitchell

Louis Jaramillo gave a brief description of this case. Staff was concerned with Industrial zoning extending into agricultural areas; therefore, staff was in favor of the zone change for Section 3 and 10 but not in favor of the areal in Section 2, Township 14 South, Range 25 East. This would create a buffer area between Industrial and Agricultural parcels with homes and fields. Staff listed five (5) Conditions of Approval and four (4) Findings of Fact in the Staff Report.

Commissioner Archuleta asked if that was a water well in Section 3 and if so, what impact the crushing operation might have on it for the adjacent agriculture land. Mr. Jaramillo responded that he believed it was a domestic agricultural water well but was not sure what impact, if any, it might have to nearby properties.

Jim Mitchell at 5006 W. Thunderbird Ln., Roswell, representing JHTC Investments, spoke on the rezone application. He indicated that they are currently mining on the north side of Chickasaw Rd. and have plans to phase out that operation and move into this property to the south. Mr. Mitchell stated that they are planning on plugging the existing water well and possibly transferring some Artesian water rights and/or drilling a brand new well in the future. His business is bound by government agencies for dust mitigation efforts. JHTC is working with Chaves County to preserve the earthen dams on their properties. They have also petitioned NM DOT to install truck turning signs and/or flashing lights at the intersection of Hwy 285 and E. Chickasaw Rd. They expect to employ about 41 people among all of their facilities. Mr. Mitchell concluded by stating their economic impact of \$15.2 million in Chaves County.

Tom Jennings, P.O. Box 1797, Roswell indicated that he was not speaking in favor nor against the application. He owns a 40-acre parcel west of the proposed site which he has leased for grazing purposes. Mr. Jennings had concerns with the dust in the area and the increased traffic on E. Chickasaw Rd. He would like to come to some agreement with Mr. Mitchell regarding his 40 acres.

Commissioner Lewis asked Mr. Jennings why would it matter if the application for rezone was approved since he mentioned he had never been to the property before. Mr. Jennings responded that the crushing operation might have an impact on the minerals found on his 40 acres.

Commissioner Archuleta asked if there was any active grazing on Mr. Jennings property and if it was fenced. Mr. Jennings wasn't sure if there was active grazing and was not aware of any fencing. Mr. Jaramillo stated that there were no cattle in the area.

Mr. Mitchell approached the podium to state that they will purchase Mr. Jennings' 40-acre parcel to mitigate any other issues.

Reina Vasquez at 248 E. Chickasaw Rd. spoke against the application. Her property was just east of the proposed crushing operation. She had concerns with the dust, traffic, noise, and impact on their home value. Mrs. Vasquez also worried about her husband since he has health problems, including requiring oxygen. She did state that there might be some cattle on Mr. Jennings property.

Mr. Jaramillo stated that this was the reason staff was recommending keeping Section 2 as a buffer between the crushing operation and adjacent properties.

Commissioner Lewis asked if E. Chickasaw Rd. was an asphalt road. Mr. Jaramillo responded that it was currently chip sealed.

Commissioner Lewis wanted to know from Mr. Mitchell how they would be exiting the property. Mr. Mitchell stated that there is a gate on the east side of Section 3 which they would use for ingress and egress. He mentioned that their crushing operation would be in Section 10.

Nobody else spoke in favor nor against the application.

Commissioner Archuleta made a motion to recommend approval of Case Z 2022-05 including the Conditions of Approval and Findings of Fact and excluding the rezone request in Section 2 as noted in the Staff Report in order to create a buffer between Industrial and Agricultural areas with homes and fields. Commissioner West would also like to add an additional Condition of Approval for more road signs. A 6th Condition of Approval will be added to read as follows “Encourage the Chaves County Road Department to evaluate E. Chickasaw Rd. to increase necessary road signs for the health, safety and welfare of the citizens of Chaves County. Commissioner West seconded the motion. Motion carried by a 4-0 roll call vote. This case is scheduled to be heard by the Chaves County Board of Commissioners on May 26, 2022 at 9:00 a.m.

3. Case Z 2022-06

Request for a Rezone to Industrial for an office, shop and hot plant operation in portion of S33 T13S R25E S2SE4 E of Hwy 285 @ 5 and 31 E. Chickasaw Rd., Dexter; owner-JHTC Investments, LLC; applicant-Jim Mitchell

Louis Jaramillo gave a brief description of this case. Staff was in support of the zone change with the six (6) Conditions of Approval and four (4) Findings of Fact listed on the Staff Report.

Chair Rogers would like to add the same Condition of Approval as was done for Case Z 2022-05.

Nobody spoke in favor nor against the application.

Commissioner Archuleta made a motion to recommend approval of Case Z 2022-06 with the Conditions of Approval and Findings of Fact including a 7th Condition of Approval to read as follows “Encourage the Chaves County Road Department to evaluate E. Chickasaw Rd. to increase necessary road signs for the health, safety and welfare of the citizens of Chaves County.” Commissioner Lewis seconded the

motion. Motion carried by a 4-0 vote. . This case is scheduled to be heard by the Chaves County Board of Commissioners on May 26, 2022 at 9:00 a.m.

**4. To amend the Chaves County New Mexico Zoning Ordinance No.7, Revision #11;
Article I General Statements**

Mr. Jaramillo highlighted the proposed changes to the Chaves County Zoning Ordinance No. 7, Article I General Statements. There was some discussion on these proposed amendments. There was an additional change under Section 5 Administration, I. regarding public notification. It will be changed from 100 feet to 600 feet.

Commissioner Archuleta made a motion to recommend approval of the proposed changes including the additional one regarding public notification to change from 100 feet to 600 feet. Commissioner Lewis seconded the motion. Motion carried by a 4-0 vote. This item is scheduled to be heard by the Chaves County Board of Commissioners on May 26, 2022 at 9 a.m.

Other Business

None

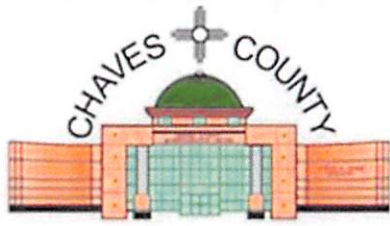
There being no other business listed on the agenda or to come before the Commission, the meeting adjourned at 7:17PM.

Approved this 7th day of June, 2022

Chairperson/Commissioner

Attest

Note: The minutes of this meeting are on file in the Chaves County Planning and Zoning office for review, upon request.



PLANNING & ZONING STAFF SUMMARY REPORT

MEETING DATE: June 07, 2022

CASE # Z 2022-07

REVIEWING BOARD	PLANNING & ZONING COMMISSION
ACTION REQUESTED:	Special Use Permit for a Community Solar Project in Area I Zone A-R - Agricultural-Residential
LAND OWNER AND AGENTS:	Blackwell Revocable Trust Zinnia NM Solar LLC
LOCATION:	3801 Zinnia Road, Roswell NM 88201 A parcel of land being in the SE/4SE/4 Sec. 19 and the W/2SW/4SW/4 of Sec. 20, T.10S. R.25E.
ITEM SUMMARY	Blackwell Revocable Trust and Zinnia NM Solar LLC are proposing a 5.0-megawatt Community Solar Facility.
SUPPORTING DOCUMENTS	Staff Report, Application, Development & Site Plan, Vicinity Map

SUMMARY BY: Louis Jaramillo–Planning & Zoning Director

STAFF'S REPORT

CASE # Z 2022-07

Blackwell Revocable Trust along with Zinnia NM Solar LLC. are requesting a Special Use Permit for a community solar facility at 3801 Zinnia Road. The property is accessible from Zinnia Road, a county-maintained road being approximately twenty-four (24") feet wide that runs from Red Bridge Road east to the proposed site. The proposed area is mostly vacant land except for a 5-acre strip of land that is owned by Mr. Roberson. This strip of land, located north and parallel to Zinnia Road, was once owned by Blackwell Revocable Trust and was part of an ethanol production facility back in the 1980s. The proposed solar facility would be located approximately 130 feet north of this 5-acre strip of land. Buildings 1 and 3 remain standing and are utilized by the Roberson Family as residential dwelling units. The area is without electrical service and domestic water, as it was serviced from a different location in the past. Mr. Roberson has asked staff for assistance with this issue in the past.

The proposed area is bound to the north, east and west by vacant land, zoned A-Agriculture and to the south by residential homes zoned A-R Agriculture-Residential. The property to the north does have a Special Use Permit for a Commercial Solar Facility. This area is scheduled to begin construction in July for the expansion of the existing facility to the north. This area is not in the flood hazard area and is designated Zone "X" per the 2009 FIRM maps.

Zinnia NM Solar LLC has provided a development plan for the proposed community solar facility. The facility would be ground based. The proposed facility would connect to the existing overhead distribution lines which run along the south side of Zinnia Road from east to west. The solar facility would be completely fenced in by a six-foot chain link fence with three barbed wire strands at the top. (See Project Description for details.) Zinnia NM Solar LLC. has provided a de-commissioning plan upon abandonment of the site.

Renewable energy facilities are not addressed in our County Zoning Ordinance nor in the County Comprehensive Master Plan. Therefore, per Section 1.A.1. of Article XVIII of the Chaves County Zoning Ordinance #7, the Board may grant a SUP in districts from which the uses are otherwise prohibited by this Zoning Code and shall impose appropriate conditions and safeguards to protect the general plan to conserve and protect the property values in the neighborhood. SUP should not create a nuisance, such as, noise, dust, glare, vibration, and interference with WIFI and cellular data. SUP should not interfere in the daily life nor create a hardship on the neighbors for which the SUP would be located.

Should the subject request receive favorable consideration, Staff recommends the following Conditions of Approval:

1. Blackwell Revocable Trust shall provide Mr. and Mrs. Roberson a twenty-foot utility easement from the 5-acres strip of land to Zinnia Road within one year. Failure to provide this easement shall result in the termination of this Special Use Permit.

2. Failure to complete the construction of the community solar facility within ten years shall result in the Special Use Permit being terminated.
3. Zinnia NM Solar LLC. shall apply for any necessary building and electrical permits for construction of the community solar facility within one year of being awarded the project.
4. Zinnia NM Solar LLC. shall utilize the existing electric lines and substations in the area.
5. All lighting used on-site shall be shielded from traffic, surrounding properties and shall comply with the NM Night Sky Act.
6. All solar panels and their foundations shall be setback from the 5-acres parcel of land and the western most property line of the proposed area, a minimum of one hundred (100) feet. All other minimum setbacks shall be fifty (50) feet for the north and east property lines.

Findings of Fact:

1. The Chaves County Zoning Ordinance #7 nor Chaves County 2016 Comprehensive Master Plan address renewable energy facilities, therefore a Special Use Permit, approved by the Zoning Authority is necessary.
2. The proposed use is compatible with the neighbor to the north as recommended in Article XVIII of the Chaves County Zoning Ordinance No. 7.
3. Owner's within 100 feet of the proposed Special Use Permit have been notified by certified mail, per Chaves County Zoning Ordinance No. 7, Article XVIII Section 2-B.1. No protest has been received at the time of this report.
4. This case has been advertised in the local newspaper and on the Chaves County website, 3 days prior to this meeting, as required by Chaves County Zoning Ordinance #7 and State Statute.



CHAVES COUNTY/ETZ ZONING ORDINANCE
APPLICATION FOR A SPECIAL USE PERMIT

Case Number: Z 2022-07 Date Received: _____ Fee: # 300⁰⁰

Name of Property Owner: Blackwell Revocable Trust Phone Number: 507-350-8585
 Mailing Address: PO BOX 477, Roswell, NM 88202
 Name of Applicant: Cindy Larson O'Neil, Project Developer, Ameresco
 Mailing Address: 701 Xenia Ave So Home Phone Number: _____
 City, State, Zip: Golden Valley, MN 55416 Business Phone Number: 952-486-1538
 Applicant Status: Owner Agent Tenant Other Solar Developer

Site Address: 3822 Zinnia Rd, Roswell, NM ETZ Chaves County
 Property Legal Description: Legal Summary S: 19 T: 10S R: 25E SE4SE4 N 993.72'-S 130.64'-N 195.64' S 326.28' W 190' M/L S: 20 T: 10S R: 25E S2SW4 S: 29 T: 10S R: 25E E2NW4/W2NW4 LESS W 344.49' S 412.6' N 2024.23'/LESS E 200' W 300' S 100' N 700' S: 30 T: 10S R: 25E NE4NE4 5 AC IN BK 764 PG 70 PRD, 275.34 ACRES (INCLUDES 29.00 ACRES OF WATER RIGHTS) UPN: 4141060107049000000
 Present Land Use: None.
 Intended Land Use: community solar facility
 Present Zoning: A-R Agriculture Residential Size of Development in Acres: 30
 Reason for Request (Attach sheets if more space is needed): Construction and operation of a community solar facility.
 Copy of Deed Attached:

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH FOR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.
 Owner's Signature: [Signature] - TRUSTEE Date: 5/2/2022
BLACKWELL TRUST

Clara Blackwell Trust Member



Project Description

Community Solar: Zinnia NM Solar LLC Project

Zinnia NM Solar LLC, a New Mexico Community Solar project, owned by Ameresco Solar Land Holdings LLC, respectfully submits this application for a Special Use Permit (SUP) to Chaves County. Zinnia NM Solar LLC community solar requests that Chaves Planning and Zoning Commission and Chaves County Board of Commissioners approves for the Project to be permitted, constructed, owned, and operated by Zinnia NM Solar LLC. This project will be part of the New Mexico Community Solar program enacted in 2021 by the state legislature.

3801 Zinnia Road, Roswell, NM 88201

The project will be located at ~~3824 Zinnia Rd, Roswell, NM 88201~~ in Chaves County. The project will take up approximately 30 acres of the 280-acre parcel. The project will be a 5-megawatt (MW) community solar facility located on the northwest portion of the parcel. The property is zoned A-R Agriculture Residential. The access road is planned to be off the end of Zinnia Rd at the easterly point running north to the facility. We have reached out to the neighbors to address any concerns and questions. Neighbors we have spoken with have no concerns about the project and are excited to be potential subscribers to the community solar project.

Ameresco, Inc. (NYSE: AMRC) is a leading cleantech integrator and renewable energy asset developer, owner, and operator. Founded in 2000, as one of America's largest solar developers, Ameresco has 147 megawatts in solar assets with another 217 megawatts in development and construction in the US. We are a partner-driven company and consider landowners and community members as partners in this opportunity.

Ameresco Solar Land Holdings LLC. | www.ameresco.com

701 Xenia Avenue South, Golden Valley, MN 55416 | 952-486-1538

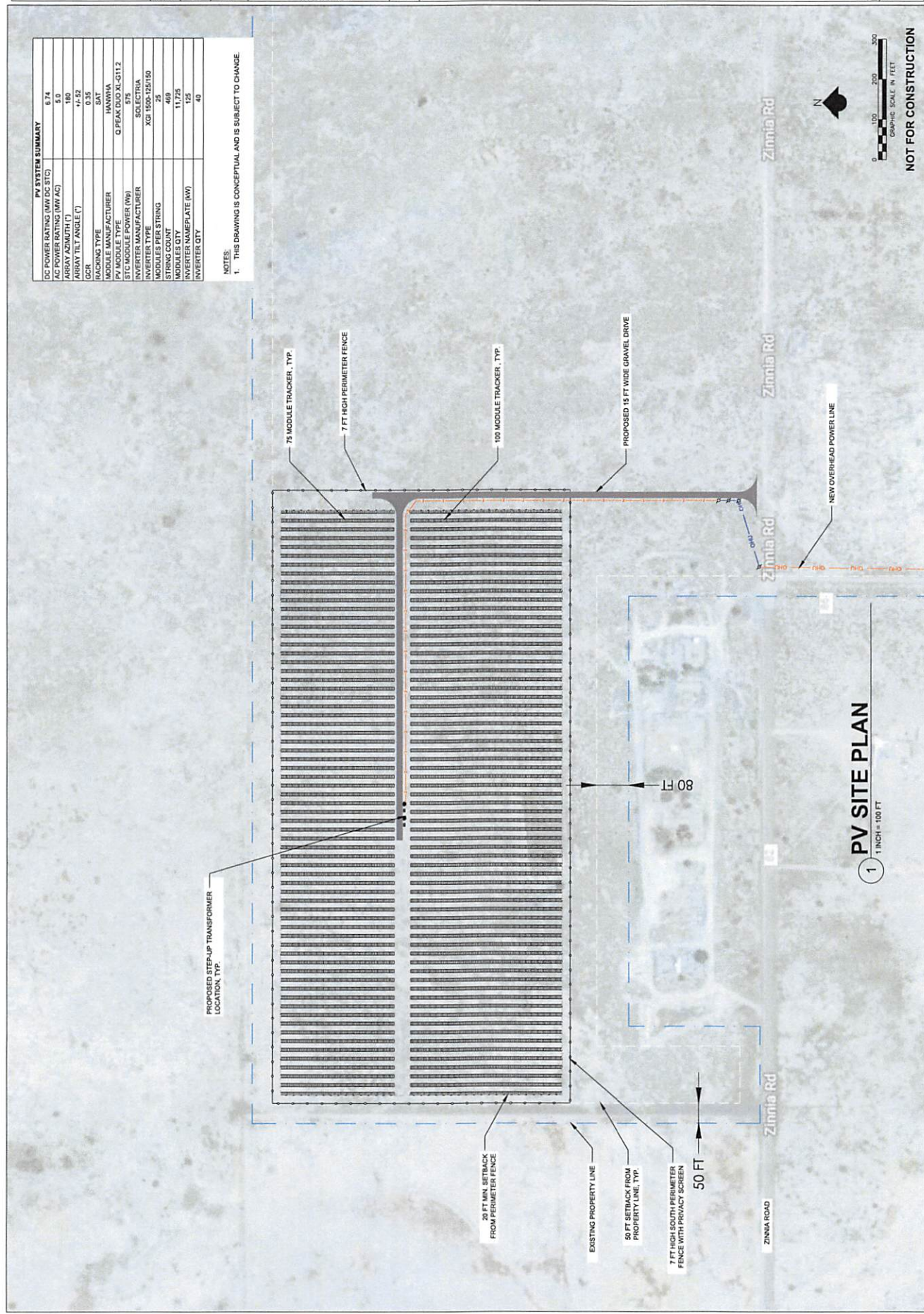
REV	DATE	DESCRIPTION	CHK BY
A	05/03/2022	PRELIMINARY	CMG

Project No:	NM000
Project:	ZINNIA NM SOLAR LLC
Address:	33 4189025, -104.4321658
Scale:	AS SHOWN
Sheet Size:	D

PV SITE PLAN

PV SYSTEM SUMMARY	
DC POWER RATING (MW DC STC)	6.74
AC POWER RATING (MW AC)	5.0
ARRAY AZIMUTH (°)	180
ARRAY TILT ANGLE (°)	47.52
TRACKING TYPE	SAT
MODULE MANUFACTURER	HANWHA
PV MODULE TYPE	Q PEAK DUO XL-G11.2
STC MODULE POWER (W)	575
INVERTER MANUFACTURER	SOLETRIA
INVERTER TYPE	XG1 1500-125/150
MODULES PER STRING	25
STRING COUNT	489
INVERTER COUNT	1125
INVERTER NAMEPLATE (W)	1325
INVERTER QTY	44

NOTES:
 1. THIS DRAWING IS CONCEPTUAL AND IS SUBJECT TO CHANGE.



1 PV SITE PLAN
 1 INCH = 100 FT



NOT FOR CONSTRUCTION

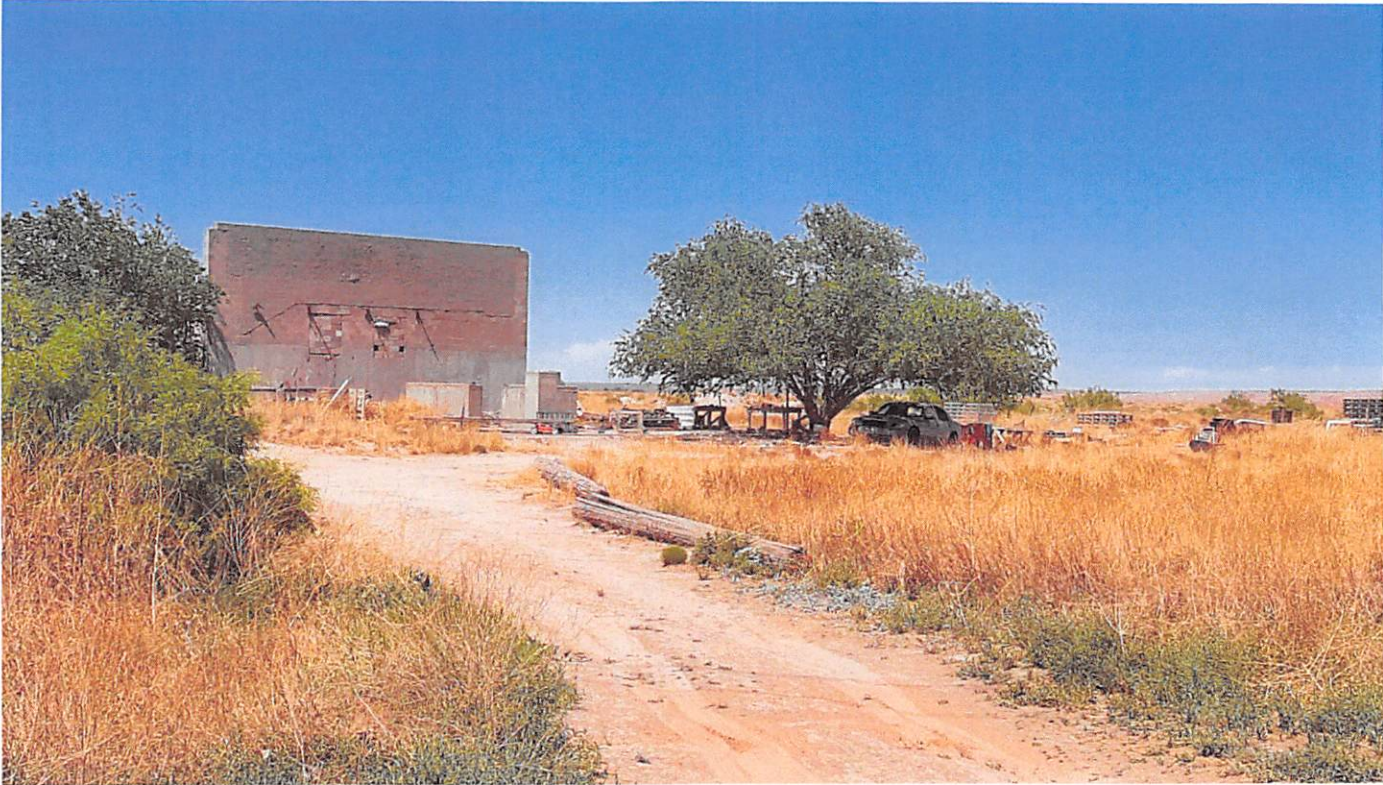
Zinnia Road looking east toward Red Bridge Road.



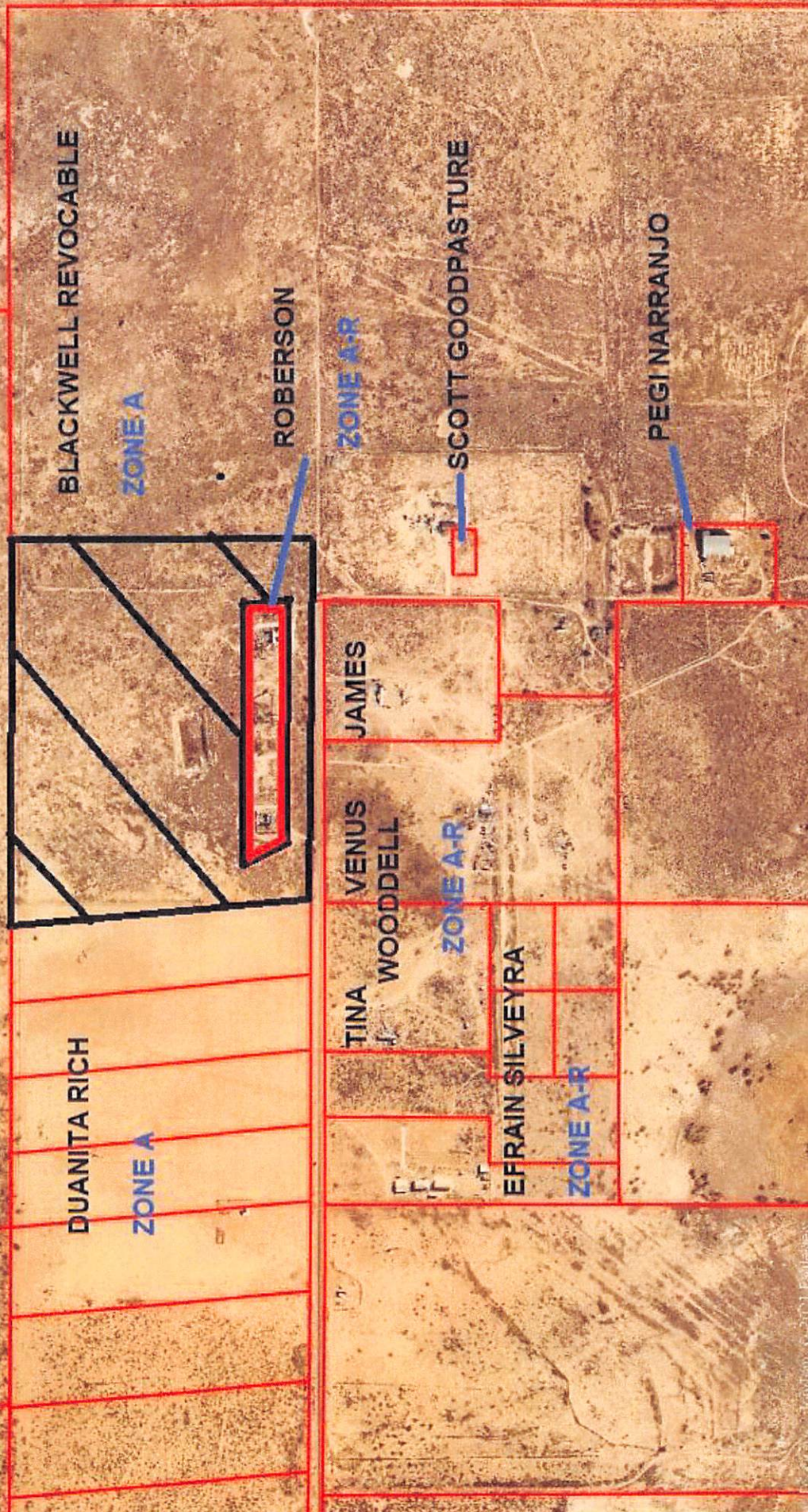
Structures located on the 5-acre parcel of land



Structures located on the 5-acre parcel of land



CHAVES COUNTY SOLAR II LLC
SUP COMMERCIAL SOLAR



ARTICLE II
RULES OF CONSTRUCTION AND DEFINITIONS

Section 1 RULES OF CONSTRUCTION

- A. In the construction of the Chaves County ~~New Mexico~~ Zoning Ordinance, the following rules shall be observed unless the construction would be inconsistent with the manifest intent of the regulations;
1. Words and phrases shall be construed according to the context and the approved use of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed according to such meaning.
 2. Words importing the singular number may be extended to several persons or things, works importing the plural number may be applied to one person or thing, and words importing the masculine gender only may be extended to females.
 3. In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended to include the whole of the following Monday.
 4. The words "shall" and "will" are mandatory and "may" is permissive or directory.
 5. The word "building" shall include the word "structure."

Section 2 DEFINITIONS

As used in the Chaves County ~~New Mexico~~ Zoning Ordinance:

ABANDONMENT when a structure or use has been inactive for a six-month period or more.

ABSORPTION FIELD means an area in which open joint or perforated piping is laid in gravel packed trenches or excavations for the purpose of distributing the effluent discharged from a tank used as a part of an individual liquid waste disposal system for absorption into the soil.

ACCESSORY BUILDING, STRUCTURE OR USE a subordinate detached building or use which is incidental to and customary in connection with the principal building or use and which is located on the same lot with the principal building or use.

ADULT ARCADE means an enterprise where, for any forms of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial enterprise, whether or not alcoholic beverages are served, which features

- (a). persons who appear nude or semi-nude; or
- (b). live performances which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or
- (c). films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT DAY CARE CENTER: A facility licensed by the State as an adult day care center or as an adult respite facility, which provides care, services and supervision for less than twenty-four (24) hours a day to three (3) or more adults, who because of diminished mental or physical capacity, find it difficult to care for themselves in their own residence during the day. Adult day care does not include public or private school facilities or senior recreation centers.

ADULT DAY CARE HOME: A private dwelling in which a resident of the dwelling has been licensed by the State to provide adult day care home services or adult respite home services, and who provides care, services and supervision for less than twenty-four (24) hours a day to at least three (3) adults but not more than five (5) adults, who because of diminished mental or physical capacity find it difficult to care for themselves in their own residence during the day. The use as an adult day care home or adult respite home shall be an accessory use. The primary use shall be as a private residence.

ADULT ENTERTAINMENT EMPLOYEE means any and all persons, including managers, entertainers, and independent contractors who work in, render services to, and have direct interaction with clientele of the sexually oriented business or Adult Entertainment Enterprise.

ADULT ENTERTAINMENT ENTERPRISE means any establishment, commercial and/or retail enterprise, including, but not limited to, an adult arcade, adult cabaret, adult bookstore, adult lounge, adult encounter center, adult lotion or massage parlor, adult modeling studio, adult motel, adult movie, adult movie theater, adult panorama establishment, adult video store, live adult entertainment establishment, massage parlor, nude or semi-nude model studio, sexual encounter center or establishment, or any similar establishment to which customers are invited or permitted access and which, for consideration of any kind, offers sexually-oriented materials to such customers when: (a) any live, video, photographic or film Adult Materials; (b) other Adult Materials are displayed to customers while on the premises of the establishment; and/or (c) makes available rooms or private areas that cater to engagement of sexual entertainment or activities, and the establishment: (i) represents to be or is primarily in the business of offering such services or (ii) the sale of such constitutes either ten percent (10%) or more of the establishment's stock in trade at the location of sale, as computed by items offered for sale, or ten percent (10%) of gross revenue, whichever is less. Specifically such establishment is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas of the male and female sexual genitalia, and the likeness thereof whether in print, video, or objects whose shape and intended use mimic such, and exclude minors by virtue of age.

ADULT ENTERTAINMENT LAND USE means any use of the land for a sexually-oriented business or adult entertainment enterprise.

ADULT MATERIAL means

1. books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes, slides, digital storage devices or other devices and other visual representations; recordings, other audio matter; novelties or devices which have as their primary or dominant theme subject matter depicting exhibiting, illustrating, describing or relating to sexual activities or specified anatomical areas including male and/or female genitalia and female breasts exposing the areola, and nudity intended to arouse the viewer sexually, or
2. instruments, novelties, devices or paraphernalia which are designed for use in connection with specified sexual activities.

ADULT MINI THEATER means an enclosed building with a capacity of less than 50 persons, a portion of an enclosed building with a capacity of less than 50 persons, or an outdoor theater with a capacity of less than 50 persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter for observations by patrons therein.

ADULT MOTEL means a hotel, motel, or similar commercial enterprise which:

1. Offers accommodations to the public for any form of consideration and provides patrons with
 - (a). closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; and
 - (b). which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
2. Offers sleeping rooms for rent on an hourly basis; or
3. Allows tenant(s) or occupant(s) of a sleeping room to sub-rent on an hourly basis.

ADULT MOTION PICTURE means an enclosed building with a capacity of 50 or more persons, a portion of an enclosed building with a capacity of 50 or more persons, or an outdoor theater with a capacity of 50 or more persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein for observation by patrons therein.

ADULT PANORAM EXTABLISHMENT means any building or portion of a building which contains device(s) which for payment of a fee, membership fee, or other charge, is used to exhibit or display a picture, view, or other graphic display distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein.

ADULT THEATER means a concert hall, theater, auditorium, or similar commercial enterprise which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter for observation by patrons therein.

AGENT as referred to in the Flood Plain District means that person so designated by Chaves County Flood Commissioner as his agent.

AGRICULTURE the use of land and/or structures for the commercial growing of farm crops such as but not limited to plants, crops, trees, forest products, orchard crops, livestock, poultry, and fish – includes ranching and farming **but shall not include feed lots, slaughterhouses, or stockyards.**

AIRPORT any area which is used or is intended to be used for the landing or taking off of aircraft. The use as an airport includes any appurtenant areas which are used, or intended to be used, for airport buildings, other airport facilities, or rights-of-way.

ALLEY any public space or thoroughfare which provides a secondary means of access to abutting property which has been dedicated or deeded to the public for public use.

APARTMENT any building, or portion thereof, which designed, built, rented, leased, let, or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their own cooking in the said building.

AMATEUR RADIO TOWER an antenna structure operated by a federally licensed amateur radio operator for amateur radio activities and does not mean citizens band or commercial antennas. Maximum height shall be fifty-five (55) ft. measured from natural ground and shall be setback from property lines the same distance as the height of the tower.

ANIMAL, DOMESTIC an animal of a species of vertebrates that has been domesticated by humans so as to live and breed in a tame condition and depend on humankind for survival

BASEMENT any area of the building having its floor subgrade (below ground level) on all sides.

BOARD the Board of Chaves County Commissioners.

BOARDING HOUSE a building, other than a hotel, where, for compensation and by pre-arrangement for definite periods, meals, or lodging and meals, are provided for three (3) or more persons, but not exceeding twenty (20) persons.

BUILDING any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind, having a roof supported by columns or walls.

BUILDING HEIGHT the height of a building measured from the ground surface level to the highest point of the building.

BUNK HOUSE an accessory structure used as a dwelling, being less than sixteen hundred (1600) square feet in size, occupied by a person(s) working on the property or for the property owners, on which the structure is located and is not for rent, lease, or sale. Bunk houses are not assigned rural addresses separate from the principle residence on the property and utilities are provided through the principle residence

BUSINESS any occupation, employment, or enterprise which occupies time, attention, labor, and materials, or where merchandise is exhibited or sold, or where services are offered.

CARPORT a building used solely for the storage of motor vehicles and containing no enclosing walls other than the wall or walls of the building to which it attaches, or other than a storage room.

CELLAR a story having a part or all of its height below grade.

CHANNEL as referred to in the Flood Plain District: the geographical area within the natural or artificial banks of a watercourse required to convey continuously or intermittently flowing water.

CLERK the Chaves County Clerk.

CLINIC, OUTPATIENT an establishment where patients are not lodged overnight, but are admitted for examination and treatment.

CLUB, PRIVATE building and facilities owned or operated by a corporation, association, persons, or persons for a social, educational, or recreational purpose, but not primarily carried on rendering a service which is customarily carried on as a business.

COMMERCIAL USE a use operated for profit or compensation.

CONDOMINIUM an individually owned unit in a multiple family dwelling, the common area of which is held as a tenancy in common by all tenants. 47-7-1 through 47-7-28 N.M.S.A., 1978.

COUNTY Chaves County, New Mexico.

DAIRY an establishment that is engaged in the production, sale, and distribution of milk and milk products

DAY CARE CENTER a commercial child care facility, licensed by the State of New Mexico, that provides care, services, and supervision for children in a 24-hour period

DAY CARE HOME, FAMILY an occupied residential dwelling, licensed by the State of New Mexico, in which care, services, and supervision are provided by individuals residing in the dwelling for three (3) to six (6) children on a regular basis for less than 24 hours per day. The care giver's own children, grandchildren, nieces, or nephews shall be counted towards the permitted number of children.

DAY CARE HOME, GROUP an occupied dwelling in which care, services, and supervision are provided by individuals residing in the dwelling for seven (7) to twelve (12) children on a regular basis for less than 24 hours per day. The care giver's own children, grandchildren, nieces, or nephews shall be counted towards the permitted number of children. (Requires a special use permit with a CYFD recommendation)

DEPARTMENT the Chaves County Planning and Zoning Department.

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

DIRECTOR the Director of the Chaves County Department of Planning and Zoning or designee.

DISTRICT any section of the Zoning area for which the regulations governing the use of buildings, premises, or the height, area, and density of buildings are uniform.

DRIVEWAY APRON is the section where a private driveway connects to the public roadway, usually extending from the edge of pavement of the public road to the property line.

DUPLEX A **single structure containing two-family dwelling units built to NM Building Code standards.**

DWELLING any building, or portion thereof, which is designated and used exclusively for residential purposes, **does not include, boarding house, group care residences, workforce camps and recreational vehicles.**

1. **Dwelling, single family:** a building designated for occupancy by one family.
2. **Dwelling, two families:** a single building designated for occupancy by two families. Also known as a duplex.
3. **Dwelling, multiple:** a single building or portion thereof designed for occupancy by three or more families.
4. **Dwelling unit:** a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for one family with facilities for living, sleeping, cooking, and eating.
5. **Dwelling, cluster:** three or more single or two-family or a combination thereof, residential structures on one lot.

FAMILY ~~an individual or two~~ **one** or more persons related by blood, adoption or marriage or a group of not more than five persons who need not be related by blood or marriage living together in a dwelling unit.

FARM see Agriculture.

FEED LOT a place of confinement for livestock where feeding is by a method other than grazing and which is operated as a commercial enterprise.

FILLING/SERVICE STATION any land, building, structures, or premises used for the retail sale of motor vehicle fuels, oils, accessories or for servicing or lubricating motor vehicles or installing and repairing parts and accessories. This does not include the repairing or replacing of bodies or fenders of motor vehicles, or painting motor vehicles, and excluding public garages.

FLOOD as referred to in the Flood District: an overflow of water onto lands not normally covered by water. Flood bears two essential characteristics: The inundation of land is temporary, and the land is adjacent to and inundated by overflow from a watercourse, lake, or other body of standing water.

FLOOD COMMISSIONER as referred to in the Flood District: the Chaves County Flood Commissioner who shall act as the enforcement official with lawful duties and powers pursuant to 4-50-1 et seq. And 3-41-5 N.M.S.A., 1978 in such case made and provided.

FLOOD HAZARD as referred to in the Flood District: any area which will be flooded by high water from a 100-year frequency storm.

FLOOD PLAIN as referred to in the Flood District: the relatively flat area or low land adjoining the channel of a watercourse or a body of standing water which has been or may be covered by floodwater, the limits of which are shown on the HUD Flood Hazard Boundary map, latest edition.

FRONT OF LOT ~~the front boundary line of a lot bordering on the street. In case of a corner lot, may be either frontage.~~

GARAGE:

1. **Private:** an accessory building designed or used for the storage of not more than three (3) motor-driven vehicles owned and used by the occupants of the building to which it is accessory. Not more than one (1) of the vehicles may be a commercial vehicle and of no more than two (2) ton maximum gross cargo weight.
2. **Commercial:** a building or portion thereof, other than a private or storage garage, designed or used for parking, servicing, repairing, equipping, hiring, selling, or storing motor-driven vehicles. The term "repairing" shall include automotive body repair but not the rebuilding, dismantling, or storage of wrecked or junked vehicles.
3. **Storage:** a building or portion thereof designed or used exclusively for housing four (4) or more motor-driven vehicles.

GRAZING the commercial raising of domestic livestock on open grassland, rangeland, or fenced pasture.

GOVERNMENTAL BUILDING means any structure that houses a branch of government, government administrative offices, a town hall, a courthouse, a library, or a structure designed to accommodate the public for purposes of public assembly or for public meetings or hearings.

GUEST any person ~~hiring or~~ occupying a room for living or sleeping purposes.

GUEST HOUSE an accessory structure used as a dwelling unit, being less than ~~one thousand six hundred~~ (1,000) square feet in size, intended for ~~lodging for temporary occupancy of~~ no more than two hundred (200) days in a calendar year, by a ~~family guest~~. Guest houses shall not be for rent, lease, or sale and are not assigned rural addresses separate from the principle ~~dwelling residence~~ on the property. ~~and utilities are provided through the principle residence.~~

HEMP the plant Cannabis sativa L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than three-tenths percent of a dry weight basis.

HOME BURIAL SITE a human burial site for an immediate family member of the current or past property owner that is located on Agriculture-Residential zoned property. Said site shall be a minimum of fifty (50') feet from a known water source, ten (10') from any property line, and one hundred (100') feet from any dwelling. The site shall be located with record distances to property lines and recorded as an addendum to the deed of the property with the Chaves County Clerk's office.

HOME OCCUPATION a business operated within a dwelling that meets the following criteria: the activity is clearly an incidental and secondary use of the residential structure; only members of the residing family are engaged in the occupation; all activities are conducted entirely within a dwelling; and there is no external evidence of the activity, such as commercial vehicles, outside storage, signs, noise, dust, odors, noxious fumes, or other nuisances which would change the residential character of the property or

neighborhood. Home occupation includes consultation and emergency treatment by physicians, surgeons, dentists, lawyers, and clergymen, but does not include the general practice of these occupations.

HOTEL any building containing six or more guest rooms intended or designed to be used or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

HOUSE TRAILER see mobile home.

INCOMPATIBLE LAND USE means those land uses which are particularly sensitive to the negative secondary impacts associated with sexually oriented businesses and Adult Entertainment Land Uses, and include the following:

1. Residences;
2. Residentially zoned areas located either in the County or the ETZ;
3. Public and private schools and day care institutions;
4. Public parks and playgrounds and commercial recreational uses;
5. Churches or other religious facilities or institutions.

INOPERABLE VEHICLE any motor vehicle, not including farming equipment, which by reason of dismantling, disrepair or other cause is incapable of being propelled under its own power.

INSTITUTION a building occupied by a non-profit corporation or non-profit establishment for public use.

INTERIOR COURT an open space that is more than half surrounded by a single building.

JUNKYARD the use of a lot or portion thereof for the storage, keeping, or abandonment of junk, dismantled automobiles, or other vehicles, machinery, or parts thereof, including scrap metals, rags, or other scrap materials. A junkyard shall include a lot or parcel of land containing seven (7) or more inoperable vehicles.

KENNEL any property on which dogs and/or cats are being kept for the business of buying, selling, breeding, training, or boarding but does not include veterinary hospitals, humane societies, or animal shelters/pounds approved by a governmental agency.

LAUNDROMAT a building in which domestic type washing machines and/or dryers are provided on a rental basis for use by individuals doing their own laundry.

LIVE ADULT ENTERTAINMENT ENTERPRISE means any building or portion of a building which contains any exhibition or dance wherein any employee or entertainer is unclothed or in such attire, costume, or clothing so as to expose to view any portion of the female breast below the areola, or male or female genitals, vulva, anus, and/or buttocks, or any portion of the pubic hair and which exhibition or dance is for the benefit of member or members of the adult public, or advertised for the use or benefit of a member of the adult public, held, conducted, operated, or maintained for profit, direct or indirect.

LODGING a place in which someone lives or stays temporarily.

LODGING HOUSE a building where lodging ~~only~~ is provided for compensation to three or more ~~guests~~, ~~but not to exceeding more than~~ twenty (20) ~~guests per night persons~~, in contradistinction to hotels and motels.

LOT a parcel of land adequate for occupancy by a use herein permitted, providing yards, building area, and off-street parking as herein provided. ~~This parcel of land is a part of a subdivision or described by metes and bounds.~~

1. **Corner lot:** a lot abutting upon two (2) or more streets at their intersection. A lot shall be considered to be in that block in which the lot fronts.
2. **Depth:** the mean horizontal distance between the front and rear lot lines.
3. **Interior lot:** a lot other than a corner lot.
4. **Lot of record:** a lot as defined in this Ordinance and recorded in the office of the Chaves County Clerk.
5. **Through lot or double frontage:** a lot having frontage on two (2) non-intersecting or parallel streets, as distinguished from a corner lot.
6. **Width:** the shortest distance between the side lot lines measured at the mean distance of the side lot lines.
7. **Front:** the property line of a lot or parcel of land that borders along the road. For corner lots, the front shall be the narrowest width of the two property lines bordering the roads.
8. **Rear:** the property line of a lot that is the opposite side of the front.

MANUFACTURED HOME a structure built on a permanent chassis with a body width exceeding eight (8) feet and body length exceeding forty (40) feet designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, plumbing, heating, cooling, and electrical systems that is constructed to the standards of the United States Department of Housing and Urban Development and the National Manufactured Housing Construction and Safety Standards Act of 1974.

~~**MARIJUANA** all parts of the plant cannabis, including any and all varieties, species, and subspecies of the genus Cannabis, whether growing or not, the seeds, thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant this incapable of germination; or the plant Cannabis sativa L. and any part of the plant, whether growing or not, containing a delta-9 tetrahydrocannabinol concentration of more than three tenths percent of a dry weight basis.~~

MASSAGE PARLOR means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or a licensed massage practitioner operating pursuant to Chapter 61 Article 12C NMAC, or as amended. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

MILE means a statute mile, a unit of measurement equal to 5,280 feet, or 1,760 yards; and one-half mile is a unit of measurement equal to 2,640 feet, or 880 yards.

MOBILE HOME a dwelling unit built on a chassis with a body width exceeding eight (8) feet and body length exceeding forty (40) feet designed to be used as living quarters, with or without a permanent foundation, when connected to the required utilities that is not constructed to the standards of the United States Department of Housing and Urban Development, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Housing and Urban Development Zone Code 2 or New Mexico Residential Building Code.

MOBILE HOME/ MANUFACTURED HOME SUBDIVISION a subdivision designed and developed for long term residential use and intended for sale or lease where the residences are comprised of mobile/manufactured homes.

MOTEL see hotel.

MULTIGENERATIONAL HOUSING a temporary secondary dwelling unit located on the same lot or parcel as the main dwelling unit that is used by family members who are related by blood, common ancestry, marriage, guardianship or adoption. Multigenerational housing requires a Special Use Permit and are not to be rented or leased, to non-family members and may be included in the sale or purchase of the property.

NATURAL OBSTRUCTION as referred to in the Flood District: any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within a floodway by a non-human cause, such as an area having special erosion prone features or a flood-related erosion area as along an arroyo.

NONCONFORMING ADULT ENTERTAINMENT LAND USE means a sexually oriented business or an Adult Entertainment Land Use which lawfully existed prior to the enactment of this chapter and is maintained after the effective date of this chapter although it does not comply with the sexually oriented business and Adult Entertainment Land Use regulations set forth in Article 20.

NON-CONFORMING USE the use of any **structure or** premise contrary to the use provision of this Ordinance for the district in which the **structures or** premises are located.

NUDE OR SEMI-NUDE MODEL STUDIO means any building or portion of a building where person(s) appear nude or semi-nude or displays specified anatomical areas, for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons, unless specifically exempted by Article 20.

NUDITY means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the depiction of covered male genitals in a discernibly turgid state.

NURSING HOME a home for the aged or infirm in which three or more persons are received, kept, or provided with shelter and/or care for compensation; but not including hospitals, clinics, or similar institutions.

OBSCENE means an act or expression which:

1. The average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and
2. Explicitly depicts or describes patently offensive representations or descriptions of:
 - (a). Ultimate sexual acts, normal or perverted, actual or simulated, or
 - (b). Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area, or
 - (c). Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; and
3. When considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

OBSTRUCTION as referred to in the Flood District: artificial impediments, such as a dam, wall, embankment, abutment, excavation, channel, rectification, bridge, conduit, culvert, building, structure, wire, fence, or other analogous structure or matter in, along, across, or projection into any flood plain area, which may impede, retard, change the direction of the flow of water, or increase the flooding height, either in itself or by catching or collecting the debris carried by such water, or that is placed where the natural flow of water would carry the same downstream to the danger or detriment of either life or property.

OFFICE a place where consulting, record keeping, or the work of a professional person such as a physician or lawyer is done; or a headquarters of an enterprise or organization. The sale on premises of commodities is not included.

OPEN SPACE land area unoccupied by buildings, driveways, parking areas, roads, streets or structures. Open space includes parks, areas used for farms or forestry, and certain areas within planned development.

PARKING

1. **Off-Street Parking:** an on-the-property space for the standing, loading, and unloading of vehicles. For district requirements, check the specific article for applicable district.
2. **Off-Street Loading:** a surfaced area, enclosed or unenclosed, together with a surfaced driveway connecting the parking space with a street or alley and permitting egress and ingress of an automobile. For district requirements, check the specific article for applicable district.

PERSON shall be construed to include a person, entity, partnership, firm, company, corporation, tenant, owner, lessee, or agent, heir, or assignee.

PLACE OF ASSEMBLY means a building, or portion thereof, excluding residential dwelling units, in which a specified number of persons may gather for recreational, educational, political, social, or other purposes, such as to await transportation, or to eat and drink. A place of assembly may also include an outdoor space where a number of persons may gather for any of the above purposes.

PROPERTY LINE. the official boundary of a lot, parcel or tract of land as designated either by a legal mete and bounds description or a survey plat recorded with the County Clerk's Office.

PUBLIC NUISANCE knowingly creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either injurious to public health, safety or welfare, or interferes with the exercise and enjoyment of public rights, including the right to use public property, roads or right-of-way.

RANCH see Agriculture.

RECREATION something done for pleasure, relaxation, and enjoyment on one's own property when not working that is not a public nuisance to the surrounding community nor a violation of County Ordinances.

RECREATIONAL VEHICLES a self-contained driven or towed portable unit, being four hundred (400) square feet or less when measured at the largest horizontal projection, designed or constructed to provide temporary or readily movable living quarters for recreation, camping, travel or other uses. RVs shall also include, but not be limited to: pickup campers, chassis mounted motor homes, mini-motor homes, recreational vans, pop up tent/hardtop trailers, converted buses, camping trailers, recreational travel trailers, fifth wheel trailers, park models or any other vehicles which are constructed to include a chassis, integral wheels and a towing hitch. A recreational vehicle may be referred to anywhere in this ordinance as RV.

RECREATIONAL VEHICLES (RV) PARK any lot, tract, or parcel of land with three (3) or more recreational vehicles, whether connected to utilities or not, which are occupied for lodging purposes.

RELIGIOUS INSTITUTION: A place or structure that is used primarily for religious worship, which may include onsite housing, as permitted in this ordinance, for religious leaders and similar staff, and which may include accessory facilities and structures.

RESIDENTIAL PURPOSE the intent to use and/or the use of a room or group of rooms for the living, sleeping, and housekeeping activities of persons on a permanent or semi-permanent basis.

RIGHT-OF-WAY the total area of land that is deeded, reserved by plat, or otherwise acquired by a governing body that is dedicated for the public movement of vehicles, people, and goods.

SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration specified sexual activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of Nudity or semi-nudity.

SEXUAL ENCOUNTER ESTABLISHMENT means an establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort to perform specified sexual activities. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

SEXUALLY ORIENTED BUSINESS means the same as an ADULT ENTERTAINMENT ENTERPRISE.

SIGN any surface and/or supporting structure, visible from a roadway or public access, used or intended to be used to advertise or inform. This may be a display, light, device, figure, painting, drawing, message, plaque, structure, or similar object. If multiple surfaces are being supported by a structure, each surface shall be considered a separate sign. Any structure used or intended to be used to support a sign surface shall be considered a sign.

SLAUGHTERHOUSE a building maintained for the purpose of slaughtering any animals to be held, exposed for sale, or offered for sale for human consumption.

SOLAR ENERGY CONVERSION SYSTEM/SOLAR PANELS a device that collects energy from the sun and converts it to produce electricity or other forms of energy

SPECIFIED ANATOMICAL AREAS means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, vulva, or female breasts below a point immediately above the top of areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIAL USE A land use permitted in one or more districts as defined by this Ordinance, but which, because of characteristics peculiar to it, or because of size, technological processes or equipment, or because of the exact location with reference to surroundings, streets, and existing improvements or demands upon public facilities, requires a special degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zoning district, and to assure that such use shall not be in conflict with the public interest. Approval of Special Use Permits may contain certain conditions that assure that the use will conform to the Chaves County Comprehensive Plan and this Ordinance.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, vulva, or female breasts; or
2. Sex acts, actual or simulated including sexual intercourse, oral copulation, or sodomy; or
3. Human masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal, or tumescence; or
5. Excretory functions as part of or in connection with any of the activities set forth in this subsection.

STABLE a structure for the purpose of sheltering and feeding livestock.

1. **Public:** a stable of which the stalls and/or livestock are for rent.

STORAGE UNITS see Warehouse.

STORY that portion of a building included between floor and the upper surface of the next floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

1. **Half-story:** a space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use. A half-story containing independent living quarters or apartments shall be counted as a full story.

STREET all property dedicated or intended for primary public or private right-of-way purposes, or subject to public easements therefor.

STRUCTURE anything constructed or erected, the use of which requires permanent location on the ground or attached to something having a permanent location on the ground, including but without limiting the generality of the foregoing, advertising signs, billboards, backstops for tennis courts, and pergolas.

STRUCTURAL ALTERATIONS any change in the supporting members of a building such as bearing walls or partitions, columns, beams, or girders, or any substantial change in the roof or in the exterior walls.

TEMPORARY USE a specific, permitted use established for a specific period of time.

TOWNHOUSE a single-family dwelling unit which is part of a group of dwelling units attached by common walls. Each unit is designed for occupancy by a separate family, with separate entrances and exits, and is sold as a separate dwelling unit

TRAVEL TRAILER see **Recreational Vehicle**

TRAVEL TRAILER PARK see **Recreational Vehicle Park**

WAREHOUSE a place for storage of merchandise or commodities.

WILDLIFE HABITAT an area where animals and/or plants may live in their natural environment, independent of people.

WORKFORCE CAMP: temporary housing in a barracks or dormitory style setting, where the entire facility is designed, constructed and managed by a single entity, and is established for a specified period of time and subject to specific operational and other requirements

YARD an open space area, at grade, between the main a building and the adjoining property lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum distance between the property lot line and that portion of the main building that is parallel to the property line-the main-building shall be used.

1. **Front:** Shall be unoccupied and unobstructed. The yard extending across the front of a lot between the side lot lines and being the minimum distance between the front property line and the main building or any portion thereof, other than steps.
2. **Rear:** Opposite the front, a yard extending across the rear of a lot between the lot lines and being the minimum distance between the rear property line and the rear of the main building or any projections, other than steps.

ZONING AUTHORITY being the Chaves County Board of Commissioners

ZONING MAP a map indicating the officially approved and designated zoning districts.

**ARTICLE III
GENERAL PROVISIONS AND SUPPLEMENTAL REGULATIONS**

Section 1 EFFECT OF ESTABLISHMENT OF DISTRICTS

All property is governed according to the zone in which it is located. Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

A. Zoning and District Boundaries. The boundaries of the zoning districts as described in this Ordinance are shown on the Zoning Maps which are hereby designated as an integral part of this Ordinance and have the same force and effect as if fully described herein. Said maps are to be properly attested and on file with the County Clerk of Chaves County, New Mexico.

1. Where district boundaries are indicated as approximately following streets or alley centerlines or right-of-way lines, such lines shall be construed to be district boundaries.
2. Where district boundaries are indicated as approximately parallel to street or alley centerlines or right-of-way lines, such boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Maps. In the absence of a dimension, scale of the Zoning Maps shall determine.
3. Where district boundaries are indicated as approximately following lot lines, section lines, or other legal subdivision lines, such lines shall be construed to be said boundaries.
4. Where a district boundary is indicated as an extension of any street or alley or lot line the boundary shall be construed to be of the same course and bearing as the line extended.
5. Any area indicated on the Zoning Maps as school, park, cemetery, right-of-way, or watercourse shall be subject to the applicable regulations of the zone in which it is located, or if it is not in a district, regulations of the most restricted adjoining district shall apply.
6. Whenever any street or alley is vacated in the manner authorized by law, the zoning district adjoining on each side of such street or alley shall be automatically extended to the center of such vacation, or as the vacation directs, if different.
7. Any design for subdivision of zoned land shall reflect the zoning for the district in which it is located or be accompanied by an application for amendment to the Zoning Ordinance compatible with the intended use of the land.
8. Any application for change of zone of unplatted land shall be accompanied by a plat delineating the boundaries of each tract included in the area subject to the proposed amendment.

Section 2 SUPPLEMENTAL REGULATIONS

A. Road Setback Requirements – All Zones

In order to make adequate provision for transportation, water, sewerage, and other utilities, and to assure that land be available, when required, for widening of county roads:

1. **Front yard setback:** The construction or placement of permanent structures is prohibited nearer than ~~forty~~ **eighty (80)** feet from the ~~section line, on section line roads; forty (40) feet from the half-section line roads; thirty (30) feet from the~~ center line **on other of the** road, even if the existing ~~county~~ road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration, or other means.
2. Utility companies or others **requiring** obtaining **additional** right-of-way outside of ~~the~~ existing county road right-of-way, ~~but~~ **and** adjacent thereto, shall ~~not~~ acquire **sufficient said** right-of-way **to comply with Article 5 of the Chaves County Subdivision Ordinance No.51 and the additional area necessary to install their service lines.** ~~nearer than fifty (50) feet from the section line, on section line roads; forty (40) feet from the half-section, on half section line roads; thirty (30) feet from the center line on other roads, even if the existing county road has a narrower right-of-way, and was acquired by deed, dedication, prescription, condemnation, declaration, or other means, unless Said right-of-way dedication shall be~~ approved by the Board **at a public hearing.** ~~of Chaves County Commissioners.~~
3. Utility companies who wish to place their lines or other facilities within existing county road rights-of-way shall first obtain a permit from the Board ~~of Chaves County Commissioners~~ which shall contain, among other things, a statement that if the Board ~~of Chaves County Commissioners~~ find it necessary to widen a county road, the applicants agree to move their lines and equipment as required, at their own expense, after receiving a ninety day advance notice.

**ARTICLE IV
ESTABLISHMENT OF ZONES (LAND USE AREAS)**

Section 1 ESTABLISHMENT OF ZONES (LAND USE AREAS)

A. In order to carry out the purposes and provisions of this Ordinance, the area under Chaves County Zoning jurisdiction, not including the Roswell Chaves County Extraterritorial Zoning Area, the boundary of which is determined by Joint-Powers Agreement between the Board ~~of Chaves County Commissioners~~ and the Roswell City Council or lands within the municipal limits of Roswell, New Mexico; Dexter, New Mexico; Hagerman, New Mexico; or Lake Arthur, New Mexico is hereby divided into **two** Areas which shall be known as:

1. Area I

2. Area II

a. Minimum lot size shall be five-acres in size, with the exception of home burial sites, public utility substations, and properties within a half mile radius of the municipal boundary lines of the Town of Dexter, Town of Hagerman and Town of Lake Arthur NM.

- 1. This area covers an important part of the recharge area of the Roswell Artesian Basin.**
- 2. The ground waters in the San Andres Limestone is recharged by precipitation on its outcrops and by ground water moving down the water table gradient from the Hondo Sandstone Member into the upper part of the San Andres Limestone and underlying formations.**
- 3. This area covers an “Outcrop” of the San Andres Limestone which is at or near the surface in this area.**
- 4. The very fact that the basin is partly recharged by “Precipitation on its outcrops” also makes this recharge area susceptible to contamination from polluted waters.**
- 5. Water from this aquifer is vital to the future of Roswell and Chaves County, therefore the purpose of this area is to safeguard the future water supply and to recognize the desirability of carrying on compatible agricultural operations and spacious home developments. Overdevelopment in this area by buildings, paved driveways, paved streets, et., would increase runoff of surface water and decrease the amount of water absorbed into the recharge area.**

3. Boundary Line. The boundary line location separating Area I and Area II is based on the text contained in a handout titled “Code Information”. Area I is the area lying east of the boundary line. Area II is the area lying west of the boundary line. Excluding the Town of Dexter, Hagerman and Lake Arthur. The boundary line is as follows:

- Beginning at a point on US 285 at the Chaves – De Baca County line, thence south along US 285 to the northern boundary of the Roswell-Chaves County Extraterritorial Zone (ETZ);**
- Thence east along northern ETZ line and thence south along the eastern boundary line of the ETZ to a point where the eastern boundary of the ETZ and East Crossroads Street [CR 1 242] intersect;**
- Thence east approximately 4.1 miles along Crossroads Street [CR 1-242] to a point where Cherokee Road [CR 3-047] and East Crossroads Street intersect (Projected Cherokee Road and Crossroads Street intersection);**

- Thence south approximately 6 miles along Cherokee Road right-of-way to a point where Cherokee Road and State Road 2 intersect [Old Dexter Highway];
- Thence south along State Road 2 to a point where State Road 2 and Shawnee Road intersect. Thence east along State Road 2 [Shawnee/1st St.] to a point where State Road 2 turns southeast, parallel to the Burlington-Santa Fe Railroad. Thence southeast along State Road 2 to the point where State Road 2 and the Chaves County-Eddy County line intersect.

B. Each area shall be further divided into zones, with the primary zone in each Area being Agriculture-Residential:

1. Zone A-R – Agriculture-Residential
 - a. ~~Type 1 – Single Family Dwelling~~
2. Zone B – Residential
 - a. Type 1 – Single Family Residence
 - b. Type 2 – Two-Family (Duplex) Residence
 - c. Type 3 – Multiple Family Residence
3. Zone C – Commercial
 - a. Type 1 – General
 - b. Type 2 – Offices – Professional
4. Zone D – Industrial

B. Other District or Land Use Areas are restricted to the area designation as shown on the zoning maps. Any request for zoning, where not shown on the zoning maps, must have that zoning assigned by the Board of ~~Chaves County Commissioners~~ after proper hearing by the Chaves County Planning and Zoning Commission and their recommendation to the Board ~~of Chaves County Commissioners~~.

C. Applications for land use who have classifications for which this Ordinance provides no specific regulations will, after proper notification and publication, be reviewed by the Planning and Zoning Commission, and applicant must then comply with the requirements then provided, until such time as specific regulations are provided by separate ordinance.