

ARTICLE

7

AGRICULTURAL DISTRICTS: (AG-40 & AG-80)

Sections:

- 7-1 Application/Purpose
- 7-2 Permitted Uses
- 7-3 Conditional Uses
- 7-4 Sign Regulations
- 7-5 Height, Area and Yard Regulations

SECTION 7-1 APPLICATION/PURPOSE

7-101. The regulations set forth in this Article, or set forth elsewhere in these regulations when referred to in this Article, are the regulations in the Agricultural Districts (AG-40 and AG-80). The purpose of these Districts are to provide for a full range of agricultural activities on land used for agricultural purposes, including processing and sale of agricultural products raised on the premises; and at the same time offer protection to land used for agricultural purposes from the depreciating effect of objectionable, hazardous, incompatible and unsightly uses. The Districts are also intended to protect watersheds and water supplies; to protect forest and scenic areas; to conserve fish and wildlife habitat; to promote forestry; and to prevent and/or discourage untimely scattering of residential and other more dense urban development. The Districts is intended to direct nonagricultural growth to cities and to the established Growth Areas around cities, where full services can be provided. All lands used for agricultural purposes, as defined in these Regulations, are and shall be exempt from the restrictions and limitations of these Regulations. No administrative interpretation shall be made that results in any restrictions or stipulation on land used for agricultural purposes as herein defined; provided, however that consistent with state law, new agricultural buildings shall be subject to setback requirements on that part of agricultural lands fronting on designated Butler County collectors and arterials and state and federal highways. Any proposal for change of land used for agricultural purposes to nonagricultural uses shall be subject to the requirements of these regulations.

SECTION 7-2 PERMITTED USES

7-201. In the Agricultural District no building, structure, land or premises shall be used and no building or structure shall be hereafter erected, constructed, reconstructed, moved or altered, except for the following uses:

1. Agricultural purposes.

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2. Grain storage structures, including grain elevators.
3. Wellhead stations, well separators, tank batteries or other similar aboveground facilities used merely for oil and/or gas well drilling operations, distribution, transmission or temporary storage of oil or natural gas.
4. Oil and/or gas well drilling operations, and temporary on-site storage of oil and gas field-related equipment and supplies.
5. Single-family dwellings. All single-family residences shall be constructed in accordance with all County-adopted building-related codes.
6. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations.
7. Home occupations allowed in the Planned Residential Development Districts (PRD-A and PRD-B).
8. Machinery repair, welding and similar activities relating to maintenance and repair of agriculture equipment, whether such equipment is owned or operated by the property owner. However, no such activity is authorized under this subsection unless the Zoning Administrator determines, based upon the totality of circumstances, that agricultural use of the property is substantial enough to establish that the property owner is not masking a nonagricultural use with an agricultural pretense in order to avoid a nonagricultural zoning classification.
9. Riding stables, when operated on a parcel ten (10) or more acres in area.
10. The Zoning Administrator may approve the temporary placement and use of a manufactured home, in addition to an existing residence if there is no guest house on property, under conditions of hardship as defined by these regulations, provided:
 - A. The applicant clearly states the reason for the hardship.
 - B. All requirements of the Butler County Sanitation Code are met.
 - C. No permanent foundation shall be required as a condition of approval of the temporary placement under this subsection.
 - D. The applicant shall provide a notarized affidavit relevant to the application for the placement of a temporary hardship manufactured home for a period of one (1) year which acknowledges that failure to remove the temporary hardship home upon expiration of the term approved by the County constitutes a zoning violation punishable by a fine of \$200 for each day of violation.

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- E. The temporary placement and use of a hardship residence may be extended for one or more successive one year periods of time upon verification by the Zoning Administrator that the hardship continues to exist.
 - F. A hardship residence shall be limited solely for the use of the tenants of the verified hardship and shall not be rented, leased or otherwise occupied. If, for any reason, the hardship or reason of necessity shall cease to exist, the hardship residence shall be removed.
11. Agricultural educational activities, including tours, seminars, workshops, conferences and similar activities or programs, for the purpose of educating the public about agricultural lands, production and culture. Such activities may be conducted on either a not-for-profit or for-profit basis and may occur only on a parcel comprised of ten (10) or more acres. Activities which involve more than ten (10) members of the public at a frequency of two or more times in any calendar month may be undertaken only upon issuance of a Conditional Use Permit in accordance with the provisions of Article 21 of these regulations.
 12. Agriculturally related activities including, but not limited to, seed and/or feed sales, herbicides, pesticide, and fertilizer sales and storage (including bulk storage provided tanks storing anhydrous ammonia must be located at least 1,000 feet from a residence on property other the operator's).
 13. Wind generators for personal on-site use on parcels 5 acres in size or larger provided they are 100 feet or less in height.

SECTION 7-3 CONDITIONAL USES

7-301. The following conditional uses may be approved by the County Board, for location within the Agricultural District, upon application for a conditional use permit by the owner, or upon initiation by the County, in accordance with the provisions of Article 21 of these regulations:

1. Public or private airports and/or landing fields.
2. Cemeteries.
3. Contractors' shop and/or yard, including construction equipment and/or materials storage area, provided no open storage area shall be approved without adequate screening or landscaping.
4. Farm implement repair service. Sales shall be restricted to repair service and replacement parts. Open storage must be screened from adjacent public roads and adjoining properties

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by a view-reducing wall, fence, or landscaped material.

5. Fire stations.
6. Greenhouses, nurseries and/or hydroponic farms, operated as a retail business.
7. Sanitary landfills not otherwise prohibited by law.
8. Manufactured homes when used as a temporary office or other non-residential structure on the site of a construction project, provided such structure is removed upon completion or abandonment of the project, or upon the expiration of a period of one (1) year from the time of erection of such temporary structure, whichever is sooner.
9. Quarrying, mining or removal of sand, gravel or stone and the processing of the same, including asphalt and concrete plants, provided:
 - A. All quarries and mining operations and asphalt and concrete plants shall be screened by a method approved by the County Board when the same are visible from any public road.
 - B. The applicant shall submit complete operational plans, providing detail as to such matters as planned future excavation, noise and dust control, blasting safety, storm-water drainage and retention, hours of operation, interior roads, security and lighting.
 - C. Where applicable, a maintenance agreement between the applicant and the County shall be required to maintain the roads that provide the ingress/egress to the operation.
 - D. A plan for reclamation of the site shall be prepared and submitted as a part of the application. The plan shall indicate a timetable for the reclamation to the proposed use of the site and a general plan of the proposed use. The reclamation plan submitted shall be binding only to the extent that said plan shows the intent of the applicant for reclamation. The actual reclamation plan may be amended at such time that the applicant is ready to begin such reclamation; however, the amended plan must be approved by the County Board before reclamation work may begin. Said approval shall require a public hearing under the same procedures as the original Conditional Use Permit. The County Board may require the applicant to provide a performance bond in a form and amount determined by the County Board.
 - E. All areas quarried or mined shall not endanger the lateral support of abutting or adjoining properties. A minimum setback of one hundred (100) horizontal feet from any road right-of-way and thirty (30) horizontal feet from all other property lines, measured on the surface, must be maintained free of any quarrying or mining activity, either surface or subsurface.

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- F. No building, equipment, quarry products or other materials shall be erected or stored within one hundred feet (100') of any property or right-of-way line.
- 10. Water treatment facilities, water towers or storage facilities, electric utility substations or any other public utility facility; but not sewage treatment facilities. Notwithstanding any other provisions of these Zoning Regulations, none of these uses shall be required to comply fully with the lot size and height regulations of the zoning district in which they are located, except as may be recommended by the Planning Commission and approved by the County Board to meet the standards of this Article.
- 11. Veterinary and small animal hospitals.
- 12. Kennels, provided:
 - A. The kennel occupies a minimum lot size of ten (10) acres.
 - B. No kennel building or runs shall be located nearer than two hundred (200) feet to any property line.
 - C. All kennel runs or open areas shall be screened around such areas or at the property lines to prevent the distraction or excitement of the animals.
 - D. The kennel shall have adequate measures to prevent odor, dust, noise or drainage from becoming objectionable to uses on other properties. No incineration of animal refuse shall be permitted.
 - E. All state licensing and operations requirements are met.
- 13. Construction and demolition landfills, as defined in K.S.A. 65-3402 and amendments thereto.

In addition to compliance with the other requirements of these regulations, an applicant for a conditional use permit for a construction and demolition permit shall comply with the following:

- A. Hold a valid, state-issued construction and demolition landfill permit at all times such landfill is in operation.
- B. Limit the landfill operation to the disposal of construction and demolition waste as such is defined at K.S.A. 65-3402(u) and amendments thereto.
- C. Minimum parcel size: 20 acres

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D. Setbacks: In accordance with Section 7-301.10.E of these regulations and K.S.A. 49-501.

E. Operational Plan:

The applicant shall submit complete plans for the design and operation of the landfill, providing detail as to such matters as noise and dust control, stormwater drainage and retention, hours of operation, interior roads, fire suppression, security and lighting.

14. Riding stables, when operated on a parcel less than ten (10) acres in area, but larger than 5 acres.
15. Bed & Breakfast Inn. See Article 10, Section 10-301(5) for requirements.
16. Other uses not specifically listed may be allowed as a conditional use only upon a finding by the Planning Commission and the County Board that the proposed use: would be consistent with the intent and purpose of these regulations; will be in compliance with the provisions of these regulations; is substantially similar to permitted uses or conditional uses which are authorized for the Agricultural District; and that all conditions have been established that are necessary to limit any adverse impacts from the proposed use upon the neighborhood.
17. Wireless Communications Facilities.

Introduction

The approach of this section encourages short or disguised facilities almost anywhere, and with only administrative review, while providing appropriate guidelines to consider taller “towers” through a normal public review process. Given the uncertainties of future technology and consumer demand, no one can reliably pinpoint all the locations for future wireless communication facilities.

Purpose

The purpose of this section is to set forth the regulations for the placement, development, permitting and removal of personal wireless communications facilities including support structures and antennas. These standards were developed to comply with the Federal Telecommunications Act of 1996. They are intended to protect property values and minimize visual impact while furthering the development of enhanced telecommunication services in the county.

The provisions of this section are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This section shall not be applied in such a manner as to discriminate between providers of functionally equivalent personal wireless services.

Telecommunications Act of 1996

Protected Services

Section 704 of the Telecommunications Act of 1996 preserves local zoning authority over the placement, construction and modification of personal wireless service facilities with some limitations or protections from regulation by local governments. This Act only governs those services that are defined as being protected.

Unprotected Services

Section 704 of the Telecommunications Act of 1996 does not cover the following unprotected services.

- **Broadcast Systems for AM/FM radio and television.** Once existing personal wireless service facilities are inventoried and mapped, those areas least covered by existing personal wireless service facilities may in some cases provide co-location opportunities for new broadcast facilities. Future personal wireless services also may seek out broadcast facilities for co-location before building new facilities of their own.
- **Public Service & Emergency Systems.** Butler County and other public/governmental agencies should not locate any facilities that contradict guidelines that wireless communication facilities are held to in this section.
- **Wireless Cable Systems.**
- **Private Dispatch Systems.**
- **Tower Builders.** The tower builder companies are not included in the FCC definition of functionally equivalent services or personal wireless services.

Preferred Locations

Butler County encourages wireless communication providers to seek the following new locations for new facilities:

1. Mounted on top or the side of multistory buildings and other structures, appropriately concealed, screened, disguised or camouflaged.
2. On existing poles in street rights of way, including telephone poles, electrical transmission and distribution poles, street lights, and traffic signal stanchions; on existing parking lot and athletic field/stadium light standards; and on modified or rebuilt poles that are substantially similar in appearance.
3. On existing support structures, including those constructed for personal wireless services, AM/FM radio and television broadcast, school district microwave antennas, and private dispatch systems.
4. In wooded areas.
5. Water towers, provided an engineer validates the structural integrity of the

existing water tower for adding the new structure.

6. Provided they are of monopole design, towers may be clustered up to 3 (three) only after all available co-locations are exhausted.

Uses permitted by right

The following wireless communication facilities should be permitted by right in any zoning district, subject to the issuance of a building permit, if they conform to the *Design Guide-lines* in this section.

- New facilities that are concealed in or mounted on top of or on the side of existing buildings (excluding single-family and duplex residences) and other structures, including support structures up to 20 feet above the building or the maximum height permitted for the existing structure.
- Modification and /or replacement of support structures (light poles, flag poles, electrical poles, private dispatch towers, etc.) that are not significantly more visible or intrusive, including cumulative height extensions of up to 25 percent above the original structure height.
- Modification and /or replacement of wireless communication facilities, including cumulative height extensions of up to 25 percent above the original structure height.

If a building permit is denied, the applicant may appeal the decision by applying for a Wireless Communication Facilities (WCF) Permit or a Conditional Use Permit, whichever is applicable.

Wireless Communication Facilities (WCF) Permit

The following facilities should be approved by a Wireless Communication Facilities Permit (WCF) in any zoning district, by the Director of Planning & Development, if they conform to the *Design Guidelines* in this section.

- New disguised ground-mounted facilities up to 85 feet in height in all zoning districts.
- New undisguised ground-mounted facilities up to 65 feet in height in all zoning districts.
- New undisguised ground-mounted facilities up to 85 feet in height in the **Commercial** and **Business Park** zoning district. Must be in areas where “Commercial” zoning is from our 1999 regulations, not from existing conditional use permits or grand fathered uses.

Conditional Use Permits

Wireless communication facilities that exceed the maximum height for a WCF Permit shall be reviewed through the Conditional Use process as described in Article

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21 of these regulations.

Applicant must demonstrate to the satisfaction of the governing body that:

- There is no available space on existing or approved wireless communication facilities or other structures that can be utilized to meet the applicant's communication needs (an existing site will be considered "available space" only if the site is economically and technically feasible with a ready, willing, and able landlord). Each application must be submitted a map showing the location of all other tower structures within 3 miles of the proposed site. Names, addresses, height and co-locates available must be given for all locations within this 3 mile radius.
- There is no other economically and technically feasible opportunity to modify or rebuild an existing structure on which the communication equipment may be located (no more than the cost of building a new facility on a new site).
- They agree in writing that all proposed towers up to 80 feet in height will accommodate at least 1 (one) other carrier, if more than 80 feet in height, at least 2 (two) other carriers. Reasonable accommodations will be made to lease space on the facility to other carriers so as to avoid having a proliferation of support structures that are not fully utilized.
- Space at the top of the tower shall be reserved for 911 emergency transmitters.
- They comply with the *Design Guidelines* of this section.
- They agree that they are responsible for the removal of unused facilities within 60 days if the wireless communication facility, or portion thereof, has been unused for 12 consecutive months. The applicant shall secure a *cash bond* with the County to cover the costs of removal. The amount of the bond shall be established at the time of approvals based on tower type, height and associated facilities. The amount shall be the current estimated value for removal plus 50 percent to allow for future inflation.
- The new support structure is not located in the flight paths of local airports where they would constitute a potential hazard to air safety.
- The proposed wireless communication facilities comply with all federal, state, and local rules and regulations.

Design Guidelines

These guidelines are standards to make proposed wireless communication facilities less visible, obtrusive and more acceptable to the community. The visibility of facilities can be minimized by techniques such as concealment, disguise, camouflage, and sensitive design and siting. Specific guidelines include:

1. Preserving the pre-existing character of the area as much as possible.
2. Minimizing the height, mass or proportion of the facility to minimize conflict with the character of its proposed surroundings.

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3. Such structures must be set back from all adjacent property lines, streets and highways a distance equal to not less than its height plus fifty (50) feet, unless noted otherwise in these regulations.
4. Minimizing the silhouette presented by new support structures and antenna arrays. Monopoles are favored over guyed structures. Using colors, textures and materials that blend in with the existing environment; under some circumstances, surfaces should be painted, or otherwise treated, to match or complement existing background structures and surfaces, or the sky, as appropriated, and to minimize reflection.
5. Concealing facilities within potential space in or on existing structures, or disguised to look like another type of facility, like a flagpole, clock tower, or church steeple.
6. Placing facilities in areas where trees and /or buildings obscure some or all the facility from view, and installing new plantings/screening around the site where visible from major streets or residential areas.
7. Placing facilities on existing walls, flush-mounted, or on roofs of buildings (excluding one and two family dwellings) and structures, up to 20 feet above the existing structure, as opposed to building new ground-mounted support structures. Facilities on rooftops generally should be set back from roof edges or screened from view.
8. Any required lighting for such towers shall be red during time of darkness. Nighttime strobes are not allowed. Lighting is only permitted on facilities that are required to have such by federal regulations.
9. Height Restrictions, Setbacks and Type
 - 85 feet maximum height with a setback twice the height of tower in the **Residential, Planned Residential Development “A”, Planned Residential Development “B”, Manufactured Housing, and Town Zoning Districts**. Tower types of monopole design only are allowed.
 - 160 feet maximum height with a setback of the height of the tower plus 50 feet from all property lines in the **Rural Residential, Commercial and Business Park Zoning Districts**. Tower types of monopole design only are allowed.
 - 250 feet maximum height **Agricultural Zoning District**. Applicant must show the need for whatever height is requested. Heights exceeding 250 feet must first go through separate variance application process. Setbacks must be the height of the tower plus 50 feet from all property lines. Tower types are not restricted, but preference is given to those of monopole design.

Definitions

Amateur Radio. Radio equipment and associated antennas or support structures operated for the purpose of receiving or transmitting communications by a radio station as described in Section 153(g) of Title 47 of the U.S. Code and which is operated under license by the FCC.

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Antenna. A whip (omni-directional antenna), panel (direction antenna), disc (parabolic antenna) or similar device used for transmission and/or reception of radio frequency signals.

Antenna Array. More than one whip, panel, disc or similar device used for the same carrier at the same frequency.

Applicant. A person or entity with an application before the County for a permit for a wireless communication facility.

AGL (above ground level). The actual height of the wireless communication facility from the ground to the highest part of the mount or the antenna, whichever is higher.

Broadcast Systems. Wireless communication systems that are licensed for the broadcast of AM/FM radio or television.

Camouflage. To paint or mount a wireless communication facility in a manner that requires minimal changes to the host structure and hides the facility in the context of its surroundings on the host structure.

Carrier. A company licensed by the Federal Communications Commission (FCC) that provides wireless communication. A tower builder is not a carrier.

Cellular. A personal wireless service capable of transmitting and receiving voice that operates in the 800 MHz spectrum.

Co-location. The use of a common wireless communication facility or common site by two or more carriers or by one carrier for more than one type of wireless communication technology and/or placement or two or more wireless communication facilities on adjacent properties.

Commercial Mobile Radio Services (CMRS). Per Section 704 of the Telecommunications Act of 1996, any of several wireless communication technologies using radio signals at various frequencies to send and receive voice, data and video. According to the FCC, these services are “functionally equivalent services.” Section 704 of the Telecommunications Act of 1996 prohibits unreasonable discrimination among functionally equivalent services.

Common Carrier Wireless Exchange Access Services. Services by which wireless communication is interconnected with wired communication infrastructure.

Conceal. To enclose a wireless communication facility within a natural or manmade feature resulting in the facility being either hidden from view or made part of the feature enclosing it.

Design. The appearance of wireless communication facilities as determined by selection of materials, colors, size, and shape.

Disguise. To design and construct a wireless communication facility to be an architectural feature of an existing or proposed structure in such a manner that the wireless communication facility is not discernible from the remainder of the structure.

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Elevation. The measurement of height above sea level. Also AMSL, or above mean sea level.

Enhanced Specialized Mobile Radio (ESMR). Private land mobile radio with telephone services.

Equipment Shelter. An enclosed structure, cabinet, shed, or box at the base of or in the general proximity of a support structure within which are housed the equipment for the wireless communication facility such as radios, batteries, and electrical equipment.

Federal Communications Commission (FCC). An independent federal agency charged with licensing and regulating wireless communication at the national level.

Functionally Equivalent Services. Cellular, PCS, Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging. Section 704 of the Telecommunications Act of 1996 prohibits unreasonable discrimination among functionally equivalent services.

Guyed Tower. Any type of support structure that is supported in whole or in part by cables anchored to the ground or other surface.

Lattice Tower. A type of support structure that consists of an open network of braces forming a tower that is usually triangular or square in cross section.

Location. The area where a wireless communication facility is located or proposed to be located.

Modification. The changing of any portion of a wireless communication facility from its description in a previously approved permit. The FCC definitions for “modification” are different than local government rules.

Monopole. A type of support structure that consists of a vertical pole fixed into the ground and/or attached to a foundation.

PCS (Personal Communication Services). A personal wireless service capable of transmitting and receiving voice, data, text, and video messaging that operates in the 1850-1990 MHz range.

Paging. A personal wireless service that provides tone, text, and limited voice messaging that operates on several frequency ranges, usually in a limited geographic area.

Personal Wireless Services. Any personal wireless service defined in the Federal Telecommunications Act of 1996 which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and unlicensed wireless services, and common carrier wireless exchange access services.

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Private Dispatch System. Wireless communication systems that are licensed to one user for exclusive use and not to be shared with, or leased to, other users.

Public Service and Emergency System. Wireless communication systems operated by or for a governmental agency for the delivery of emergency or other public services.

Radio Frequency (RF) Engineer. Someone with a background in electrical engineering or microwave engineering who specializes in the study of radio frequencies.

Radio Frequency Radiation (RFR). The propagation of electromagnetic waves through space.

Radio Frequency (RF) Signal. The actual beam or radio waves sent and received by a wireless communication facility. A signal is the deliberate product of a wireless communication facility. The RF emission is the byproduct.

Screening. Decorative fencing or other materials, evergreen vegetation, or landscaped earth berms constructed and maintained for the purpose of concealing a wireless communication facility from view.

Separation. The distance between one carrier's antenna array and another carrier's antenna array.

Site. That portion of a subject property where a wireless communication facility is to be placed. Any acceptable location may have several potential sites within it.

Siting. The method and form of placement of wireless communication facilities on a specific area of a subject property.

Specialized Mobile Radio (SMR). A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for delivery vans, truckers or taxis within a small, definable geographic area.

Support structure. The structure or surface upon which antennas are mounted.

- Roof-mounted. Mounted on the roof of a building.
- Side-mounted. Mounted on the side of a building.
- Ground-mounted. Mounted on the ground.
- Structure-mounted. Mounted on a structure other than a building.

Tower. Generally used to describe all wireless communication facilities or sometimes is used to refer only to those wireless communication facilities at high elevations above grade. Also used as a modifier (e.g., tower builder) or when modified (e.g., lattice tower).

Tower Builder. A company or individual that builds or manages support structures for

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wireless communication facilities.

Unlicensed Wireless Services. Wireless communication services operating on public domain frequencies using duly authorized devices, which do not require an FCC license for their sites.

Wireless Cable System. Wireless communication services that provide point-to-multipoint communication for the provision of voice, data, text, and video that operate in the 2.1 to 2.8 GHz range.

Wireless Communication. Comprehensive term describing the wireless services covered by the location/design guidelines of this Section. Includes the following terms as defined herein: broadcast systems, cellular, commercial mobile radio services, common carrier wireless access exchange services, enhanced specialized mobile radio, functionally equivalent services, personal communication services, paging, personal wireless services, public service and emergency systems, specialized mobile radio, tower builder, unlicensed wireless services, and wireless cable system. Does not include amateur radio or private dispatch system.

Wireless Communication Facility. Comprehensive term describing the facilities covered by the location/design guidelines of this Section. Includes the following terms as defined herein: antenna, antenna array, equipment shelter, guyed tower, lattice tower, location, monopole, site, support structure, and tower.

Wireless Communication Facility Permit. An administratively approved permit for wireless communication facilities.

18. Commercial Wind Energy Projects (CWEP's)

I.) Purpose

The purpose of this section is to outline required information for application of a Conditional Use Permit (CUP) for a Commercial Wind Energy Projects (CWEP). A Development Plan is to be submitted with the application. These guidelines are written to:

- Assist the applicant and relevant authorities;
- Provide details of the CWEP;
- Provide information so individuals may gain an understanding of the CWEP;
- Provide a basis for public discussion and informed comment on the CWEP;
- Identify significant environmental, social, and economic effects related to the CWEP; and,
- Provide a background on which decision makers will consider the project.

Information in the application and Development Plan shall be as current as possible at the time of submission. Where information is unavailable or not yet finalized, estimates &/or alternative options shall be provided and noted as estimates or alternatives. Not all

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matters in the guidelines are relevant to all aspects of the project. Only those matters relevant to the projects shall be addressed.

II.) Intent

These guidelines are intended to:

- Address major issues associated with the project; however, they are not all inclusive. Issues not listed may be deemed significant and issues may emerge as significant (studies, public input) during the course of review.
- These guidelines are not intended to restrict installation of small “home” systems.

The Development Plan shall be written in a style that is easily understood by the general reader. Technical terminology shall be avoided as much as possible. Detailed technical data, statistics, and supplementary information required to support the main text is to be included as appendices. All sources of information are to be referenced, and must be current. Information presented as maps, diagrams, or plans is preferred, as the general reader finds it easier to understand.

Close consultation with the Director of Planning & Development during preparation of the Development Plan is highly recommended. More than one draft may be required before it is considered suitable for presentation to the Planning Commission.

These requirements specify the maps, information surveys and studies that must be submitted as part of the CUP application. Butler County may adjust the standards for future projects based on the results of monitoring avian collisions; the success or failure of remedial actions required in the decommissioning process; and with the changing technology in wind generated electricity.

If approved, one CUP shall be issued for the perimeter of the proposed CWEP. One application, with landowner’s signature(s), shall be required for each parcel of land located within the perimeter of the CUP.

A. Key Issues

Key issues relating to CWEP’s, identified to date, are listed below. These issues include, but are not limited to:

- Land Use
- Visual Impact
- Noise
- Bird migration / strikes
- Endangered Species
- Wildlife Habitat
- Soil Erosion
- Water Quality
- Public Health & Safety
- Infrastructure
- Aviation / FAA
- Reception Interference
- Cultural Heritage
- Native Vegetation / Weeds
- Cumulative Impact
- Company experience, reputation, and financial ability

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- Removal / Reclamation
- Electric – Magnetic fields associated with transmission lines
- Bond Agreement

B. Power Purchase Agreement (PPA)

The Conditional Use Permit does not authorize construction of the project until the Applicant has obtained a Power Purchase Agreement (PPA) for the electricity to be generated by the CWEP. The Applicant shall advise the Director of Planning & Development when it obtains a power purchase agreement and shall provide such documentation confirming said agreement.

The PPA must be obtained within one year of the date of publication of the Resolution approving CUP, this one-year period (established in Section 21-503 of the Butler County Zoning Regulations) may receive up to a 6-month extension upon written request by the Applicant, and approval of the Planning Commission and the Board of County Commissioners.

In the event the Applicant does not obtain a PPA within the 12 to 18 month time span, the CUP shall be null and void.

Building permits shall be issued only after the Director of Planning & Development receives documentation confirming said PPA, and all conditions pertaining to CWEP's have been satisfied. Once the PPA has been received, the 12-month rule established in Section 21-503 of the Butler County Zoning Regulations, with respect to revocation of CUP and building permits, shall apply.

III.) Conditions required for approval shall include, but not be limited to:

- 1.) Strict conformance to all performance standards as detailed in Article 7 and 21 of the Butler County Zoning Regulations. .
- 2.) No turbines shall be located closer than 500 feet or the total height of the turbine plus 50 feet, whichever is greater, from public roads.
No turbines shall be located closer than 500 feet or the total height of the turbine plus 50 feet, whichever is greater, from property lines of any property not included in the CUP.
No turbine shall be located closer than 1000 feet from a residential structure. Turbines shall be located no closer than the total height of the turbine plus 50 feet from a common agricultural / residential accessory structure.
- 3.) Communication lines and power collection lines are to be installed underground in the area covered by the CUP. Said lines are to be located under or at the edge of turbine access roads. Aboveground transmission lines may be used only in public rights-of-way or easements.

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- 4.) Applicant shall apply for building permit prior to the construction of each turbine.
- 5.) A Power Purchase Agreement (PPA), and a surety bond for de-construction purposes must be approved and accepted before any building permits are issued for construction to begin.
- 6.) Transportation routes used for construction shall be coordinated with the County Engineer. A road agreement must be approved before any building permits are issued for construction to begin.
- 7.) Applicant shall be held liable for any damage to county / township roads or rights-of-way resulting from tower construction, deconstruction, and/or maintenance activity.
- 8.) Lowest point of the rotor blades shall be at least 100 feet above ground level at the base of the tower.
- 9.) If lubricants and/or hazardous materials are needed to be located on the premises in connection with the CWEP, said materials shall be kept and transported in accordance with all state and federal regulations.
- 10.) There shall be no lights on the towers other than those required by the Federal Aviation Administration (FAA). This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.
- 11.) At the end of the projects useful life, equipment shall be removed from the site and the foundations shall be removed to a depth of four (4) feet below the ground surface. Access roads shall be removed to the landowner's satisfaction, and the ground shall be reseeded in native grasses. The requirement to remove access roads shall not apply to roads in existence before the CWEP application was filed. The landowner may choose to have access roads left intact.
- 12.) Structures for wind turbines shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.
- 13.) Applicant shall take reasonable measures to correct deficiencies in radio and television reception in or near the project area shown to be caused by the project. CWEP shall operate in conformance with the Federal Communications Commission (FCC) regulations.
- 14.) Applicant shall take reasonable measures such as planting trees, installing awnings, etc. to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting residences within or immediately adjacent to the project area.

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- 15.) An owner, lessee, or occupant of agricultural land is not liable for property damage caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the procedures established by the Kansas State University Research and Extension Office – Butler County.
- 16.) A certified structural engineer or certified structural engineering firm shall conduct all necessary inspections on each turbine. Inspections shall include, but not be limited to; foundation, structural assembly, mechanical, and electrical. Documentation regarding each approved inspection shall be submitted to the Planning Director before advancing to the next step of construction.

Said engineer, or engineering firm, shall be selected by the Board of County Commissioners. All expenses shall be the responsibility of the Applicant or holder of the CUP. Butler County, its officers, agents, and employees shall be held harmless from any and all claims, costs, liabilities, damages, or expenses, including costs of suits and fees and expenses for legal services on account of any damages claimed by any third party, including such claims by agents or employees of said third party, arising from any approval or non-approval of any inspection.

All inspections shall be conducted in accordance with Butler County inspection policy as stated in the officially adopted building Codes. (Reference: Section 108 of the 1997 Uniform Building Code, and Butler County Resolution No. 98-73).

- 17.) If the CUP is to be transferred from one party to a different party, said transfer must first be approved by the Board of County Commissioners. First party shall inform the second party of the surety bond and all other requirements of the CUP. The second party, or new holder of CUP shall meet the surety bond requirements and all other requirements of the CUP. A transfer fee of \$100 per turbine shall be paid to the County.

See also Butler County Zoning Regulations Article 21, Section 109.1 for additional requirements.

IV.) CONTENTS OF CWEP DEVELOPMENT PLAN

1. INTRODUCTION: This section shall provide information on the following.

- Name of the project.
- Phases of construction (if applicable).
- Two (2) maps showing project location and vicinity. One at 1:100,000 scale, and one at 1:2,000 scale (USGS scale).
- Name and address of the developer, and a statement from the developer providing relevant information regarding:

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- An overview of the company;
 - Qualifications and experience in Commercial Wind Energy development;
 - Environmental management history of the company.
 - Financial information regarding the applicant's ability to construct, operate, and maintain the CWEP;
 - Financial information regarding applicant's ability to meet decommissioning escrow-bond requirements.
 - (Note to Applicant: K.S.A. 45-221, Section 33 exempts financial information submitted by contractors in qualification statements from being open to the public.)
- Relevant background information on the project, including a general overview of the project location, timeframe and project life, phases of development, and possibilities for future expansion.
 - An examination of feasible, alternative locations for the project and reasons for the choice of this location over alternative locations.
 - Environmental guidelines and industry codes of practice that will be followed if approved.
 - An inventory of existing wildlife, endangered species, wetlands, and other biologically sensitive areas within the site.
 - Archeological reconnaissance survey within the site that will be impacted by the construction or operation of the CWEP. Survey shall be provided to the State Historic Preservation Office (SHPO) to determine if cultural resources are present. Any unrecorded cultural resources that are found shall be evaluated for integrity and potential listing on the National Register of Historic Places. Undocumented resources that are eligible for listing on the National Register of Historic Places shall be avoided. All archaeological investigations shall meet the SHPO standards and guidelines.
 - *What percentage of the State of Kansas Renewable Portfolio Standards (RPS) does this project supply. (Not applicable at this point in time)*

2. SITE PLANS: A Site Plan with the following specifications shall be submitted:

- Scale of 1" = 2000';
- Scale and north point (up);
- Name / address of land owner and land developer;
- Boundaries of site: Boundary of property and boundary of area affected by CUP;
- Topography with contours at intervals of 20';
- Adjoining streets; Location of nearby rail roads and airports;
- Transmission lines;

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- Houses within 1000' of the site boundary;
- Acreage of site; point(s) of access to the project;
- Schematic location of turbines, electric collector and feeder lines, electrical equipment, maintenance roads, and other associated facilities.
- Boundaries of the 100-year floodplain as identified on the Federal Insurance Administration's "Flood Hazard Boundary Maps" of Butler County, Kansas.
- Also show the location of any underground pipelines and other utility easements.

3. GENERAL CONSTRUCTION DOCUMENT REQUIREMENTS: Applicant shall provide:

A. General -

- General description of major components and onsite facilities. Wind turbine specifications, transmission line and accessory facilities such as control rooms, transformers, substations, maintenance facilities, underground infrastructure, and interior access roads. The number, location, capacity, and dimensions of the turbines shall also be included.

B. Construction – (On-site)

- Prior to the start of, and continuously throughout construction and site restoration, applicant shall designate a field representative responsible for overseeing compliance with the conditions of the CUP. Said representative shall be accessible by telephone during normal business hours. Address, phone number and emergency phone number shall be provided to the Planning & Development Department and 911 Emergency services and shall be available to residents, officials, and other interested persons. Applicant is required to notify Planning & Development Department and 911 Emergency services should they change their designated representative.
- A description and general schedule of major construction activities for the turbines, transmission lines, and common accessory structures related to CWEP's.
- An outline of any proposed site preparation involving removal of vegetation, and restoration of the site due to construction.
- The volume and designated route for traffic generated during the construction phase, including oversized and heavy equipment.
- Applicant shall inform all employees, contractors and others involved in the construction of the CWEP of the terms and conditions of the CUP.
- If environmental conditions not previously identified are discovered during construction, the applicant shall have the right to move or relocate a turbine site, only if the discovery would, by law, prevent such use.

C. Construction – (Off-site)

Any new infrastructure or off site accessory structures required for the project to progress

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shall be described, including the following:

- Requirements for new transportation infrastructure and/or upgraded, realigned, or new road.
- Changes to electrical sub-stations.
- Changes to existing power transmission systems, including any upgrades to existing transmission lines.
- Requirements for the realignment of other utilities affected by the project.

D. Operation & Maintenance –

- Operation and maintenance requirements (including frequency of maintenance activities) for the turbines and transmission lines.
- Width of transmission line easements required, and, any restrictions necessary on land use, development, and access within said easement.

4. MITIGATION MEASURES: Applicant shall address the following potential environmental effects and shall provide plans to mitigate each:

A. Overview of existing environment – information shall include information regarding:

- Flora – vegetation species, threatened species (officially listed), critical habitat and habitat conditions for such species.
- Fauna – species, habitat assessment, threatened species (officially listed), migratory species, critical habitat and habitat conditions for such species.
- Geoconservation – sites of geoconservation significance listed on the state/national database. All of Butler County is located in the Flint Hills.
- Flood zones.

B. Site Clearance-

- Applicant shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the CWEP.
- Applicant shall minimize the removal of trees and shall not remove groves of trees or hedgerows (shelter belts) without approval of the affected landowner.
- Applicant shall separate and protect topsoil from subsoil.
- On cultivated land, Applicant shall minimize compaction of the land during all phases of the CWEP's life. Compaction shall be confined to as small an area as practical.
- During site clearance and construction, silt fences and other temporary erosion controls shall be installed and left in place until new native vegetation covers the bare ground around the turbines.

C. Roads-

1. Public Roads

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- Applicant shall identify all county and township roads that will be used for the CWEP and shall notify the governing body having jurisdiction over the roads (County Engineering Department) to determine if said body needs to inspect the roads prior to their use. Where practical, existing roadways shall be used for all activities associated with the CWEP.
- Applicant and governing body having jurisdiction over said roads shall enter into a road agreement for maintenance and repair of roads subject to the extra wear and tear due to transportation of equipment and turbine components.
- Applicant shall be held liable for any damage to county / township roads or rights-of-way resulting from tower construction, deconstruction, and/or maintenance activity.
- Applicant shall not be held responsible to maintain or repair a road to a condition better than what existed before Applicant began using it for CWEP purposes.

2. Turbine Access Roads

- Applicant shall construct the smallest number of turbine access roads it can.
- Access roads shall be low profile roads so farming equipment can cross them.
- Where an access road is to cross a stream or drainage way, it shall be designed and constructed so runoff from the upper portions of the watershed can readily flow to the lower portions of the watershed.
- Where an access road is to cross a stream or drainage way, Applicant must follow FEMA regulations pertaining to building a structure in a flood zone.

D. Soil Erosion, Sediment Control, & Storm Water Runoff-

- Applicant shall develop a Soil Erosion, Sediment Control, & Storm Water Runoff Plan.
- Plan shall address what types of erosion control measures will be used during each phase of the project. It shall identify plans for:
 - Grading
 - Construction and drainage of access roads and turbine pads
 - Necessary soil information
 - Design features to maintain downstream water quality
 - Revegetation to ensure slope stability
 - Restoring the site after temporary project activities.

Soil Erosion, Sediment Control, & Storm Water Runoff Plan shall also include practices regarding:

- Disposal or storage of excavated materials
- Protecting exposed soil
- Stabilizing restored material and removal of silt fences or barriers when the area is

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stabilized

- Maintenance of erosion controls throughout the life of the project

E. Cleanup-

- Applicant shall remove all waste and scrap that is the product of construction, operation, restoration, and maintenance from the site and properly dispose of it upon completion of each task. Bottles, paper, and other litter deposited by site personnel shall be removed on a daily basis.

F. Fire Safety-

- Applicant shall identify the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall include fire within the site, escape from the site, and the effects of fire originating from outside the site. Also address high angle rescue.

- It is important to be aware of the fact that **PRESCRIBED BURNING**, or range burning is a common practice in this area. Mitigation plans are to show how the towers and equipment are protected from fire within the site and from fire originating from outside the site. Best source of information is the [Butler] County Extension office located in El Dorado. See also Section E-15.

1. PRESCRIBED BURNING is defined as the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that:

- a) Is designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and,
- b) Conforms to the standards established by the Kansas State University Research and Extension Office – Butler County.

G. Water-

1. Surface water

- Applicant shall identify effects of the CWEP (especially during construction) and methods to be used to mitigate these effects, if any.

2. Ground water

- Applicant must demonstrate that the CWEP is consistent with the objectives and requirements of all relevant water management policies of the county including:
 - i. Protection of the quality and quantity of the areas ground water resources.
 - ii. Maintenance of existing ground water quality.

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H. Air Quality-

- Applicant shall submit a plan to control dust on turbine access roads, especially during construction.
- Applicant shall also address the direct and indirect effects of the CWEP on greenhouse gasses and ozone depleting substances over the life span of the project

I. Noise-

- The CWEP shall comply with current noise standards of Butler County at all times at all appropriate locations. Turbines shall be moved, or modified, or removed (and decommissioned) from service if necessary to comply with this condition.

J. Land Use and Development-

Applicant shall identify potential effects in terms of constraints or benefits the CWEP may place on the current or future use of the land within the project site and the surrounding area. The extent of any limitations due to public health and safety risks shall be specifically addressed, and, the effects on the following activities shall also be addressed:

- Existing or proposed tourist or recreation activities.
- Residential activities
- Industrial activities
- Agricultural activities
- Local and Regional tourism
- Commercial activities

K. Electromagnetic Interference-

- Applicant shall not operate the CWEP and its associated facilities so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law.
- In the event the CWEP and its associated facilities or its operations cause such interference, Applicant shall take timely measures necessary to correct the problem.

5. DECOMMISSIONING / RESTORATION / ABANDONMENT:

A. Decommissioning Plan

- Applicant shall submit a Decommissioning Plan describing the manner in which the CWEP will be dismantled and removed from the site at the end of its useful life. All aboveground components of the CWEP shall be removed. Foundations shall be removed to four (4) feet below ground level. Remainder of foundation may be left intact. Access roads shall be removed to the owner's satisfaction.

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- Applicant shall submit documentation showing financial capability to carry out the decommissioning and restoration requirements.
- Applicant shall submit an Escrow Account / Surety Bond / Insurance Policy in an amount approved by the Board of County Commissioners as reasonably necessary to restore the site to its pre-CWEP topography and topsoil quality. The purpose of this account / bond / policy is to assure removal of all improvements subject to CUP at the end of the projects life, or in the event of abandonment of the CWEP.
- Abandonment shall include any one (1) year period following delivery by certified mail of written notice of abandonment to the owner of record when a completed wind turbine does not produce any electric energy and there is no demonstrated plan to restore the equipment to operating condition.
- Upon termination of the aforesaid one (1) year period, abatement shall proceed as set forth in the Butler County regulations. The Board of County Commissioners may require Applicant (Holder of CUP) to decommission any abandoned turbine.
- At the end of the CWEP's useful life, or if CWEP is abandoned, the site shall be restored in accordance with the requirements of this condition within eighteen (18) months.

6. MONITORING & REVIEW -

- This section shall provide an outline of a monitoring, review and reporting program for each part of the project. Details shall include any pre-construction monitoring / studies, sites to be sampled, sampling procedures, the parameters to be analyzed, frequency of sampling and reporting. A site plan showing sampling locations is required.

7. EXTRAORDINARY EVENTS -

- Within 48 hours of an occurrence, the Applicant shall notify the Director of Planning & Development of any extraordinary event. Extraordinary events include:
 - Tower collapse
 - Turbine failure
 - Thrown / broken blade or hub
 - Collector / feeder line failure
 - Injured worker or citizen
 - Kills of threatened or endangered species
 - Discovery of an unexpectedly large number of dead birds of any variety on site.
- In the event of extraordinary avian mortality the Applicant shall, within 30 days of the occurrence submit a report to the Director of Planning & Development, to the Kansas Department of Parks & Wildlife, and to the U.S. Fish & Wildlife Service describing the cause of the occurrences and the steps taken to avoid future occurrences.

8. TRANSFER OF C.U.P. -

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- CUP shall not be transferred from one party to a different party without approval of the Board of County Commissioners. Applicant shall advise the Board of County Commissioners and the Director of Planning & Development, in writing, of a requested approval. All new CUP holders shall be required to meet the same conditions as the original Applicant. The new CUP holder shall also meet the surety bond / escrow requirement to insure the CWEP is decommissioned and removed to CUP specifications at the end of the projects useful lifespan or in case of abandonment.

9. REFERENCES-

- This section shall provide details of authorities consulted, reference documents, etc.

10. APPENDICES-

- All detailed technical information that supports the DP should be included in appendices. The most important features of the appendices shall be included in the main body of the Development Proposal.

BOND AGREEMENT

(The following information is to be addressed on the bond)

1.) *BOND REQUIREMENT-*

Applicant shall obtain a surety bond naming Butler County, Kansas as payee in a form acceptable to the Board of County Commissioners. Applicant shall maintain said bond through the lifespan of the Commercial Wind Energy Project. Bondholder shall provide the County annual notification of bond status. Bondholder shall provide the County 30-days written notice of any cancellation thereof.

In the event the Applicant or CUP holder is in noncompliance or default due to nonpayment, the County shall have the right to call said bond and use it for decommissioning purposes. Should there be any remaining balance, the County shall have the right to withhold refund payment until the decommissioning process is completed to the County's satisfaction.

2.) *LIABILITY ON TERMINATION OR EXPIRATION-*

In the event of termination of this CUP for any reason, the CUP holder shall remain liable to the County for any expense incurred by the County that is above and beyond what is covered by the surety bond, escrow account, and/or insurance policy.

CUP holder shall remain liable to the County for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this agreement and/or damages as a result of any breach of this agreement by the CUP holder.

The County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of this agreement and/or recover funds, which are unspent, expended or used in an unauthorized manner or for an unauthorized purpose and/or damages sustained by the County as a result of any breach of this agreement by the CUP holder.

3.) *NON-LIABILITY –*

- 10.) Nothing in this agreement or otherwise shall impose any liability or duty whatsoever on Butler County or any of its agencies, including, but not limited to any liability for taxes, wages, or any other employee benefits for any person or entity. Contractors, suppliers or consultants accepting and relying on documents, materials, and other information from the [Applicant or] CUP holder will do so on their own responsibility and at their risk

SECTION 7-4 SIGN REGULATIONS

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7-401. Sign regulations are contained in Article 24 of these regulations.

SECTION 7-5 HEIGHT, AREA AND YARD REGULATIONS

7-501. Height: Buildings or structures other than those actually used for agricultural purposes shall not exceed 35 feet and/or two and one-half (2 ½) stories in height.

7-502. **Lot Area:** To be eligible for a building permit for a residence every lot created after the effective date of these regulations shall contain acreage equivalent to a quarter of a quarter section (approximately 40 acres) in areas zoned AG-40 and acreage equivalent to a half of a quarter section (approximately 80 acres) in areas zoned AG-80. Provided: where unusual lot configurations, the dedication of land to public use, or other circumstances has resulted in a parcel of land of less than 40 acres (or 80 acres respectively) the Zoning Administrator shall determine whether the actual lot area meets the spirit and intent of this requirement.

7-503. In the Agricultural District, the minimum dimensions of yards required along designated major roads and highways in Butler County shall be as follows:

1. **Lot Dimensions:** The minimum width of a lot shall be 660 feet. The minimum depth of a lot shall be 660 feet. There shall not be a lot depth-to-width ratio greater than 4:1 (i.e. the depth of the lot cannot be greater than four times the width of the lot). In the event of unusual lot configurations, the Zoning Administrator shall determine whether the lot dimensions meet the spirit and intent of this requirement.
2. **Front Yard:** The setback from the front property line shall be at least 75 feet. Structures used for agricultural purposes are not exempt from front yard setback requirements.
3. **Side Yard:** The setback from any side lot line shall be at least 50 feet for any residential structure and 25 feet for non-residential accessory structures. (Per K.S.A. 12-758, structures used for agricultural purposes are not subject to the side yard setback requirement)
4. **Rear Yard:** The setback from the rear property line shall be at least 50 feet for any residential structure and 25 feet for non-residential accessory structures. (Per K.S.A. 12-758, structures used for agricultural purposes are not subject to the rear yard setback requirement)

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