

ARTICLE 19 SUPPLEMENTARY USE REGULATIONS; CONDITIONAL USES; ACCESSORY USES; PROHIBITED USES

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19-101 Conditional Uses - Purpose and Intent:

The establishment of virtually all land uses except agricultural and traditional single-family residential, in most cases, are not appropriate in the bulk of unincorporated portion of Marion County; especially those land uses that are of an extremely sensitive nature due to the intensity or environmental impacts associated with the normal operation of the business or activity. However, it is recognized that it may be acceptable, on a case-by-case, site-by-site basis, to permit the development of such land uses where conditions warrant and adequate safeguards are taken to mitigate any of the potential problems associated with said development. Therefore, in order to develop any land use other than agricultural and traditional single-family residential in the unincorporated portion of Marion County, a Conditional Use Permit issued in accordance with these Regulations shall be required.

It is the intent of this Article to require a Conditional Use Permit for all proposed land uses, except those specifically prohibited herein or allowed as a permitted use in one of the established zoning districts. As such, it is acknowledged that any property owner may seek a Conditional Use Permit for any of the types of land uses indicated herein for any property within the unincorporated portion of Marion County. The subsequent approval of such request by the Governing Body is a purely discretionary act that will be decided based upon the facts and circumstances discovered in the review of each application. There is no implied "right" for any person or landowner to obtain a Conditional Use Permit for any use on any property.

It is also the intent of this Article to allow the issuance of Conditional Use Permits that provides for more than one use on any property; provided the range or type of uses is clearly delineated within the Conditional Use Permit, the other relevant facts have been evaluated, and the approval is consistent with the spirit and intent of this Article and these Regulations. (For example: a Conditional Use Permit could be approved for a "strip shopping center" in a location where transportation and adequate water and sewage disposal services are available. The Conditional Use Permit could indicate a range of "retail and/or service businesses" as being appropriate for this location and included in the Permit.)

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19-102 Application of Conditional Uses:

Before the location or establishment of any land use requiring a Conditional Use Permit, or before any change or use of the premises existing at the time of the effective date of these Regulations or permitted as herein provided is made, a Development Plan in sufficient detail and a statement as to the proposed use of the buildings, structures, and premises shall be submitted to the Planning Commission as specified in Article 12 of these Regulations. The Planning Commission shall hold a public hearing following the provisions also outlined in Article 24 of these Regulations and shall review such Development Plan and statements and shall, after a careful study of the effect that such buildings, structures, or uses will have upon the surrounding property, submit a recommendation to the Governing Body.

Following receipt of the Planning Commission's recommendation, the Governing Body may, within the specifications herein provided, permit such buildings, structures, or uses; provided that the public health, safety, morals, and general welfare will not be adversely affected, that ample off street parking facilities will be provided, that the transportation and utility services are appropriate for the level and intensity of the proposed development, and that necessary safeguards will be provided for the protection of surrounding property, persons, and of neighborhood values. In this regard, the Governing Body may impose reasonable conditions on the approval of a Conditional Use Permit including, but not limited to, those items identified in Article 12 of these Regulations.

19-103 Qualification of Existing Conditional Uses:

Properties with land uses operating under an existing Conditional Use approved prior to the adoption of these Regulations, or that were zoned and used as commercial or industrial under the previous Zoning Regulations, shall be permitted to continue, but with an unapproved Conditional Use Permit. Changes in the building(s), operation(s) or use(s) of said properties shall be treated as requiring an amendment to said unapproved Conditional Use Permit and considered as provided Section 19-102 herein.

19-104 Additions and Changes to Conditional Uses:

All subsequent requests for additions and structural alterations to Conditional Uses approved by the Governing Body shall be considered in the same procedure as outlined in Section 19 102 herein.

19-105 Conditional Uses Enumerated:

The following Conditional Uses are some of the uses that may be approved by the Governing Body as provided in this Article. Other land uses may also be permitted by Conditional Use Permit except those specifically listed as permitted uses in the zoning districts or as prohibited uses in these Regulations.

1. Adult Entertainment Establishment.: Any business, premises or establishment including, without limitation, adult bookstores, adult video stores, adult motion picture theaters, adult mini-motion picture theaters, adult cabarets, adult live performance theaters which has any of the following:
 - A. Thirty percent (30%) or less of its annual gross receipts derived from: (a) the offering of entertainment, performances, scenes, visual representations, or other presentations which are characterized by emphasis on depiction or description of "specified sexual activities" or of "specified anatomical areas" as herein defined, or (b) the offering of stocks in trade of books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, slides, or other photographic materials which are characterized

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by emphasis on depiction or description of “specified sexual activities” or of “specified anatomical areas” as herein defined, and instruments, devices, or paraphernalia designed for use in connection with “specified sexual activities” as herein defined; or

- B. Thirty percent (30%) or less of its inventory on hand at any time consisting of stocks in trade of books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, slides, or other photographic materials which are characterized by emphasis on depiction or description of “specified sexual activities” or of “specified anatomical areas” as herein defined, or paraphernalia designed for use in connection with “specified sexual activities” as herein defined; or
- C. Thirty percent (30%) or less of its floor area at any time allocated to (a) entertainment, performances, scenes, visual representations, or other presentations which are characterized by emphasis on depiction or description of “specified sexual activities” or of “specified anatomical areas” as herein defined, or (b) the offering, display and storage of stocks in trade of books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, slides, or other photographic materials which are characterized by emphasis on depiction or description of “specified sexual activities” or of “specified anatomical areas” as herein defined, and instruments, devices, or paraphernalia designed for use in connection with “specified sexual activities” as herein defined, and instruments, devices or paraphernalia designed for use in connection with “specified sexual activities” as herein defined.
- D. No adult entertainment establishment shall be permitted within 2,640 feet of any religious institution, school, or public park or any property zoned for residential use. Such distance shall be measured in a straight line without regard to intervening properties from the closest exterior structural wall of the adult entertainment establishment to the closest property line of the religious institution, school, or public park, or the property zoned for residential use.
- E. No adult entertainment establishment shall be allowed to locate or expand within 2,640 feet of any other adult entertainment use or of any business licensed to sell or serve alcoholic beverages whether or not such business is also an adult entertainment establishment as defined-in this section. The distance between any two-(2) adult entertainment establishments or between an adult entertainment establishment and a business selling or serving alcoholic beverages shall be measured in a straight line without regard to intervening structures from the closest exterior structural wall of each business.
- F. All access to and from the adult entertainment establishment shall be provided from a street classified as a thoroughfare.
- G. The property on which such use is located shall have a minimum of 100 feet of street frontage.
- H. The property on which the use is located shall be screened by solid masonry wall, at least six feet (6') in height along all interior property lines.
- I. The facility on which the use is located and the parking for such facility shall have yard setbacks in compliance with the requirements for the zone in which the facility is located.

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- J. Off-street parking shall be provided at a ratio of one (1) parking space per 75 square feet of interior floor area. All off-street parking requirements shall conform to the Marion County Zoning Ordinance.
 - K. All landscaping and screening requirements for the zone in which the facility is located shall be observed.
 - L. The facility in which the use is located shall be designed in such a fashion that all openings, entries and windows prevent view into such facilities from any pedestrian, sidewalk, walkway, street or other public area. No adult entertainment activity shall take place partially or totally outside the adult entertainment establishment.
 - M. The facility in which such a use is located shall be limited to one (1) wall-mounted sign no greater than one (1) square foot of sign per linear foot of wall length, not to exceed a total of fifty (50) square feet; said sign shall not flash, blink or move by mechanical means and shall not extend above the roof line of the building. Further, no merchandise or pictures of products or entertainment on the premises shall be displayed in window areas or any area where such merchandise or pictures can be viewed from the sidewalk in front of the building. No flashing lights and/or lighting which leaves the impression of motion or movement shall be permitted.
 - N. Lighting the parking area must provide a minimum light level of 0.25 foot candles over the entire parking area, but in no point shall the light level exceed 3.0 foot candles, nor shall any increase in light levels or visible glare be permitted at the lot line.
- 2. Airports, aviation fields, heliports, and/or landing fields, either publicly or privately held.
 - 3. Bed and breakfast facility.
 - 4. Boat sales and service, including storage yard.
 - 5. Buildings, structures or premises for public utility services or public service corporations; including but not limited to, water treatment plants, wastewater treatment plants, pump stations, filter beds, water towers, substations, reservoirs, and utility maintenance shops and yards; but no Condition Use Permit is required for infrastructure otherwise permitted, allowed or not regulated pursuant to Article 1-106 (1) (I), Article 1-106 (3), or as expressly allowed by right in the applicable Zoning District.
 - 6. Bus barns or lots.
 - 7. Cemeteries, mausoleums or crematories for the disposal of the dead.
 - 8. Ceramic, pottery or concrete ornament product processing, sales and/or yard.
 - 9. Churches and church related facilities including camps, schools, retreat centers and similar facilities; publicly-owned and operated community buildings, art gallery, museums and libraries.
 - 10. Commercial and/or retail stores and activities not otherwise prohibited by these Regulations.
 - 11. Commercial offices and office parks.
 - 12. Commercial parking lots.

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13. Commercial stockyard or agricultural processing facility, including hog, dairy and poultry, provided:
 - A. The development plan shall include a statement verifying compliance with the applicable provisions of Kansas statutes and Kansas Administrative Regulations in effect at the time of application. Copies of all permit documents, plans, specifications or reports required to be submitted to the KDHE, or any state agency, shall be submitted with the application.
 - B. The applicant shall identify the method to be used in the handling and disposal of all animal waste generated from all one-site operations.
 - C. All roads not a part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application. Final approval of the designated roads to be used shall be made a part of the Conditional Use Permit, if approved. A construction agreement between the applicant and Marion County shall be required. Such agreement shall specify the standards to which such roads will be reconstructed, if necessary. The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee.
 - D. If the Conditional Use Permit is approved, the applicant and all successors or operators of the facilities shall submit copies of all annual reports and documents required to be submitted to all state regulatory agencies to the Marion County Planning & Zoning/ Environmental Health Department, which shall keep them on file.
14. A Commercial Wind Energy Conversion System, subject to the requirements of Article 27.
15. Any small Wind Energy Conversion System proposed to exceed the Performance Standards as stated within these Regulations.
16. Convenience food stores.
17. Contractor's shop and/or yard, including construction equipment and/or material storage areas.
18. Drinking establishments, taverns, membership clubs, or other places that serve alcohol for consumption on the premises.
19. Drive-in and drive-through establishments.
20. Drive-in theaters.
21. Dwellings for resident night watchmen and caretakers employed on the premises of a business.
22. Dwellings, two-family and multi-family; provided, consistent with single-family residential developments, the provision of adequate public water and sewer service, along with other public infrastructure, is necessary in order for development of said dwellings to be permitted.
23. Exposition centers and/or buildings.
24. Explosives, fireworks, ammunition, black powder, or similar material wholesale sales, storage, warehousing, and/or manufacturing.

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25. Fairgrounds.
26. Farm machinery sales and service, including storage yards.
27. Fire stations.
28. Grain elevators and its accessory activities including, but not limited to, bulk fuel storage facilities, ammonia storage, tire repair facilities, etc.
29. Greenhouses, nurseries and/or hydroponic farms operated as a retail business.
30. Group Boarding Home, Licensed Group Day Care Home, Child Care Center, Licensed Day Care Home, Preschool, Detention Center, or Residential Center, except as permitted by K.S.A. 12-736 as amended, provided:
 - A. The applicant shall submit, as a part of the application, the plans for the proposed facility giving the type of services to be rendered, the number of persons to be placed in the facility, the number of staff to be employed and other information that will help in determining the extent of services to be provided.
 - B. A report from the Marion County Health Officer shall be submitted by the applicant, giving the current status of the applicant's license to operate the proposed facility and listing all requirements yet to be met in order for the proposed facility to be granted authorization to begin its operations.
 - C. Off street parking at a rate of one space per employee plus two additional spaces for guests.
 - D. When operated out of an existing or proposed residential structure, the following standards shall be met:
 - 1) That only one non-illuminated ground or wall sign not more than 4 square feet in area is used to advertise the home occupation.
 - 2) Outside play areas shall be fenced.
31. Hospitals, nursing or convalescent homes, congregate care facilities and retirement housing.
32. Hospital or clinic for large or small animals, provided, such hospital or clinic and treatment rooms shall be maintained within a completely enclosed, soundproof building, and that such hospital or clinic shall be operated in such a way as to produce no objectionable odors outside its walls.
33. Hotels, motels, and motor hotels.
34. Judicial centers, jails, penal or correctional institutions.
35. Junkyard.
36. Keeping of exotic birds and/or animals on any tract of land, whether in a building or not.
37. Keeping of farm animals, including but not limited to horses, ponies, cows, hogs, pigs, sheep, and/or goats on a lot or tract of less than one (1) acre.

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38. Kennels, either boarding or breeding, provided:

- A. All kennel buildings, runs and open areas shall be a distance of at least 1,000 feet between the outer perimeter of the breeding or boarding operation and the nearest residence other than the residence on-site, church, school, public meeting place, commercial business or confined livestock operation.
- B. Open pens shall not be required to be served by sanitary sewer facilities unless soil conditions will not support adequate percolation.

39. Laboratories; research, experimental, and/or testing.

40. Lawn and garden supply sales and service, including storage yards.

41. Manufactured home and recreational vehicle sales and service, including display yard.

42. Manufactured home as a single-family dwelling on an individual tract.

43. Manufactured home parks, subject to the standards established in the Manufactured Home Code of Marion County.

44. Manufacturing, processing, fabrication and assembling of any commodity except junk or salvage.

45. Membership clubs, including private clubs as defined by K.S.A. 41-2601 et seq, and subsequent amendments.

46. Mortuaries and attendant accessory activities and facilities.

47. Motor vehicle sales, service and repair.

48. Multi-family dwellings, including two-family dwellings, townhouses, garden apartments, condominiums; provided, consistent with single-family residential developments, the provision of adequate public water and sewer service, along with other public infrastructure, is necessary in order for development of said dwellings to be permitted. In addition, the introduction of accessory apartments for extended family members in accessory buildings on the same lot; provided ownership and all services for such unit are maintained in the name of the owner of the principle building and/or occupant.

49. Non-Traditional Structure for the purposes of creating a residence, provided:

- A. Any person intending to place a non-traditional structure on an individual lot within Marion County for the purpose of creating a residence is expected to meet the setback requirements of the Zoning Regulations to the same extent as for a site-built home.
- B. Every property owner seeking a Conditional Use Permit to allow a non-traditional structure used as a residence shall submit a detailed site plan of the proposed structure and its relationship to the lot property lines.
- C. Every property owner seeking a Conditional Use Permit to allow a non-traditional structure used as a residence shall submit a description of the design of the proposed residence, including but not limited to the type of roof covering, siding and/or paint color, a floor plan, and elevation drawings.

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- D. Each non-traditional structure shall be placed on a permanent foundation constructed in compliance with the adopted Codes of the County, with a continuous, permanent masonry foundation or masonry curtain wall, unpierced except for required ventilation and access which may include walk-out basements and garages, is installed under the perimeter of the non-traditional structure.
- E. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the non-traditional structure shall be installed or constructed firmly to the primary structure and anchored securely to the ground.
- F. Each non-traditional structure shall be required to obtain a wastewater system permit in compliance with the adopted Codes of the County.

50. Offices and office buildings.

51. Parks and playgrounds.

52. Printing, publishing, and engraving firms, including newspaper publishing; provided said operations are principally retail businesses.

53. Quarrying, mining, and removal of sand, gravel, stone, coal or topsoil 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 Governing Body when the same are visible from any public road.
- B. The applicant shall provide an approvable method for dust abatement on all unpaved interior roads if any part of the operation is located within 1/4 mile of any residential dwelling.
- C. Where applicable, a maintenance agreement between the applicant and the County and/or Township having jurisdiction shall be required to maintain the roads that provide the ingress/egress to the operation.
- D. All areas quarried or mined shall not endanger the lateral support of abutting or adjoining properties. A minimum setback of 100 horizontal feet from any road right of way and 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. The setback areas may be used for the erection of berms or other screening features required by the Conditional Use Permit.
- E. 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 Governing Body before reclamation work may begin. Said approval of a revised reclamation plan shall require a public hearing under the same procedure as the original Conditional Use Permit.

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- F. A bond in the amount necessary to reclaim all lands opened at any given time shall be placed in effect and submitted to the Governing Body prior to the operation of all quarries, mining or removal of sand, gravel, coal or topsoil authorized by the Conditional Use Permit.
 - G. All area quarried or mined shall not endanger the lateral support of abutting or adjoining properties. A minimum setback of 100 horizontal feet from any road right-of-way and 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.
 - H. No building, equipment, quarry products or other materials shall be erected or stored within 100 feet of any property or right of way line.
 - I. A copy of the annual survey of mining operations, as required to be filed by State law with the State, shall also be filed with the Governing Body. Said annual survey applies only to underground mining activities, not to open pit mines or quarries.
 - J. The applicant's operation shall be inspected by the Zoning Administrator on or before July 1st of every year following approval of the Conditional Use Permit for compliance with the above listed requirements. All deficiencies or violations shall be corrected within 60 days of written notice from the Zoning Administrator itemizing the violations and corrective measures necessary for compliance. There shall be a mandatory (5) five year review by the Planning Commission for all quarries, mining or removal of sand, gravel, coal or topsoil operating under a Conditional Use Permit.
54. Radio or television broadcasting towers and/or stations, microwave transmitting and/or receiving towers and/or stations, commercial telecommunication towers, or any tower or other similar structure 50 feet or more in height; whether publicly or privately owned, provided:
- A. The location of every tower must be such that it is at least an equal distance from all property lines as it is in height.
 - B. All lighting necessary to comply with the FAA lighting requirements shall consist of dual lighting structures with day time strobe lights on medium intensity and night time red lights only. No high intensity strobes or night time strobes shall be permitted. Further, all towers requiring lighting shall provide battery backup or other alternative power source to assure lighting operations during times of power outages.
 - C. Any communication tower that is unused for a period of twelve (12) months or more shall be declared abandoned and shall be notified of the necessity of removing the tower and appurtenances and reclaiming the lands as provided herein.
55. Recreational or sports-related activity or facility, whether publicly or privately owned.
56. Recreational vehicle park or campground, subject to the standards established in the Recreational Vehicle Code of Marion County.
57. Restaurants.
58. Riding academies, stables and/or show arenas, indoor or outdoor rodeo arenas and/or facilities.

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59. Sanitary landfills, hazardous waste disposal facilities, construction/demolition landfills, industrial landfills, or other such similar areas not prohibited by law.
60. Schools, preschools or kindergartens, either publicly or privately owned or operated.
61. Short-Term Rentals, provided:
- A. The maximum number of transient guests occupying a short-term rental unit shall not exceed eight (8) persons.
 - B. The unit shall be located within the principal residential dwelling unit on the property and may not be located within an accessory building, unless the principal residential dwelling unit is owner-occupied.
 - C. The unit may not be rented or offered for use as reception space, party space, meeting space, or for other similar events open to non-resident guests.
 - D. No food service may be provided by the host.
 - E. The county-issued zoning certificate and/or certificate of occupancy for such dwelling unit shall be on display in the interior of the unit. The zoning certificate and/or certificate of occupancy for a short-term rental use is valid for only the original Operator and dwelling(s) listed on the zoning certificate and/or certificate of occupancy and must not be transferable to any future Operator or other property. Changes to the information pertaining to the operator or dwelling(s) listed on the zoning certificate and/or certificate of occupancy will require the issuance of a new zoning certificate and/or certificate of occupancy.
 - F. No exterior evidence that the property is being used as a short-term rental shall be allowed, including signs indicating the dwelling is used as a short-term rental.
 - G. The short-term rental host shall monitor any complaints received from guests, local residents, or others regarding any nuisance activity or sanitary, health, or life safety conditions observed on the property. Said complaints made to either the short-term rental host, or their intermediary platform, shall be made available to the county upon request.
 - H. The zoning certificate and/or certificate of occupancy for a short-term rental may be denied, or once issued, suspended or revoked when, in the determination of the County Zoning Administrator, the rental of the short-term rental property is ineligible under, or fails to comply with, these provisions of the Conditional Use Permit.
 - I. Comply with all applicable federal, state, and local laws, including but not limited to collection and certification of payment of taxes and procurement of any required licenses and permits.
 - J. Post, within each unit, contact information for the owner, host, and/or other local emergency contact information.
 - K. The owner shall install and maintain the following safety requirements:
 - 1) An operational smoke detector in each bedroom and floor of the unit;

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- 2) Each floor must have at least one operational fire extinguisher that is clearly marked and accessible to guests;
 - 3) Each floor must have at least one operational carbon monoxide detector;
 - 4) All receptacles serving countertop areas and any receptacle within 6 feet of a water source, such as bathrooms, kitchens, laundry, utility, and wet bar sinks, and pool/spa areas accessible to guests, must have ground-fault circuit interrupter (GFCI) protection.
 - 5) All rooms used for sleeping must have at least two means of egress;
 - 6) A working battery powered portable flashlight, or lantern, or other emergency lighting device that is workable during an electrical power outage;
 - 7) A fire safety plan and emergency contact information, including the contact information for the Operator or Manager, local law enforcement, and fire and rescue, must be posted in a visible location.
- L. The owner shall allow the inspection of the short-term rental dwelling unit by the County for compliance with the Conditional Use Permit upon a 10-day prior notice (which may be oral or electronic), or upon the first vacancy of said short-term rental dwelling unit; and further agree that if the host for any reason does not allow requested County inspection of such unit, the short-term rental permit for such unit may be suspended by the County Zoning Administrator until such inspection is allowed by the host.
- M. Provide evidence to the County Zoning Administrator that there is at least \$300,000 of liability insurance for the proposed short-term rental dwelling unit in question. Said insurance may be provided by a short-term rental intermediary; provided that no short-term rental intermediary shall have any obligation or liability to the county with respect to whether such insurance is so provided. Proof of insurance shall be provided at the time of application and with annual registration.

62. Solar Energy System – Utility Scale (SES-U), provided:

- A. Information shall be provided relative to the solar technology to be used (i.e. polycrystalline PV, monocrystalline PV, Cadmium Telluride PV, evacuated tube solar thermal, flat plate solar thermal, etc.); approximate number of solar modules/panels; system mounting (i.e. fixed-tilt on flat roof, fixed-tilt ground mount, 1-axis tracking ground mount, etc.); the maximum height of the array from the ground or roof surface; the maximum height of any new utility poles; and power capacity of the system, in both DC and AC Watts where applicable; total acreage of array and acreage of total project; manner in which the project will connect (i.e. net meter to existing distribution line, to new distribution line, to transmission line); and, whether a new substation will be constructed. (If so, provide location and size).
- B. If a SES-U is proposed to be placed within one (1) mile of any airport or airstrip, the applicant shall provide acknowledgment of location approval from the Federal Aviation Administration prior to construction.
- C. No SES-U shall be placed such that concentrated solar glare casts onto adjacent properties or roadways. The applicant shall provide a Solar Glare Hazard Analysis utilizing the latest

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version of the Solar Glare Hazard Analysis Tool (SGHAT), or its equivalent, to evaluate the solar glare aviation hazard. The full report for each flight path and observation point, as well as the contact information, shall be submitted to the Zoning Administrator at least 30 days before the required public hearing for the Conditional Use Permit for the SES-U. Any applicable SES-U design changes (e.g., module tilt, module reflectivity, etc.) after initial submittal shall be rerun in the SGHAT tool and the new full report shall be sent without undue delay to the County for accurate records of the as-built system. The analysis shall provide an assessment of when and where glare will occur throughout the year.

- 1) If solar glare is predicted, the applicant shall provide mitigation measures to address the impacts of solar glare. Mitigation measures may include and are not limited to textured glass, anti-reflective coatings, screening, distance, and angling of solar PV modules in a manner that reduces glare to surrounding land uses of non-participating property owners.
- D. The applicant shall submit an Environmental Assessment to EPA standards that addresses the project's impact, if any, on: wildlife habitat; bird migration; the projects potential to cause bird and bat strikes or death; officially listed flora and fauna; and flood zones.
- E. The applicant shall provide information that addresses: stormwater drainage, soil erosion, sediment control, and will detail how same will be addressed, prevented or enhanced by grading, re-vegetation or other standard construction practices. Damage to existing vegetation shall be minimized. Disturbed areas shall be reseeded. Weed control shall be maintained as directed by the Marion County Noxious Weed Department.
- F. The applicant shall provide an agreement to adequately compensate Marion County for governmental services and for impacts related to the Project. Said agreement, in content and form acceptable to Marion County in its sole discretion, shall be executed within one hundred-twenty (120) days following the adoption of a County Resolution approving a Conditional Use Permit, or failure to do so shall render the Conditional Use Permit null and void.
- G. All roads not a part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application. Final approval of the designated roads to be used shall be made a part of the Conditional Use Permit, if approved. A construction agreement between the applicant and Marion County shall be required, and said agreement shall specify the standards to which such roads will be reconstructed, if necessary. The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee. No building or construction permit shall be issued until the applicant submits proof that appropriate permits and any required guarantees dealing with road damage or maintenance can be provided.
- H. The applicant shall provide a list of all local, state and federal agencies requiring approval and a copy of such approval, including all required studies, reports and certifications. In the event that a state or federal agency has not yet approved a required study, report or

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certification, then the enforcement of the conditional use permit shall be subject to receipt of a copy of such approval, unless good cause is shown to the satisfaction of the Zoning Administrator.

- I. The SES-U infrastructure, such as solar collector panels, shall not exceed fifteen feet (15') in height; provided, said height restriction shall not apply to substation facilities or transmission lines. All other structures shall have a maximum height of 35 feet.
- J. Setbacks: All SES-U structures shall be setback from the project boundary lines and public rights-of-way at least forty (40) feet. Additional setbacks may be required to mitigate site specific issues or to provide for access, road or commercial corridors. No SES-U shall be located nearer than one (1) mile from the incorporated limits of any city in Marion County. In the event that an applicant desires to locate a SES-U within this one-mile buffer requirement, the application may only be approved if findings are made by the Board of County Commissioners that circumstances exist which are believed to necessitate the need for a deviation from this buffer requirement.
- K. The SES-U shall be enclosed by perimeter fencing at least 8 feet tall to restrict unauthorized access.
- L. No outdoor storage of any materials or equipment associated with an SES-U is permitted unless explicitly permitted by the Conditional Use Permit.
- M. On-site communication lines and power collection lines are to be installed underground. Above ground utility or power lines may be used only in public rights-of-way, easements or other legally dedicated land permitting such uses, or when conditions on-site are found to make installation of such lines or facilities impractical or infeasible, such as existing underground pipelines, utilities or high groundwater.
- N. The SES-U should be located to make maximum use of existing terrain, vegetation and structures to screen the project from off-site views.
- O. The applicants shall submit a mitigation plan to account for potential fires related to range burning (prescribed and/or non-prescribed), failures of any on-site battery energy storage equipment, or any other similar emergency occurring within the application area. Said plan shall be made available to the Marion County Zoning Administrator and all Fire Departments serving the County prior to building permit approval.
- P. No lighting over 15 feet in height shall be installed on renewable energy facilities unless approved as part of the Conditional Use review process and is required by local, state or federal requirements. No light source greater than one foot-candle shall be directed off-site. Security or safety lighting of the SES-U and accessory structures shall be limited to the minimum necessary and full cutoff lighting (e.g., dark sky compliant) may be required when determined necessary to mitigate visual impacts. Lighting shall be shielded and downcast such that the light does not spill onto the adjacent parcel or the night sky. Motion sensor control is preferred.

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- Q. The applicant(s) shall provide a site and facility reclamation and decommissioning plan for approval by the Marion County Board of County Commissioners, which indicates the planned life of the SES-U and the means by which the facility and its site will be decommissioned and reclaimed at the end of the facility's life. Said reclamation and decommissioning plan shall certify that any owner of land within the SES-U and who is not the applicant(s) has been consulted in development of the reclamation and decommissioning plan. If the permit is granted, the plan shall be updated every five (5) years until site reclamation and decommissioning is complete. Before final inspection by public officials, the applicant shall provide evidence that the decommissioning plan, and amendments thereto, have been recorded with the Register of Deeds. The reclamation and decommissioning plan shall provide that, at the end of the project's life; or array component of an SES-U, all, or the appropriate portion, of the site's equipment and access roads shall be removed from the site and the site shall be returned to original condition, or restored to such condition as to allow a use compatible with surrounding uses as determined by the Zoning Administrator, or to such condition as agreed to by the landowner and the SES-U owner, developer, and/or operator. The landowner may choose to have access roads left intact.
- R. Approval of a Conditional Use 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 SES-U. The Applicant shall advise the Zoning Administrator when it obtains a PPA and shall provide such documentation confirming said agreement. Unless an alternate timeline is determined as a condition attached to the approved Conditional Use on a case-by-case basis, the PPA must be obtained within one year of the date of publication of the Resolution for the Conditional Use. This one-year period may receive up to a 6-month extension upon written request by the Applicant and subsequent approval by the Board of County Commissioners. In the event the Applicant does not obtain a PPA within the 12-to-18-month time span, the Resolution effectuating the Conditional Use shall automatically become null and void.
- S. A construction permit must be applied for within two (2) years of the approval of the CUP. If construction cannot be commenced within that two (2) year period, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period. A failure of the holder of a Conditional Use Permit approved for a SES-U project to timely apply for a construction permit or to timely commence construction shall result in the automatic termination the right to a SES-U use under the CUP and of the CUP. Subject to the previous provision, for all Conditional Use Permits approved for a SES-U project, such permit shall be allowed to continue, as long as all conditions placed on it are met. However, if the SES-U project use ceases to exist for a period of two (2) years, the CUP will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development Plan approved. However, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason for the temporary cessation of operations and the plan of initiating operations. The County may initiate an action to remove the Conditional Use, but must follow the same procedures as followed to establish the Conditional Use originally.

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- T. Any other issues or concerns that are identified relative to a specific request for a SES-U may be included within the information required for consideration of the Conditional Use Permit.

63. Truck stops and/or truck terminals.

64. Warehousing, wholesaling and storage of any commodity except junk or salvage.

65. Zoos, commercial aquariums, or aviaries.

66. Any other use not specifically listed as a permitted and/or accessory use in any district in these Regulations, or as a prohibited use.

19-106 Continuance of a Conditional Use:

A Conditional Use Permit shall be allowed to continue, unless specified otherwise as a condition of its original authorization, as long as all conditions placed on it are met. However, if that particular use ceases to exist for a period of six (6) months, it will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development approved in conformance with the requirements of these Regulations. The County may initiate an action to remove the Conditional Use, but must follow the same procedures as followed to establish the Conditional Use originally.

19-107 Accessory Uses:

Buildings and structures may be erected and land may be used for purposes which are clearly incidental to, and customarily and commonly associated with the main permitted use of the premises. Such accessory buildings and uses shall be so constructed, maintained and conducted as to not produce noise, vibration, concussion, dust, dirt, fly ash, odor, noxious gases, heat or glare which is injurious, damaging, unhealthful or disturbing to adjacent property or the users thereof, and shall be on the premises of the main use.

19-108 Eligibility for Accessory Use:

The determination of the eligibility of a proposed use as an accessory use shall be made by the Zoning Administrator.

19-109 Accessory Uses Allowed:

Accessory uses shall be allowed; provided, said accessory uses shall be limited to those specified herein for the various zoning classifications:

1. In the "A" Agricultural Districts, the following, or similar accessory uses are allowed:
 - A. Open or enclosed storage of farm materials, products or equipment; but not junk.
 - B. Any and all farm buildings, including, but not limited to, barns, stables, sheds, tool rooms, shops, bins, tanks and silos.
 - C. The use of a manufactured home as an accessory dwelling on land used for agricultural purposes when used by persons employed thereon, including their families. At no time shall a manufactured home or the land upon which it sits be intended and/or used as a rental unit in the "A" District.

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- D. Fuel storage, tanks and dispensing equipment for fuels used solely for a farming operation. No retail sales of such fuels shall be allowed as an accessory use.
 - E. Wholesale or retail sales of agricultural products grown or raised on the premises or by the farm operator.
 - F. A hobby activity operated by the occupant of the premises purely for personal enjoyment, amusement or recreation.
 - G. Home occupations.
 - H. Home schooling of the children of the occupants of the residence in accordance with standards established by the State of Kansas.
 - I. Accessory buildings and uses commonly associated with residential activity including, but not limited to, the following:
 - 1) Accessory off street parking and loading spaces
 - 2) Fences or walls
 - 3) Flag poles
 - 4) Gates or guard houses for subdivisions
 - 5) Guest houses
 - 6) Home barbecue grills
 - 7) Parabolic and satellite dish-type antennas
 - 8) Play equipment
 - 9) Private garages and carports
 - 10) Servants quarters
 - 11) Small storage sheds
 - 12) Solar Energy System - Private
 - 13) Swimming pools
 - 14) Television and radio receiving antennas less than 50 feet in height
 - J. Noncommercial wind energy conversion systems.
 - K. Storage buildings, including those originally designed or intended for use as a transportation vehicle or shipping structure.
2. In District "RR" Rural Residential, "SR" Suburban Residential, "R-1" Single-Family Residential, "ES" Marion Reservoir Eastshore Subdivision Residential, "LL" Marion County Lake Lot Residential, and "V-1" Village District only the following accessory uses are allowed:

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- A. Accessory buildings and uses commonly associated with residential activity, including, but not limited to, the following:

- 1) Accessory off street parking and loading spaces
- 2) Fences or walls
- 3) Flag poles
- 4) Gates or guard houses for subdivisions
- 5) Guest houses
- 6) Home barbecue grills
- 7) Parabolic and satellite dish-type antennas
- 8) Play equipment
- 9) Private garages and carports
- 10) Servants quarters
- 11) Small storage sheds
- 12) Solar Energy System - Private
- 13) Swimming pools
- 14) Television and radio receiving antennas less than 50 feet in height

No accessory building or use shall occupy a required front yard (except basketball goals, flag poles and fences as permitted.) The total floor area of all accessory buildings shall not exceed 1,200 square feet, except in the "RR" Rural Residential and "SR" Suburban Residential Districts where this restriction shall not apply.

- B. A hobby activity may be operated as an accessory use by the occupant of the premises purely for personal enjoyment, amusement or recreation.
- C. In the "RR" Rural Residential District and "SR" Suburban Residential District on lots three (3) acres or larger, agricultural activities may be conducted as accessory activities, such as growing of crops, pasturage of animals, growing of hay, or other similar activities. However, at no time shall such activity be classified or permitted as the primary usage of the land; said usage being as a residential home site in either of the zoning districts.
- D. Home occupations such as, but not limited to, the following:
- 1) Accountant
 - 2) Architect
 - 3) Artist
 - 4) Attorney

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- 5) Author or writer
- 6) Chiropractor
- 7) Clergyman
- 8) Cosmetologist
- 9) Counselor
- 10) Dentist
- 11) Engineer
- 12) Home crafts
- 13) Insurance Agent
- 14) Osteopath
- 15) Photographer
- 16) Physician
- 17) Planner
- 18) Real Estate Agent
- 19) Seamstress/Dressmaker
- 20) Secretary/Typist
- 21) Teaching or instruction provided not more than 3 students are taught at any one time and not more than 12 students per day

The following conditions and restrictions shall apply to such customary home occupations:

- 1) That the home occupation shall be carried on wholly within a main building or structure, or within a permitted accessory building or structure, provided that the primary use of the main building or structure is clearly the dwelling used by the person as his or her private residence.
- 2) That no person other than members of the household living on the premises and one (1) outside person shall be employed.
- 3) That only one non-illuminated ground or wall sign not more than 4 square feet in area is used to advertise the home occupation.
- 4) That no display or storage of equipment or materials outside of a building or structure shall be permitted.
- 5) That no equipment or machine is used in such activities that is perceptible off the premises by reason of noise, smoke, dust, odor, heat, glare, radiation, electrical interference or vibration.

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- 6) That off street parking and loading shall be provided and that no generation of substantial volumes of vehicular or pedestrian traffic or parking demand shall be permitted.
- E. Home schooling of the children of the occupants of the residence in accordance with standards established by the State of Kansas.
- F. Kennels, either boarding or breeding, provided the tract of land has at least 10 acres. In addition, there shall be a distance of at least 1,000 feet between the outer perimeter of the breeding or boarding operation and the nearest residence other than the residence on-site, church, school, public meeting place, commercial business or confined livestock operation.
- G. Noncommercial wind energy conversion systems.
- H. Storage buildings, including those originally designed or intended for use as a transportation vehicle or shipping structure in property zoned "RR" Rural Residential. Storage buildings shall be subject to all setback requirements of the district and shall be limited to placement of one (1) structure originally designed or intended as a transportation vehicle or shipping structure.

19-110 Specialty Accessory Uses:

The following uses, activities, or items shall be the accessory uses or restrictions allowable:

- 1. Construction Sites: Construction and hauling trailers may be used as a temporary construction office on the site of a construction project, provided such construction or hauling trailer is removed upon completion of the project.
- 2. Recreational Vehicles and Trailers:
 - A. Recreational vehicles may be parked in a recreational vehicle park or campground. Recreational vehicles or equipment may also be stored or parked outdoors in the "A" Agricultural District. Recreational vehicles may be stored within any "RR", "SR", "R-1", "ES", "LL" or "V-1" District, provided; said recreational vehicle or recreational equipment, as defined in these Regulations, is stored within an enclosed structure (which structure otherwise conforms to the requirements of these Regulations), or may be permanently parked upon the private property of the premise if said recreational vehicle or recreational equipment is not parked within the front yard; within the required yard along any public street; or within 10 feet of side or rear lot line.
 - B. At no time shall a permanently or temporarily parked or stored recreational vehicle or item of recreational equipment be occupied or used for living, sleeping, or housekeeping purposes, except in a recreational vehicle park, or as a permitted temporary dwelling on a lot on which a valid Zoning Certificate is issued for construction of a dwelling on said lot.
 - C. The provisions of these Regulations regarding recreational vehicles do not apply to those businesses displaying recreational vehicles or recreational equipment for sale or service when said business is properly located.

19-111 Prohibited Uses:

After the effective date of these Regulations:

1. No mobile home or non-compliant manufactured home, as defined in these Regulations, shall be moved, relocated, or otherwise placed on any property in the unincorporated portion of Marion County, including within any Manufactured Home Park or Manufactured Home Subdivision.
2. No manufactured home or mobile home shall be used for any purpose other than as a residential dwelling as permitted within these Regulations. At no time shall a manufactured home or mobile home be permitted to be converted to a storage unit, office or any other such use, except when used as a permitted accessory use in this Article. At no time shall a manufactured home or mobile home be converted to an agricultural building for use as storage of agricultural products or equipment or shelter for animals.
3. No mobile home or manufactured home originally built to be a single-wide unit shall be attached or connected to any other mobile home or manufactured home, or to any other structure or building. This shall not prohibit reasonable, aesthetically designed stoops, porches, decks, carports or the like from being built onto or adjacent to an approved manufactured home.
4. No property shall be used as junkyard, sanitary landfill, construction/demolition landfill, industrial landfill, hazardous or toxic waste storage facility, or other similar use or activity, including as an accessory use to another principal use, unless such use or activity has been approved by the issuance of a Conditional Use Permit as provided within these Regulations.
5. Unless approved as a Special Exception under Article 21-104 of these regulations within the "R-1" Single-Family Residential District and the "V-1" Village District, no structure constructed or intended for use as a shipping container, whether as originally a transportation vehicle or as a separate structure, shall be used as a storage container on property zoned "ES" Marion Reservoir Eastshore Subdivision Residential District or "LL" Marion County Lake Lot Residential District. All other such placements where allowed shall be in conformance with the restrictions within these Regulations.
6. No application for a Conditional Use Permit shall be considered and no Conditional Use Permit shall be issued for any person on any property which proposes as the only use the placement of an advertising sign or billboard. Further, an advertising sign or billboard permitted as an accessory structure in an approved Conditional Use Permit shall not be built, used or remain in use unless the principal use and/or structure on the property is first built and/or currently used. Upon the cessation of the principal use and/or structure on the property, the advertising sign or billboard shall lose its standing as an accessory structure and must be removed. At no time shall an advertising sign or billboard first established under these regulations gain standing as a non-conforming use since the placement and continued use of such advertising sign or billboard is accessory to another principal structure or use.