RESOLUTION NO. 003-22

A RESOLUTION REGARDING CERTAIN AMENDMENTS TO THE JOHNSON COUNTY RURAL COMPREHENSIVE PLAN RELATING TO THE PROVISION OF SOLAR FACILITIES

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At a regular meeting of the Board of County Commissioners (hereinafter BOCC) conducted Thursday, April 4, 2022, there came before the BOCC for consideration the matter of adopting certain amendments to the Johnson County Rural Comprehensive Plan as recommended to the BOCC by the Johnson County Planning Commission (hereinafter "Planning Commission").

The BOCC, upon a motion duly made, seconded and carried, Resolution No. 003-22 was adopted to wit:

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WHEREAS**,** on or about May 3, 1984, Senate Bill No. 715 became law and appeared in the 1984 Session Laws of Kansas at Chapter 96, prior to its eventual codification in the Kansas Statutes Annotated (K.S.A.) at 19-2956 et seq.; and

WHEREAS**,** K.S.A. 19-2956 et seq. addresses planning and zoning authority in counties designated as urban areas, whereby Johnson County was so designated in K.S.A. 19-2654; and

WHEREAS**,** pursuant to the authority and under the requirements of K.S.A. 19-2956, et seq., the BOCC adopted its comprehensive plan, which plan is officially known as the

Rural Comprehensive Plan, a Plan for the Unincorporated Area of Johnson County; (hereinafter "Rural Comprehensive Plan" or "Plan"), by the adoption of Resolution No. 71-86; and

WHEREAS**,** following the initial adoption of the Rural Comprehensive Plan, the Planning Commission undertook a review of the Plan for the purpose of determining whether an amendment to the Plan was advisable; and

WHEREAS, as a result of its review of the Plan, the Planning Commission recommended, and the BOCC adopted, certain amendments to the Plan on August 22, 1991, by adoption of Resolution No. 081-91; and on March 17, 1994, by adoption of Resolution No. 020-94; and on February 8, 1996, by adoption of Resolution No. 013-96; and on July 23, 1998, by adoption of Resolution No. 078-98 and Resolution No. 079-98; and on July 29, 1999, by adoption of Resolution No. 068-99; and on June 15, 2000, by adoption of Resolution No. 052-00; and on June 3, 2004, by adoption of Resolution No. 048-04; and on December 16, 2004, by adoption of Resolution No. 111-04; and on January 25, 2007, by adoption of Resolution No. 006-07; and on October 11, 2007, by adoption of Resolution No. 078-07; and on November 19, 2009, by adoption of Resolution No. 071-09; and on January 21, 2010, by adoption of Resolution No. 009-10; and on December 12, 2013, by adoption of Resolution No. 068-13; and on April 2, 2015, by adoption of Resolution No. 013-15; and on August 20, 2015, by adoption of Resolution No. 038-15; and on August 1, 2019, by adoption of Resolution No. 033-19; and

WHEREAS**,** in accordance with the requirements of K.S.A. 19-2956 et seq., the Planning Commission again commenced a review of the Plan for purposes of determining whether any amendments, extensions or additions to the Plan are necessary and/or advisable and for the purpose of implementing policy changes within the Plan regarding the provision of solar facilities; and

WHEREAS**,** upon review of the Plan, the Planning Commission determined it to be in the best interest of the citizens of Johnson County to amend the Plan; and

WHEREAS**,** a public hearing was held by the Planning Commission on November 16, 2021, to receive public comment and testimony regarding whether certain amendments should be made to the Plan, regarding:

1. Part I, Chapter 2, Land Use Plan:
    a. Section 3.4, Availability of Public Facilities and Services;
    b. New Section 9.0, Special Land Use Considerations;
    c. New Section 9.1, Utility-Scale Solar Facilities; and
    d. New Section 9.2, Wind Energy (Reserved for Future Use); and
2. Part II, Chapter 8, Resource and Service Inventory:
    a. Section 6.2, Electric; and
    b. Map 18: Electrical Utility Areas;

as more fully set forth in the certified copy attached hereto as “Exhibit A” and included herein by reference; and

WHEREAS, on November 16, 2021, the Planning Commission closed the public hearing and continued consideration of the matter to its meeting of December 14, 2021; and

WHEREAS**,** having held the public hearing and reviewed the record and submitted evidence, comments and testimony, the Planning Commission on December 14, 2021, adopted Resolution No. PC 21-01 that recommends to the BOCC the adoption of certain amendments of the Plan as more fully set forth in the certified copy attached hereto as "Exhibit A" and included herein by reference; and

WHEREAS**,** the Planning Commission also recommended to the BOCC that following the adoption of the amendments, updates, and revisions to the Rural Comprehensive Plan, that said amendments, updates and revisions should be reformatted, as may be necessary, and thereafter published; and

WHEREAS**,** following the adoption of Resolution No. PC 21-01 by the Planning Commission, a certified copy of the recommended amendments, updates and revisions to the Rural Comprehensive Plan was officially submitted to the BOCC for its consideration of final approval; and

WHEREAS, having had an opportunity to review and consider the recommendations of the Planning Commission, and the record, submitted evidence, comments and testimony regarding same, and having thoroughly discussed the subject matter, the BOCC believes it is in the best interest of the public's health, safety and welfare that it adopt the recommended amendments to the Rural Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Johnson County, Kansas, that:

1. AMENDMENTS. The following provisions of the Rural Comprehensive Plan, are hereby adopted as amendments thereto, as more fully set forth in the attached "Exhibit A":

   a. Part I, Chapter 2, Land Use Plan:

      1. Section 3.4, Availability of Public Facilities and Services;

      2. New Section 9.0, Special Land Use Considerations;

      3. New Section 9.1, Utility-Scale Solar Facilities; and

      4. New Section 9.2, Wind Energy (Reserved for Future Use).

   b. Part II, Chapter 8, Resource and Service Inventory:

      1. Section 6.2, Electric; and

      2. Map 18: Electrical Utility Areas.

2. AREA AFFECTED. The Rural Comprehensive Plan is a document made applicable to all unincorporated areas of Johnson County, Kansas.

3. REFORMATTING. Following the adoption of the amendments, updates and revisions to the Rural Comprehensive Plan, said amendments, updates and revisions shall be reformatted, including but not limited to page numbers, as may be necessary, and thereafter published.

4. EXISTING PLAN. All of the terms, provisions and requirements of Resolution Nos. 071-86, 081-91, 020-94, 013-96, 078-98, 079-98, 068-99, 052-00, 048-04, 111-04, 006-07, 078-07, 071-09, 009-10, 068-13, 013-15,

038-15, and 033-19, and the Rural Comprehensive Plan as adopted and amended by the BOCC pursuant to said resolutions, shall remain the same except as they shall be modified by, and to give meaning to, this Resolution.

5. PUBLIC RECORD. The above-designated amendments to the Rural Comprehensive Plan shall bear the official signature, or facsimile thereof, of the Chairman of the BOCC, shall be attested, and shall be filed, among other places, with the office of the Johnson County Department of Planning, Housing and Community Development, Johnson County Administration Building, 111 South Cherry Street, Suite 2000, Olathe, Kansas, 66061, and shall be a public record. Furthermore, copies of the Rural Comprehensive Plan, as amended, shall be furnished without charge to all legislative and administrative agencies affected thereby.

6. EFFECTIVE DATE. This Resolution shall become effective upon its adoption and publication once in the official county newspaper. The attached "Exhibit A", however, need not be published, as it is on file for public inspection at the location designated above in Paragraph 5.

ADOPTED THIS 4th DAY OF APRIL, 2022.

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

Ed Eilert, Chairman

ATTEST:

Lynda Sader
Deputy County Clerk

PREPARED AND SUBMITTED BY:

Jay C. Leipzig, AICP
Director of Planning, Housing and Community Development

APPROVED AS TO FORM:

Richard J. Lind
Assistant County Counselor

RESOLUTION NO. 003-22
COMPREHENSIVE PLAN AMENDMENTS

EXHIBIT A

OFFICIAL COPY
ADOPTED BY RESOLUTION NO. 003-22
OF THE
BOARD OF COUNTY COMMISSIONERS
THE 4TH DAY OF APRIL, 2022

Rural Comprehensive Plan Amendments
regarding
Solar Facilities

PART I, CHAPTER 2: LAND USE PLAN
JOHNSON COUNTY RURAL COMPREHENSIVE PLAN

A. Part I, Chapter 2, Land Use Plan, Section 3.4, Availability of Public Facilities and Services, *Policies*, of the Johnson County Rural Comprehensive Plan, shall be and hereby is amended to read as follows:

3.4 Availability of Public Facilities and Services

Policies:

1. The *Preserving Our Future* (POF) Report, the County's Capital Improvement Plan (CIP), which identify County goals for needed infrastructure (e.g., roads), and the County's Triggers Policy, which provides a basis for determining when certain major road improvements may be needed, should be used to help co-ordinate where and what kinds of capital improvements should be made.

2. Development should be located where public infrastructure (e.g., water, sewer, and roads) is already adequate or can be most cost effectively extended.

3. New businesses should be discouraged from locating where there are no public sanitary sewers to serve them.

4. Public improvements should also support social and recreational opportunities (e.g., streamway corridors) for County residents as well as protect and promote the general public's health, safety, and welfare.

5. Utility-Scale Solar Facilities bring with them unique impacts to surrounding areas and can be an appropriate use within the county if associated land use considerations are properly identified and managed. These land use considerations are more thoroughly enumerated in Subsection 9.1, Utility-Scale Solar Facilities.

B. New pages to be inserted after Page 2-38: Part I, Chapter 2, Land Use Plan, new Section 9.0, Special Land Use Considerations, new Section 9.1, Utility-Scale Solar Facilities, and new Section 9.2, Wind Energy (Reserved for Future Use), of the Johnson County Rural Comprehensive Plan, shall be and hereby are added, and shall read as follows:

9.0 Special Land Use Considerations

9.1 Utility-Scale Solar Facilities

Preface

The production of energy is vital to a modern society. For many years, the main source of energy came from fossil fuel. In recent years, the United States has attempted to move towards a more sustainable energy model that reduces the carbon footprint. The technology to do so is currently available and in use in certain parts of the country. One such clean energy source is electricity generated by solar energy. Another is wind energy, however, nothing herein regarding solar energy should be interpreted as controlling or an indication if and how wind energy facilities may be allowed to operate in unincorporated Johnson County. That topic is either covered elsewhere herein, or will be covered at a later date. Therefore, the current policy question addressed here is whether Johnson County, Kansas, believes it to be in the best interests of the public health, safety and general welfare to provide areas in the unincorporated regions of the county for the establishment of solar facilities, to promote the present and future energy needs of not only the county, but also the country. In the year 2021, we answer that question in the affirmative, however, because these facilities pose unique challenges to land use planning in the unincorporated areas and adjacent cities, we move in that direction with caution, and with a desire for moderation, lest the unincorporated areas become inundated by this single use. Therefore, set forth below is a summary of our concerns, goals and corresponding policies as the county seeks to contribute to our country's successful transition to increased sustainable clean-energy.

Challenges and Unique Impacts

Planning bodies adopt plans and regulations so as to bring unity, consistency and efficiency to the planning efforts of a given jurisdiction. In the case of plans and regulations pertaining to solar facilities, such bodies are faced with unique challenges and impacts caused by solar facilities. For instance, solar facilities may be large scale in nature (hundreds to thousands of acres in size); with intense site coverage (structures typically covering more than 50% of the site); plus long life spans (usually at a minimum of between 20 to 40 years in length, but potentially even longer in duration). Unlike traditional development, the impacts caused by these facilities are not necessarily on existing levels of infrastructure, but rather upon, including but not limited to, the rural character, open space and aesthetics of the unincorporated area; cultural and recreational resources; wildlife, stormwater and other environmental elements; future land use and future city growth; the efficient extension of the other types of infrastructure; potential fiscal burdens to the general public by the unregulated cessation of uses; and potential fire hazards from battery energy storage facilities associated with such uses.

Of particular concern is the potential size of the solar facilities and the magnitude of their effect upon other uses and future development and upon the rural character and aesthetics of an area. These topics therefore merit additional discussion, as set forth below.

Scale and Geographic Distribution

Within the industry, it is typical for solar energy companies to lease land from area landowners in order to obtain the necessary Project Area in which to place their solar facility equipment. While the companies may attempt to have a compressed area with the numerous tracts of land all abutting, this result may be unattainable for a variety of reasons. Recognizing the practicalities of such situations, it is recommended that the county's adopted regulations and restrictions take this into consideration, and an allowance be made for the classification of non-abutting multiple tract scenarios to be considered, and to be processed, as a single conditional use permit application, rather than as multiple-applications. It is further recommended that our regulations consider adopting a requirement that the distance between non-abutting tracts shall not exceed one-half mile in distance. Because this accommodation could possibly result in widely dispersed facilities of tremendous size (resembling a "shotgun" pattern), which could potentially cover significant portions of the unincorporated areas thereby dominating the character of the area and precluding the development of other desirable and needed uses of land for extended periods of time (20 to 40 years or more), it is considered necessary and advisable, and therefore in the best interest of the public health, safety and welfare, that our regulations consider requirements to limit a solar facility's size, geographic dispersement, proximity to cities and permit term.

In order to allow for an adequately sized solar facility, yet restrict their size by reasonable requirements in order to mitigate undesirable consequences and the results of extraordinarily large facilities, a Project Area not exceeding 1,000 acres in size is recommended. Given that these uses will be the primary land use for at least one to two prudent planning periods (i.e. 20 to 40 years), and will preclude other growth and development of the land within the Project Area, it is believed that 1,000 acres is the reasonable and appropriate maximum size. Furthermore, because non-abutting multiple tracts are allowed under a single permit application, it is believed that the Project Extent of the facility should be no larger than 2,560 acres or 4 square miles in size. In addition, a further restriction is deemed necessary and reasonable, that no solar facility be located within two (2) miles of the existing main boundary line of a city, and within two (2) miles of an island city area of 80 acres or more, in order to not hinder or prevent the future growth and development of nearby cities. Furthermore, it is also deemed necessary and reasonable for the conditional use permit term limit not to exceed a reasonable planning period of 20 years to allow for further evaluation of, among other things, the solar facility's impact on surrounding growth and development and the technological advances made in the solar industry. The term Project Area is meant to include that area upon which the solar facility equipment is proposed to be located, and the term Project Extent is meant to include that area outlined by the outer boundary line of the Project Area, including tracts of land which will not have solar facility equipment located thereon. For purposes of example, the attached Diagram 1 depicts a Project Area, while attached Diagram 2 depicts a Project Extent.

This illustration is for comparison purposes only to describe the Project Area and Project Extent.

Upholding Rural Character

The majority of land located within unincorporated Johnson County is zoned RUR, Rural District, which allows agricultural uses and residential uses at a very low density. The RUR zoning district also holds the majority of very large parcels (e.g. with an area of at least 80 acres) existing within unincorporated Johnson County. Thus, it follows that proposed Utility-Scale Solar Facilities will likely be located within the Rural District within agricultural areas. A typical pattern within these agricultural areas consists of fields and pastures surrounded by tree lines (also referred to as "hedgerows"), intermittently dotted with homesites and ponds, and all placed among the branching streamways that flow within the area.

In general, solar facilities located within the Midwest are divided into groupings of photovoltaic panels (referred to as PV pods) that are placed in areas which were formally used as the aforementioned pastures and fields while retaining the existing tree lines, stands of mature trees, and the like and conforming to the existing topography of the area in a manner that requires a minimum of clearing and grading. Development of solar facilities within unincorporated areas of the county should be designed to uphold the rural character of the area in which they are located by following the typical agricultural development pattern, as outlined above, which emphasizes preserving existing vegetation and minimizing grading.

This "midwestern approach" is in contrast to the development of many solar facilities located within the southwestern regions of the country. These areas are often arid with little vegetation and relatively flat terrain. Solar facilities located in the southwest are often not divided into PV pods with surrounding tree lines, but are massed into larger groupings of PV panels that are relatively flat with little screening. Solar facilities located within the county that are developed using large-scale clearing and grading would generally not be in character with county agricultural areas, but would be more in

keeping with southwestern development patterns. Furthermore, Policy 5 of Section 3.1, Sense of Community and Rural Character, of this Chapter, indicates that development in predominantly rural areas should be designed with compatible elements (e.g., larger setbacks, low densities, buffering, landscaping) that blend the development into the surrounding rural character.

An example of a utility-scale solar facility preserving existing mature vegetation and topography.

Goals, Policies, and Action Steps

In order to lead the County toward the goal of a more sustainable energy model, and toward solar energy in particular, this unique use and its accompanying challenges calls for an equal measure of individualized regulation and restriction as part of a proportionate response. In addition to the above recommendations for Project Area, Project Extent, proximity to cities and project term, a non-exhaustive list of policies and corresponding action steps are enumerated, below:

1. Promote the county's rural character and open spaces.

    a. Adopt performance standards to control impacts affecting rural character and open space, including but not limited to requirements related to setbacks and screening to protect views from roads and abutting properties; ground cover consisting of prairie grasses, forbs and pollinators to protect disturbed areas; wildlife corridors; Project Area limitations to control the overall scale of the solar facility; height, noise and lighting to maintain a rural and not an urban character; and a decommissioning and reclamation plan to ensure that solar

facility equipment is properly removed from the Project Area and disturbed areas reseeded.

2. Protect the county's airports.

    a. Coordinate with the county airport compatibility plans.

    b. Adopt performance standards to control glare from sunlight and limit distance from county airports.

    c. Require glare impact studies when warranted and airspace studies in accordance with Federal Aviation Administration (FAA) requirements.

3. Coordinate with the county's comprehensive plan policy areas and area plans.

    a. Guide the location of solar facilities away from the Urban Fringe Policy Area and from residential areas designated in area plans.

4. Protect existing and proposed parks, streamway trails, and other natural, recreational, or cultural amenities.

    a. Encourage solar facility locations away from existing and future parks, streamway trails, and other natural, recreational amenities.

    b. Require a visual impact analysis and additional setbacks and screening when warranted.

    c. Adopt noise and lighting standards.

5. Protect environmentally sensitive areas.

    a. Prohibit encroachment upon environmentally sensitive areas.

    b. Require, among other things, an environmental impact assessment; wildlife corridors through the solar facility; additional setbacks when warranted; stormwater management plans that address stormwater quantity and quality; and conformance with Johnson County Erosion and Sediment Control Regulations.

    c. Encourage the use of permeable fencing to allow certain wildlife to continue to pass through the solar facility.

    d. Adopt standards regarding herbicide use, noise and lighting.

    e. US Solar Facilities shall be designed and developed to minimize grading and to protect and preserve Mature Trees, Stands of Mature Trees, treelines, streamways, ponds, and other natural features, and, in particular, remnant

grasslands and woodlands (which are areas that have not been previously plowed or graded) to the greatest extent reasonable and practicable.

6. Provide for efficient development of other infrastructure and services.

    a. Coordinate with the plans of area providers of infrastructure and services.

7. Protect existing and future residential areas and uses.

    a. Encourage facility locations away from existing and future residential uses.

    b. Adopt buffer zones, setbacks and other restrictions to mitigate any potential detrimental impacts.

    c. Adopt screening, noise, lighting and height restrictions and requirements.

    d. Require a visual impact analysis.

8. Provide for future city growth and development.

    a. Adopt permit term limits that do not exceed a prudent planning period.

    b. Protect land areas for future development in general, and in particular, within two (2) miles of the city fringe development areas.

    c. Coordinate with cities on their land use plans, street plans and other infrastructure plans.

    d. Adopt performance standards to control impacts affecting future city growth and development.

9. Maintain the highest levels of fiscal responsibility to minimize the potential burdens on taxpayers.

    a. Require the applicants to provide surety for decommissioning such uses.

10. Protect the unincorporated area from being inundated by this single use.

    a. Adopt size and geographic extent restrictions and distance limitations, plus site coverage limits.

    b. Restrict site coverage to promote and protect stormwater concerns.

11. Protect nearby uses from potential fire hazards.

    a. Adopt requirements to regulate battery energy storage facilities associated with this use, including requirements to coordinate with local emergency

services and requirements to be constructed, maintained and operated in conformance with county, state and federal codes and standards.

9.2 Wind Energy (Reserved for Future Use)

C. All of the terms and provisions of Part I, Chapter 2, Land Use Plan, of the Johnson County Rural Comprehensive Plan shall remain the same, except for the above designated amendments and additions.

PART II, CHAPTER 8: RESOURCE AND SERVICE INVENTORY
JOHNSON COUNTY RURAL COMPREHENSIVE PLAN

A. Part II, Chapter 8, Resource and Service Inventory, Section 6.2, Electric, of the Johnson County Rural Comprehensive Plan, shall be and hereby is amended to read as follows:

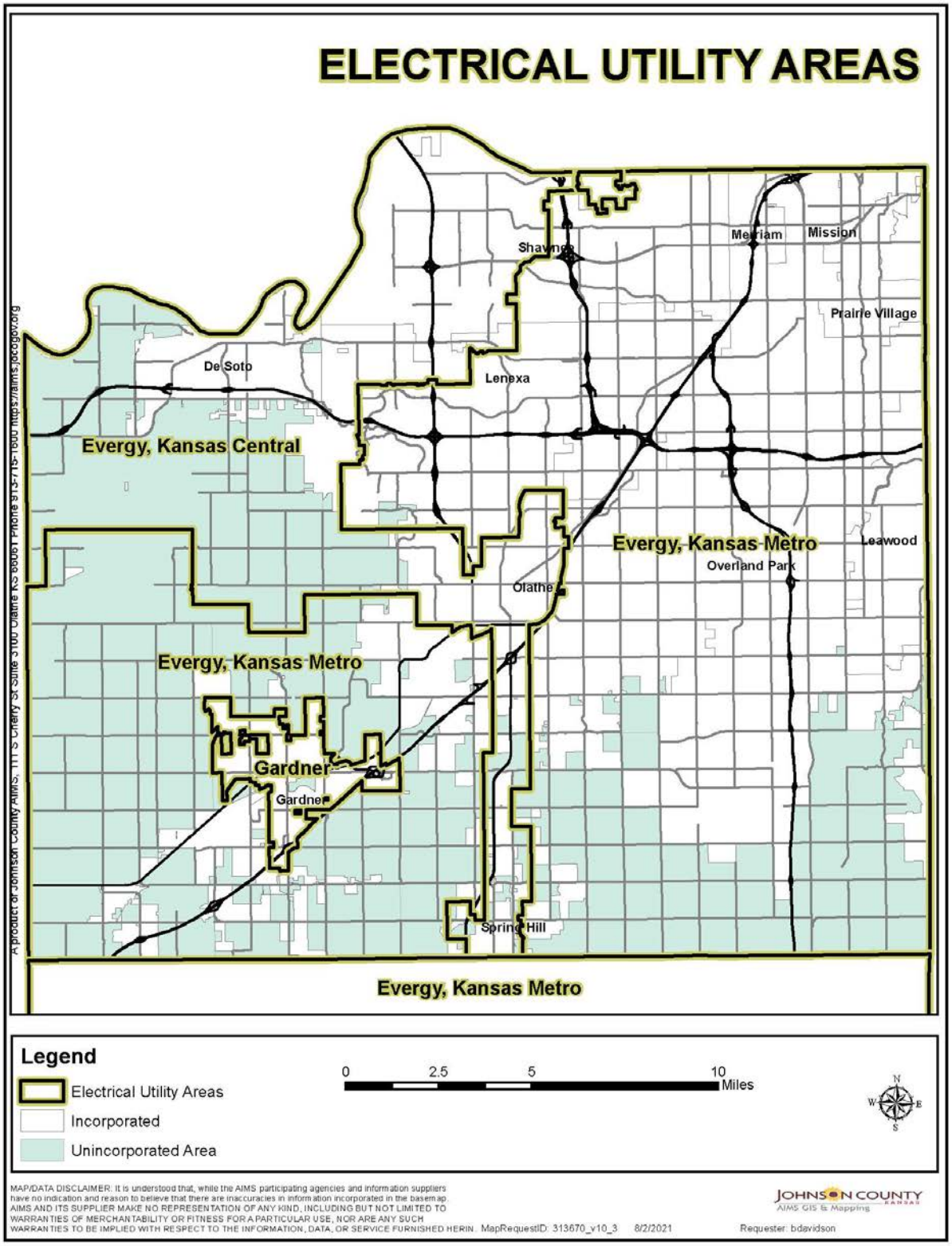
6.2 Electric

Evergy (Kansas Metro and Kansas Central divisions) delivers electrical service to the unincorporated areas of Johnson County. Map 18, Electrical Utility Areas, on the following page shows the general boundaries these utility providers.

As the renewable energy industry becomes more prevalent, development of new electric utility facilities to generate, transmit, and distribute energy in the unincorporated area will be considered on a case-by-case basis in coordination with electrical service providers.

B. Part II, Chapter 8, Resource and Service Inventory, Map 18, Electrical Utility Areas, of the Johnson County Rural Comprehensive Plan, shall be and hereby is amended to read as follows:

MAP 18: ELECTRICAL UTILITY AREAS



C. All of the terms and provisions of Part II, Chapter 8, Resource and Service Inventory, of the Johnson County Rural Comprehensive Plan shall remain the same, except for the above designated amendments.