

Attachment 1.01
Resolution No. 2023-027

COUNTY OF SEDGWICK, COLORADO
RESOLUTION NO. 2023-027

A RESOLUTION APPROVING THE SPECIAL USE PERMIT APPLICATION FOR
UTILITY SCALE WIND SYSTEM, OVERLAND PASS ENERGY EAST

Commissioner Schneider moved for adoption of the following resolution:

WHEREAS, pursuant to the provisions of C.R.S. § 30-11-101(2), Sedgwick County (“**County**”) has the authority to adopt and enforce ordinances and resolutions regarding health, safety, and welfare issues.

WHEREAS, National Renewable Solutions, a Delaware limited liability company, incorporated in the State of Delaware and in good standing, as owner of Overland Pass Energy, LLC, a Colorado limited liability company, incorporated in Colorado and in good standing (referred to as “**NRS**” herein), submitted an application for a Special Use Permit (“**SUP Application**”) to Sedgwick County on February 22, 2023 to construct, maintain, and operate the Overland Pass Energy East wind project (the “**Project**”) in eastern Sedgwick County, Colorado;

WHEREAS, the Project is a proposed 750MW, 2-Phase utility scale wind energy system currently under development in Sedgwick County, Colorado, and is comprised of 69,907 acres under Land lease and Wind Easement with Overland Pass Energy, LLC;

WHEREAS, the projected Project site (“**Project Site**”) lies south of Interstate 76 (“**I-76**”) on a portion of the “South Table”, the high plains lying south of the South Platte River Valley; and is bisected by US Highway 385 (“**Hwy 385**”). The easterly boundary of the Project Site lies within 1 mile of the State boundary between Colorado and Nebraska. The entire Project Site and legal description can more fully be found in the SUP Application;

WHEREAS, NRS requested the SUP Application be approved within a primarily agricultural district pursuant to the County’s district plan and the County’s Zoning Ordinance and that their SUP Application be approved by the County’s Land Use Board and the Board of County Commissioners¹;

WHEREAS, on July 18, 2023, the County’s Land Use Board conducted its hearing regarding NRS’s SUP Application (“**Land Use Hearing**”);

¹ Pursuant to Colorado Revised Statute (“C.R.S.”) § 30-28-102, County Planning Commission, “...in counties of the state having a population of fifteen thousand (15,000) or less desiring to establish a commission, the board of county commissioners may constitute the commission.” As Sedgwick County’s current 2023 population is calculated at 2,410 residents; well under the statutes maximum population requirements. Therefore, pursuant to Colorado law, the County’s commissioners may constitute the land use commission for which they will act pursuant to this hearing and then as the board of county commissioners for the following meeting.

WHEREAS, at the Land Use Hearing, the Land Use Board found that both the SUP Application should be approved (“**Land Use Finding**”);

WHEREAS, due to the Land Use Finding, the County’s Board of Commissioners held a second public hearing on August 8, 2023 at its regularly scheduled Board of County Commissioners meeting regarding whether the SUP Application should be approved (“**BoCC Hearing**”); and

WHEREAS, at the BoCC Hearing, the County’s Board of Commissioners approved the SUP and pursuant to Board’s powers vested under C.R.S. § 30-11-101(2) found that such application had complied with the necessary provisions as set forth in County’s Land Use Code.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SEDGWICK, COLORADO:

I. APPROVAL:

The County finds that the SUP Application meets the approval standards as enumerated in Sections 12.1.3(a), 12.1(3)(b), and 12.1(3)(c) of the County’s Land Use Code and the setback reduction requirements as enumerated in Section 13-105(C)(3)(d) of the County’s Land Use Code. Therefore, NRS’ Special Use Permit Application for Utility Scale Wind System, Overland Pass Energy East in Sedgwick County, Colorado is **GRANTED**, subject to the conditions set forth below.

II. FINDINGS OF FACT:

1. That proper notice has been provided as required by law, 30 days prior to each hearing, for both the public hearing in front of the Land Use Board on July 18, 2023, and the public hearing in front of the Board of County Commissioners on August 8, 2023.
2. That the information contained in the record of proceedings and presented to the Land Use Board and the Board of County Commissioners at the public hearings is extensive and complete, and that all pertinent facts, matters and issues were submitted and considered by both boards.
3. That the Utility Scale Wind System, Overland Pass Energy East, as described in the SUP Application, is consistent with the minimum zoning requirements set forth in the Sedgwick County Zoning Ordinance.
4. That the Utility Scale Wind System, Overland Pass Energy East’s request for reductions in its application meets the following criteria:

- a. The proposed reduction of setbacks is justified;
- b. The public health, safety, welfare, and the environment will not be harmed by the proposed reducing of setback; and
- c. The proposed utility scale wind energy system otherwise complies with relevant standards.

The following are the requested reduction in setbacks pursuant to Section 13-105(C)(3)(d) of the County's Land Use Code:

	Sedgwick County "Minimum Setback" per Section 13-105.C3	Reduction of Setback Request
Setback of Wind Turbine from above-ground public electric power lines or communication lines	2 times system height	1.5 times system height
Setback of Wind Turbine from public road or highway or railroad	2 times system height	1.5 times system height
Setback of Wind Turbine from public road or highway with ADT of 7,000 or more	2 times system height or 420 feet, whichever is greater	1.5 times system height or 420 feet, whichever is greater.
Setback of Wind Turbine from an inhabited structure located on-site , including residence, school, hospital, church or public library.	2 times system height, or 1000 feet, whichever is greater	(2 times system height, or 1,500 feet, whichever is greater – see Note 1)
Setback of Wind Turbine from an inhabited structure located outside the site boundary , including residence, school, hospital, church or public library.	2 times the system height or 2000 feet from the property line, whichever is greater.	
Setback from all other property lines, unless appropriate easements are secured from adjacent property owners or other acceptable mitigation is approved by the Board	2 times system height or 1000 feet, whichever is greater.	1.5 times system height or 1000 feet, whichever is greater.
(1) While this 1500' setback is greater than what is currently defined within the Sedgwick County Wind Ordinance, a 1,500 feet setback from an inhabited structure on participating property ("on-site") is the standard internal setback NRS uses across all wind projects.		

5. That the Utility Scale Wind System, Overland Pass Energy East's agreement to increase the County residential setback from 2x the system height or 2,000ft; whichever the great to 2x the system height or 2,500ft is an adequate compromise for the County's findings for the Project's request for reductions being found to meet the County's criteria for approving the same.
6. That the following portions of the SUP Application that requested a conditional approval

are reasonable and such approval shall allow such application to be approved:

- a. Evidence of an executed Turbine Supply Agreement;
 - b. A final Geotechnical Report;
 - c. Definitive injection/grid studies;
 - d. Applicable Third-Party Certifications; and
 - e. Updated reports or designs according to any changes to final layout.
7. That the Utility Scale Wind System, Overland Pass Energy East is consistent with the goals and strategies for Sedgwick County's growth and economic goals.
 8. That the Utility Scale Wind System, Overland Pass Energy East will be compatible with the character of the surrounding neighborhood and will not have negative impacts on adjacent properties. The Utility Scale Wind System, Overland Pass Energy East has been designed to mitigate any potential noise, odor, vibration, glare and similar impacts associated with the proposed land use.
 9. That the Utility Scale Wind System, Overland Pass Energy East will not cause undue traffic, congestion, dangerous traffic conditions, or other vehicle-related impacts due to the implementation of project-wide best management practices and effective traffic control measures during construction.
 10. That the Utility Scale Wind System, Overland Pass Energy East will not require a level of community services or facilities that is not available, and the Applicant will provide the necessary improvements to address any deficiencies to facilities and services that the use would cause. All public roads, utilities, bridges and septic systems, if applicable, to be developed in connection with the Utility Scale Wind System, Overland Pass Energy East will comply with County standards.
 11. The operating characteristics of the Utility Scale Wind System, Overland Pass Energy East shall not create a nuisance and the project has been designed to minimize impacts on neighboring properties with respect to noise, odor, vibrations, glare, and similar conditions.
 12. That an adequate water supply is available to provide water to the Utility Scale Wind System, Overland Pass Energy East either through a public water supply system or wells adequate in quality and quantity to serve the development and approved by the State Engineer. The water supply will comply with all applicable requirements of the Colorado Water Quality Control Division and the State Engineer.
 13. That the Utility Scale Wind System, Overland Pass Energy East will not cause significant deterioration of surface or groundwater resources. The Utility Scale Wind System, Overland Pass Energy East has been designed and will be constructed to:
 - a. Prevent any changes to patterns of water circulation, conditions of the substrate, extent and persistence of suspended particulates, and the clarity, odor, color or taste of water;

- b. Comply with applicable water quality standards;
 - c. Control levels of point and nonpoint source pollution;
 - d. Prevent any changes in seasonal flow rates and temperature for affected streams; and
 - e. Prevent changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
14. That the Utility Scale Wind System, Overland Pass Energy East will not significantly degrade wetlands or other aquatic habitat and riparian areas. The Utility Scale Wind System, Overland Pass Energy East is designed to avoid such areas or to minimize disturbance in these areas. Specifically, Utility Scale Wind System, Overland Pass Energy East will not:
- a. Cause any significant changes to the structure and function of wetlands and to unique, rare, delicate, or irreplaceable riparian areas, vegetation, forest or woodlands;
 - b. Cause any significant changes to the filtering and nutrient uptake capacities of wetlands and riparian areas; and
 - c. Cause any significant changes to aerial extent of wetlands and evolution of wetland species to upland species.
15. That the Utility Scale Wind System, Overland Pass Energy East will not cause significant deterioration of grasslands or farmland.
16. That the Utility Scale Wind System, Overland Pass Energy East will preserve the integrity of existing and natural drainage patterns. Where required by County standards, a stormwater retention system shall be provided to retain stormwater runoff in excess of historic flows and shall be designed for a 100-year flood.
17. To the extent necessary, the Utility Scale Wind System, Overland Pass Energy East will be served by an adequate wastewater treatment system that meets all applicable County, state and federal standards.
18. NRS shall obtain a grading or building permit within three (3) years of this SUP Application being approved with the deadline being December 31, 2026, with the possibility of one (1) additional one (1) year extension upon the showing of a good cause why such permit, either grading or building, has not been obtained. If NRS has failed to obtain a grading or building permit in accordance with such time period, the SUP shall expire, and a new SUP Application will have to be applied for at such time. So long as NRS applies for either a grading or building permit in such time frame contemplated above, the SUP shall be valid for the useful life of the Utility Scale Wind System.

III. CONDITIONS:

1. NRS shall provide the County with results for and or evidence for the portions of the SUP being granted conditional approval upon completion. Such portions are as follows:
 - a. Evidence of an executed Turbine Supply Agreement;
 - b. A final Geotechnical Report;
 - c. Definitive injection/grid studies;
 - d. Applicable Third-Party Certifications; and
 - e. Updated reports or designs according to any changes to final layout;
2. NRS agrees that in addition to the County's residential setback, to provide an additional 500 feet; making the setback for Wind Turbine from an inhabited structure located outside the site boundary, including residence, schools, hospitals, church or public library the following:
 - a. 2 times the system height or 2,500 feet from the property line, whichever is greater.
3. NRS will provide an updated decommissioning plan to Sedgwick County with final planned quantities of facilities to be placed in Sedgwick County, prior to construction.
4. All vehicles (excluding emergency vehicles) accessing the project must observe Sedgwick County road speed limits.
5. All construction debris (including concrete truck clean out) and trash cannot be buried nor burned on site but must be disposed of at a properly permitted landfill on a regular basis. Suitable containers/dumpsters shall be utilized to prevent the debris from becoming wind-blown.
6. All reclamation materials: native seed mixtures, mulch and erosion control materials shall be certified as weed free.
7. NRS shall, to the extent required by Colorado law, reasonably accommodate access to and development of subsurface mineral interests with respect to their proposed use of the property for wind farm facilities. In this regard, the applicant shall, as a condition of approval and prior to the construction or installation of any wind farm facility, provide evidence that it has entered into, or made good faith and commercially reasonable efforts to enter into, surface use agreements or other compatible development agreements with mineral estate owners who have filed timely objections to the land use applications pursuant to Colorado statutes.
8. Prior to the issuance of any construction or building permits, the Board of Sedgwick County Commissioners shall enter into a written agreement which includes resolution of the fees to be paid by NRS relative to a combined permitting and sales and use tax assessment.
9. NRS shall obtain a grading or building permit within three (3) years of this SUP Application being approved with the deadline being December 31, 2026, with the

possibility of one (1) additional one (1) year extension upon the showing of a good cause why such permit, either grading or building, has not been obtained. If NRS has failed to obtain a grading or building permit in accordance with such time period, the SUP shall expire, and a new SUP Application will have to be applied for at such time. So long as NRS applies for either a grading or building permit in such time frame contemplated above, the SUP shall be valid for the useful life of the Utility Scale Wind System.

BE IT THEREFORE RESOLVED, that a Special Use Permit is granted to NRS, to construct a Utility Scale Wind System, Overland Pass Energy East in accordance with the terms of the Application, subject to the conditions set forth above. The Sedgwick County Board of County Commissioners retains continuing jurisdiction over the permit to address future issues concerning the site and to ensure compliance with the conditions of the permit. The applicant is responsible for complying with all of the forgoing conditions and all other county zoning or other land use regulations. Noncompliance with any of the conditions may be cause for revocation of the permit.

Adopted, signed and effective as of this 8th day of August 2023.


Upon the second by Commissioner McCormick said Resolution passed at the regularly scheduled meeting of the Board of Commissioners held this 8th day of August 2023, with each Commissioner voting as follows:

W. Howard McCormick	Yes <u>X</u>	No _____
Ronald Berges	Yes <u>X</u>	No _____
Donald Schneider	Yes <u>X</u>	No _____

BOARD OF COMMISSIONERS

By: 
Donald Schneider, Chairman

ATTEST:


Christy M. Beckman, County Clerk and Recorder
4888-4033-4965, v. 4