

APPLICATION FOR SPECIAL USE PERMIT APPLICATION FOR UTILITY SCALE WIND SYSTEM, OVERLAND PASS ENERGY EAST

Sedgwick County Staff Recommendations

Date of Hearing: October 10, 2024

Subject: Application For Special Use Permit (“**SUP**”) for Utility Scale Wind System, Overland Pass Energy Wind Project Within Sedgwick County, Colorado.

Applicant: Overland Pass Energy, LLC, a Colorado limited liability company in good standing (“**OPE**”), a wholly owned subsidiary of National Renewable Solutions, LLC, a Delaware limited liability company (“**NRS**”).

Request: Issuance by the Board of County Commissioners of the SUP for a utility scale wind system, Overland Pass Energy Wind Project Within Sedgwick County, Colorado

1. The application, with all requested attachments (the “**Application**”), was determined complete by the Sedgwick County Land Use Administrator and County’s Attorney within the timeframe required by Section 12 of the Sedgwick County Zoning Resolution and Section 13 of the Sedgwick County Comprehensive Plan and Zoning Ordinance for the Project (collectively, the “Land Use Regulations”) and a Determination of Sufficiency was issued by the County on June 17, 2024, and subsequent Determination of Completion was issued by the County on July 29, 2024.
2. Certified mailing of mineral notice for the land use public hearing in front of the Sedgwick County Planning and Zoning Board and Sedgwick Board of County Commissioners was completed August 8, 2024. Mailing of certified mineral notice for the land use hearings complied with all necessary State and County publication requirements.
3. Publication of the notice for the land use public hearing in front of the Sedgwick County Planning and Zoning Board and Sedgwick Board of County Commissioners was completed in the *Julesburg Advocate* on August 22, 2024. Publication on notice for the land use public hearing complied with all necessary State and County publication requirements.
4. Posting of signs for the notice for the land use public hearing in front of the Sedgwick County Planning and Zoning Board and Sedgwick Board of County Commissioners was completed August 25, 2024. Posting for the land use public hearings complied with all necessary State and County publication requirements.
5. Mailing of public notice for the land use public hearing in front of the Sedgwick County Planning and Zoning Board and Sedgwick Board of County Commissioners was completed August 30, 2024. Mailing of public notice the land use public hearings complied with all necessary State and County publication requirements.

6. **Proposed Project:** OPE is requesting an SUP for a Utility Scale Wind System, the Overland Pass Energy East wind project (the “**Project**”). The Project is a multi-phase utility scale wind energy system that includes a maximum of three hundred ten (310) wind turbine locations and is comprised of 113,145 acres under land lease and wind easement with OPE. The current Project acreage is an increase of 43,238 acres since the submittal of the 2023 Application and SUP (approved by County Resolution 2023-027 (the “**2023 Permit**”) for which 69,907 acres were permitted) for a total Project acreage of 113,145 participating acres. The Project as currently modeled will generate at least approximately 1275MW, though the final installed MWs will vary depending on the final turbine model selected and available commercial offtake opportunities.

The projected Project site (“**Project Site**”) is exclusively outside of any municipal boundaries, with the nearest boundaries lying 2.7 miles southeast of Julesburg, 3.8 miles south of Ovid, and 3.9 miles south and east of Sedgwick. The majority of the Project Site is dedicated to dryland/irrigated cultivated crop farming with a small percentage of the area dedicated to pasture/hay, and occasional grassland/fallow ground. The irrigated cultivated crop farming within the Project Site is primarily located in the eastern portion of the Project Site with the western portion of the Project Site primarily dedicated to dryland farming.

This Project’s SUP is being submitted to replace, in its entirety, the 2023 Permit that was issued by the County on August 8, 2023 to NRS.

7. **Sedgwick County Planning and Zoning Hearing:** On September 12, 2024, the Sedgwick County Planning and Zoning conducted its public hearing on the Application. Upon the completion of the Hearing, the County’s Planning and Zoning Board made its finding that the Application complied with the Sedgwick County’s Land Use Regulations and made a recommendation to the Sedgwick County Board of Commissioners that the Application be approved as presented.

8. **Recommendations and Findings:**

Staff Recommendations: Staff recommends that the SUP Application be **APPROVED**, subject to the findings and conditions of approval outlined herein.

Sedgwick County General Counsel comments: OPE’s Application has obtained and met all County Requirements for its SUP to be issued for the Project.

9. **Discussion:**

a. **Comprehensive Plan:** Staff has determined that the proposed SUP Application is in compliance with the County’s currently approved Comprehensive Plan at the time of this Application’s review. Further, that the Application is in conformance with the Sedgwick County’s plan in that it provides for development of public facilities and services within the rural, agricultural land use areas as required.

b. **Permit Submittal Requirements:** OPE has complied with all the submittal requirements outlined in the County’s Land Use Regulations.

c. **Referral Comments:** As part of the Application all entities, landowners, mineral interest owners, and others to which notices of the Project were issued. Sedgwick County Land Use Administrator did not receive any negative comments in response to the notice provided. Such list of owners is available for review at the Sedgwick County Land Use Administrator’s office.

- However, the Land Use Administrator and Planning and Zoning Board were informed by a non-participating landowner that the Project's posted notice was placed errantly on his property. Such issue was remedied with no further issues reported.
- d. **Approval Criteria:** The SUP approval shall comply with the criteria set forth in the County's Land Use Regulations unless such compliance was deemed impossible by mutual consent between the County and OPE.
10. **Staff Comments and Findings:** Staff for the purposes of this report consists of the following: Sedgwick County Planning and Zoning Board, Sedgwick County Land Use Administrator, and Sedgwick County Attorney. Staff is familiar with the portions of the site for the proposed Project that are within Sedgwick County. Staff has reviewed the plans and supporting documentation and referral comments, as well as citizen input in response to this Application and notice of the public hearing on OPE's Application. Based upon Staff's review of the Sedgwick County Land Use Regulations, and analysis of all information, Staff's findings on matters are as follows:
- a. It does not appear that the health, welfare, and safety of the citizens of Sedgwick County will be adversely affected by the issuance of the SUP.
 - b. It does not appear that the natural and socio-economic environment of Sedgwick County will be harmed by this proposed Project.
 - c. The granting of the SUP would be consistent with the intent, purpose, and spirit of promoting Sedgwick County general economic interests.
 - d. The granting of the SUP's waiver request for a reduction of setbacks through the process outlined within Section 13-105.C.3.d of the Land Use Regulations is found to meet the following County standards:
 - i. The proposed reduction of setbacks is justified;
 - ii. The public health, safety, welfare, and the environment will not be harmed by the proposed reducing of setback; and
 - iii. The proposed utility scale wind energy system otherwise complies with relevant standards.
 - e. The nature and location of the proposed Project complements the existing and reasonably foreseeable needs of OPE's service area and of the area immediately affected by the facility.
 - f. The nature and location of the proposed Project does not unduly or unreasonably impact existing community services. It does not appear that the granting of the SUP will have significant adverse effect on the capability of local governments to provide services or exceed the capacity of service of delivery systems.

- g. The nature and location of the proposed Project does not appear to create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide government services.
- h. Though the site for the proposed Project is in an area where severe thunderstorm and tornado threats occur from time to time which could interfere with or obstruct normal operations and maintenance, such interference is not undue interference since OPE has designed and constructed similar projects in a manner to minimize the risks from natural hazards such as wind and floods.
- i. The nature and location of the proposed Project will not adversely affect water rights of any upstream, downstream or adjacent communities or water users.
- j. The proposed Project, other than minimal water use during construction and maintenance, will not use water supplies. Due to the minimal use of water for the proposed Project, adequate water supplies are available for the proposed Project.
- k. The nature and location of the proposed Project will not unduly interfere with existing easements for or rights-of-way, for other utilities, canals, mineral claims or roads. OPE should enter into a roadway use agreement with Sedgwick County for use by OPE or its agents of Sedgwick County roads during construction or maintenance of the proposed Project.
- l. OPE represents it will be able to obtain needed easements for the proposed Project.
- m. OPE proposes developing with the proposed Project all necessary utilities to construct, maintain and operate the transmission line. Issuing the SUP with conditions setting forth specific utilities for OPE to develop to construct, maintain or operate the proposed Project does not appear necessary.
- n. The nature and location of the proposed Project does not appear to be in an area that will interfere with any protected wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark within the Project area. The issuance of the SUP should be conditioned upon OPE's continued coordination with the federal and state wildlife agencies to avoid, minimize, or mitigate for impacts by the Project to protected species and their habitat. The Project will also avoid or mitigate for impacts to unique natural resources or historic landmarks within the Project area.
- o. The nature and location of the proposed Project, inclusive of expected growth and development related to the operation and services will not significantly deteriorate air quality in the proposed Project area other than possibly during the construction of the proposed Project. The issuance of the SUP should be conditioned upon OPE being required to implement measures during construction of the Project to minimize deterioration of the air quality in the proposed Project area.

- p. The proposed Project will have minimal impact on geological and topographic features of the proposed Project area. Issuing the SUP with conditions related to geological and topographic features of the proposed Project area does not appear necessary.
 - q. The proposed Project will have minimal, if any, impact on existing water quality of state waters. Issuing the SUP with conditions to not degrade water quality below state and federal standard or baseline levels does not appear necessary.
 - r. The benefits of the proposed Project appear to outweigh the minimal, if any, losses of natural resources or agricultural productivity. Issuing the SUP with conditions to mitigate losses of natural resources or agricultural productivity within the proposed Project area does not appear necessary.
 - s. Additional state or local permits or approvals may be required for OPE to complete the proposed Project. Given the scope of NRS' investment in and commitment to the proposed Project, it is anticipated that OPE will acquire all necessary state and local permits or approvals.
 - t. It appears that OPE has or can contract for the necessary expertise and financial capability to develop and operate the proposed Project consistent with all requirements and conditions.
 - u. OPE has conducted or will conduct the necessary studies to indicate that the proposed Project is technically and financially feasible.
 - v. It does not appear that the proposed Project will create an undue financial burden on existing or future residents of Sedgwick County.
 - w. It does not appear that the proposed Project will significantly degrade any substantial sector of the local economy and may actually improve the local economy by attracting solar and wind projects to the area with their related personnel and use of services provided by the local economy.
 - x. It does not appear that the proposed Project will unduly degrade the quality or quantity of recreational opportunities and experiences in Sedgwick County due to the minimal footprint of the proposed Project.
 - y. OPE is not requesting, nor will the County be granting, any tax breaks and/or incentives as part of the approval of the Application. Future incentives may be negotiated by the County and OPE independent from the approval of this Application.
11. **Staff Recommendations:** Staff is familiar with the site for the proposed Project. Staff has reviewed the plans and supporting documentation and referral comments, as well as citizen input in response to this Application and notice of the public hearing on OPE's Application. Based upon review of the Sedgwick County Land Use Regulations, and analysis of all information, Staff's recommendations are:
- a. OPE 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;
 - e. Updated reports or designs according to any changes to final layout; and
 - f. Evidence that the water and wastewater supply is adequate to serve the Project and compliant with state standards.
- b. OPE will provide a Road Use Agreement(s) to be approved by Sedgwick County with clear expectations, guidelines, and terms for such approved agreement, prior to construction.
- c. OPE will provide an updated decommissioning plan to Sedgwick County in a form substantially similar to Attachment 2.14 “Preliminary Decommissioning Plan” included with the Application with final planned quantities of facilities to be placed in Sedgwick County and clear expectations, guidelines, and terms for such approved plan, prior to construction.
- d. OPE shall continue to have communication with and meetings, as necessary, with Sedgwick County Emergency services for the duration of the Project’s lifetime.
- e. All vehicles (excluding emergency vehicles) accessing the Project must observe Sedgwick County road speed limits.
- f. 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.
- g. All reclamation materials: native seed mixtures, mulch and erosion control materials shall be certified as weed free.
- h. OPE 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, OPE 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 Application pursuant to Colorado statutes.
- i. Prior to the issuance of any building permits, OPE shall pay to the County fees owed pursuant to the County’s Land Use Regulations and adopted fee schedule and reimbursement amounts that may be due pursuant to an agreement to be negotiated between the County and OPE wherein OPE agrees to reimburse the County for actual expenses related to its review and/or third-party consultant review of the Application.
- j. In addition to the conditions stated above, Staff also makes the following recommendations for the Board of County Commissioners to consider if this SUP is granted:
 - a. Staff recommends that for any blade disposal associated with the Project not be done in the County’s landfill or any other County disposal sites unless specially established for such disposal.

- b. Staff recommends that the County either hire and/or designate a County employee to be the primary contact and/or liaison to handle issues related to the Project.
- c. Staff recommends that OPE be required to meet with the County prior to construction to establish a schedule and form for routine Project construction updates from OPE or its representatives to the County. Updates may include, but are not limited to, a monthly written report in a standard format agreed to by the County and OPE, weekly updates at the meeting of the Board of County Commissioners, upcoming road closure schedules, and provisions for site visits by County representative(s).
- d. Staff recommends that the approved Decommissioning Plan, once finalized and executed, be posted on the County's website.
- k. Collection line easements or access easements outside the Project Site that may become necessary to serve the Project are permitted so long as OPE provides evidence of such easements to the County prior to issuance of any building permits for the Project.
- l. OPE shall have the right to assign the SUP as to all or any portion of the Project and Project Site to an affiliate or any unaffiliated third-party without the need to obtain consent from the County, so long as written notice of the assignment is provided to the County no later than ten (10) days after such assignment containing the name and address of the assignee.
- m. OPE shall apply for a grading or building permit within three (3) years from the effective date of the resolution approving this Application with the possibility of one (1) additional extension upon a showing of good cause why a grading or building permit has not been issued. If OPE fails to apply for a grading or building permit within such time period, as may be extended, the approval shall expire, and a new SUP application will be required. So long as OPE applies for either a grading or building permit in such time frame contemplated herein, the Application approval shall be valid for the useful life of the Project.