

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

Sedgwick County Staff Recommendations

Date of Hearing: August 8, 2023

Subject: Application For Special Use Permit for Utility Scale Wind System, Overland Pass Energy

Applicant: 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)

Request: Issuance by the Permitting Authority of a special use permit for a utility scale wind system, Overland Pass Energy East

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 the *County’s Zoning Ordinance and a Determination of Sufficiency was issued by the County on March 31, 2023, and subsequent Determination of Completion was issued by the County on June 7, 2023.*
2. Publication of the notice for the Land Use Public hearing in front of the Sedgwick County Board of Commissioners was completed in the *Julesburg Advocate on July 7, 2023.* Publication on Notice for the Land Use hearing complied with all necessary State and County publication requirements.
4. **Proposed Project:** NRS is requesting a special use permit for a Utility Scale Wind System, the Overland Pass Energy East wind project (the “Project”). 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.

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.

5. **Recommendations and Findings:**

Staff Recommendations: Staff recommends that the Special Use Permit application be **APPROVED**, subject to the findings and conditions of approval outlined herein.

Sedgwick County General Counsel comments: NRS' Application has obtained and met all County Requirements for its Special Use Permit to be issued for the Project.

6. **Discussion:**

- a. **Comprehensive Plan:** While the County does not have an approved Comprehensive Plan at the time of this Application's review, it is determined that the proposed permit application would be otherwise 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.
- b. **Permit Submittal Requirements:** The applicant has complied with all of the submittal requirements outlined in the County's land use regulations, specifically those stated in Section 12 and 13.
- 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.
- d. **Approval Criteria:** The Permit approval shall comply with the criteria set forth in the *County's Land Use Ordinance unless such compliance was deemed impossible by mutual consent between the County and the Applicant.*
- e. **Ordinance Review and Additional Background Information:** Sedgwick County is in the process of reviewing and revising its regulations as they relate to the County's Land Use and specifically related to the Application, its wind regulations. Regardless, it is the County's finding that NRS complied with the County's regulations for this application process.

7. **Staff Comments and Findings:** 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 NRS' Application. Based upon Staff's review of the Sedgwick 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 Permit.
- 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 Special Use Permit would be consistent with the intent, purpose and spirit of promoting Sedgwick County general economic interests.
- d. The granting of the Special Use Permit'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 NRS' 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 Permit 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 NRS 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. NRS should enter into a roadway use agreement with Sedgwick County for use by NRS or its agents of Sedgwick County roads during construction or maintenance of the proposed project.
- l. NRS represents it will be able to obtain needed easements for the proposed project.
- m. NRS proposes developing with the proposed project all necessary utilities to construct, maintain and operate the transmission line. Issuing the permit with conditions setting forth specific utilities for NRS 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 significant wildlife habitat or adversely affect any endangered wildlife

- species, unique natural resource or historic landmark within the project area. The issuance of the permit should be conditioned upon NRS avoiding or mitigating interference with any significant wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark 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 permit should be conditioned upon NRS 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 permit 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 permit 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 permit 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 NRS to complete the proposed project. Given the scope of NRS' investment in and commitment to the proposed project, it is anticipated that NRS will acquire all necessary state and local permits or approvals.
 - t. It appears that NRS 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. NRS 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.

9. **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 NRS' Application. Based upon review of the Sedgwick County, land use regulations, and analysis of all information, Staff's recommendations are:
- a. 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;
 - b. 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.
 - c. All vehicles (excluding emergency vehicles) accessing the project must observe Sedgwick County road speed limits.
 - d. 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.
 - e. All reclamation materials: native seed mixtures, mulch and erosion control materials shall be certified as weed free.
 - f. The applicant 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.
 - g. 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 the Applicant relative to a combined permitting and sales and use tax assessment.