



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS
PLANNING COMMISSION/BOARD OF ZONING APPEALS
203 SOUTH THIRD
MARION, KANSAS 66861
PHONE: 620-382-2945

STAFF REPORT

October 24, 2019

TO: Marion County Planning Commission/Board of Zoning Appeals

FROM: Russ Ewy, AICP, Planning Consultant

SUBJECT: **PC-19-04** - Application for a Conditional Use Permit for the construction of Electric Transmission Lines by Expedition Wind, LLC on behalf of multiple land owners for a collection of properties in south-central Marion County, Kansas

This application for a Conditional Use Permit (CUP), filed by Expedition Wind, LLC, on behalf of Cedar Springs Trust, and Randy and Kelli Savage, seeks to permit the construction of overhead transmission lines transmitting electricity generated from a collection of previously approved Wind Energy Conversion System (WECS) in the south-central portion of Marion County, Kansas. The application area is a collection of properties in part of Section 13, Township 21 South, Range 4 East of the 6th P.M., Marion County, KS; TOGETHER WITH part of Section 18, Township 21 South, Range 5 East of the 6th P.M., Marion County, KS. The specific properties comprising the application area, located south of the City of Florence between U.S. Highway 50 and U.S. Highway 77, can be found within the submitted application packet.

National Renewable Solutions, LLC ("NRS") is a nation-wide renewable energy development company based in Minneapolis, Minnesota. Currently, NRS is the sole owner and developer of the Expedition Wind project. Under the Marion County Zoning Regulations, the validity of an approved CUP would not necessarily be affected by a change of ownership or financing. Expedition Wind, LLC has obtained authorization to act on behalf of all participating property owners within the designated project area.

As stated in the material submitted to the County, this application is designed to be a companion CUP to the approved existing "Doyle" project CUPs, and this application fills in an area of the footprint in the southeast corner of their overall Development Plan. This CUP request will only allow a transmission facility to connect distribution lines from the project to a point along U.S. Highway 77 right-of-way. Transmission lines will then run south towards the project interconnection point in Butler County. Together, property from the CUP, the previous "Doyle" CUP's and the July, 2019 CUP will comprise the entire Expedition 200 MW Development Plan.

The Marion County Zoning Regulations require a Conditional Use Permit (Article 19-105(5)) be approved for “electric transmission lines” and has three sections that deal with submittal requirements for a Conditional Use Permit request. The first section requires that a Development Plan be included with the application. The standards for submittal of a Development Plan are outlined in Article 12 and listed below.

The Development Plan shall include and/or display the following information:

1. *When deemed necessary, a topographic survey indicating the legal description, property boundary, existing contours, existing utilities and easements, and natural and manmade features of the property.*

All necessary features are outlined on the Conditional Use Permit Site Plan submitted as part of the application. Additional detail will be required with construction plans and prior to issuance of construction permits.

2. *A Development Plan, drawn to the same scale as the topographic survey, indicating:*
 - A. *existing contours (shown as dashed lines);*
 - B. *proposed contours (shown as solid lines);*
 - C. *location and orientation of all existing and proposed buildings;*
 - D. *areas to be used for parking, including the number and arrangement of stalls;*
 - E. *areas to be developed for screening, including the location of plant materials, and screening structures and features;*
 - F. *pedestrian and vehicular circulation and their relationship to existing streets, alleys and public right-of-way;*
 - G. *points of ingress and egress;*
 - H. *location of all existing and proposed utilities (sanitary sewage systems, water systems, storm drainage systems, gas lines, telephone lines and electrical power lines); drainage controls (retention or detention ponds), location, size and characteristics of identification and business signs;*
 - I. *lighting layout, appurtenances, and intensity of illumination;*
 - J. *proposed finished floor elevations of all buildings and structures.*

These elements are addressed in sufficient detail in the materials submitted as part of the application, and outlined on the Conditional Use Permit Site Plan. Further details of the project, in relationship to the Article 27 requirements, are addressed as necessary. Additional information may be required with construction plans and prior to issuance of construction permits.

3. *A statement of intent shall accompany the Development Plan to explain the measures used to achieve compatibility of the proposed development with surrounding properties through the planning of the site and the location and design of structures.*

The project area in question is agricultural in nature and the placement of electric transmission lines is deemed compatible. This request is the seventh of a series of Conditional Use Permits for the development of the Expedition Wind WECS, and will be incorporated and managed as part of the larger project.

Article 19 of the Marion County Zoning Regulations states the factors to be considered for a Conditional Use Permit. Although staff and the applicant concur that this CUP's transmission-only use is not part of the Zoning Regulations' intended depiction of a WECS, this CUP application is also requested to be issued under Article 27 to eliminate any doubt that the CUP needed to conform with Article 27. Additional requirements for WECS submittals outlined in Article 27, and as discussed in previous staff reports regarding WECS applications, will not apply due to the limited scope of this request.

The Marion County Planning Commission may recommend approval of a Conditional Use, and the Governing Body may approve such Conditional Use, using the following factors as guidelines. Those factors, and staff comments where appropriate are as follows:

- A. *Whether approval of the Conditional Use would be consistent with the intent and purpose of these Regulations;*

It is the staff's opinion that the proposed use is consistent the Marion County Zoning Regulations and historic interpretations of the regulation of transmission lines.

- B. *Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;*

The primary land use in the area is agricultural. It is the belief of staff that the proposed land use is suitable to the location.

- C. *Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided;*

Significant impacts to the County's roads are not anticipated with the development of this specific project.

- D. *Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;*

The extension of overhead electric transmission lines within this application area is needed to provide the most efficient connection from area WECS to connecting transmission lines located within U.S. Highway 77 right-of-way.

- E. *The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped;*

Staff does not believe this is applicable. To the extent it is applicable, the vast majority of the property is current in productive use as agricultural property will not jeopardize the future use of the subject property.

F. Whether the applicant's property is suitable for the proposed use;

Staff believes the proposed project area is suitable for the extension of overhead electric transmission lines. The primary land use in the project area is agricultural.

G. The recommendations of permanent or professional staff;

See below.

H. Whether the proposed Conditional Use would be in conformance to and further enhance the implementation of the Comprehensive Plan;

It is the opinion of staff that the proposed use would adhere to the intent of the Comprehensive Plan. It should be noted the Plan was developed with substantial consideration given to WECS projects in particular, and the appropriate level of regulation of such land uses the County felt was reasonable. This application is consistent with the objectives of that discussion. The Plan leaves the siting of such facilities up to the marketplace and developers, while retaining the ability to impose conditions upon these facilities in an effort to mitigate any potential impacts. Staff believes, with the inclusion of appropriate conditions, approval of this project would achieve the goals of the Plan, while protecting the health, safety and welfare of the general public.

I. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed Conditional Use;

It is the opinion of staff that these concerns do not outweigh the value of the proposed development to the applicants and participating property owners. There is not substantial evidence, prior to the public hearing, as to whether any potential concerns outweigh the value of the proposed development.

J. Whether the proposed Conditional Use, if it complies with all the conditions upon which the approval is made contingent (as authorized in Article 24 of these Regulations), will not adversely affect the property in the area affected; and,

The project area is primarily agricultural in nature, and staff believes no definitive evidence exists transmission lines negatively influence property values, create health issues, or are a safety concern. Therefore, staff is of the opinion this land use is appropriate and specific requirements recommended by the Planning Commission or Governing Body are intended to further ensure safety and compatibility of this land use with those in the area.

K. Such other factors as may be relevant from the facts and evidence presented in the application.

Additional factors are required to be addressed in Article 27, as necessary.

Due to the nature of WECS projects, additional requirements are specified in Article 27-105. These specific issues to be addressed include, but are not limited to the following:

1. *In addition to strict conformance to all performance standards and Development Plan requirements as detailed in the Marion County Zoning Regulations, the Development Plan shall address the following:*
 - A. *The "boundary" of the project shall be the properties included within the "leased lands" on which the WECS is proposed to be constructed. The specific siting of individual components of the WECS, including towers, supporting structures, and all other aspects which entail a complete WECS as recognized within the industry, may be included conceptually within the Development Plan and are permitted to be moved and adjusted as necessary during the design and construction process without modifications to the Development Plan, so long as new lands are not added to the original "boundary" of the WECS and so long as such relocations conform to the setbacks and other requirements of this Article 27.*

The project boundary and conceptual site plans were included with the application submittal. The boundary has been verified based on lease and authorized agent documentation provided by the applicant. Conceptual plans depict existing property features including existing structures, property lines, and rights-of-way.

- B. *All setback designations herein, when referenced as "total height" shall mean "Total Tip Height", which is the total height of the wind turbine measured at the highest point of the blade system during its rotation, or with respect to any other structure including meteorological tower, its total height. All horizontal setbacks shall be measured from the center point of the turbine tower to the edge point from which the setback is required.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

2. *No turbines shall be located closer than 500 feet from public roads, measuring from the nearest edge of the right-of-way or public road easement, or the total height of the turbine plus 50 feet, whichever is greater. No turbines shall be located closer than 500 feet from property lines of any property not included in the CUP, or the total height of the turbine plus 50 feet, whichever is greater. No turbine shall be located closer than 1,320 feet from an existing nonparticipating residential structure. For a participating residential structure, the turbine shall be located no closer than the total height of the turbine plus 50 feet. Turbine locations for other buildings on "participating lands" shall be as determined jointly by the WECS developer and the participating landowner. For the purposes of the above requirements, a "participating residential structure" means a residential structure on the same land under lease or contract with a wind company; and a "non-participating residential structure means a residential structure on land not under lease or contract with a WECS Developer.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

3. *Communication lines and power collection lines are to be installed underground in the area covered by the CUP with use of directional boring, horizontal drilling, micro-tunneling, vibrating plowing, narrow trench ditching and other techniques in the construction of facilities. Such processes are intended to result in the least amount of disruption and damage as possible to the surface soil and natural features. Said lines are to be located under or at the edge of turbine access roads as feasible. Above ground transmission lines may be used only in public rights-of-way, easements or other legal documents dedicated for such purposes, or when conditions on-site are found to make installation of underground supporting lines impractical or infeasible, for example the presence of existing underground lines or pipelines that conflict with such type of construction.*

Expedition Wind acknowledges this regulation and will meet or exceed during the design and construction. This includes inclusion of all County ROW and roadways into the CUP as necessary to provide for Expedition's use of these ROW/Roadways for wire crossings.

4. *Designation of the public roads to be used as transportation routes for construction and maintenance of the WECS; said roads to be included within the mandatory Road Maintenance Agreement specified in these Regulations.*

The maintenance of any construction routes necessitated by this request will be included in the "Road Use and Maintenance Agreement (RMA)" already established by previous Conditional Use Permits, and under consideration by the County.

5. *Applicant shall construct the smallest number of turbine access roads as reasonably feasible. Access roads shall be low profile roads so farming equipment can cross them. Where an access road is to cross a stream or drainage way, it shall be designed and constructed so runoff from the upper portions of the watershed can readily flow to the lower portions of the watershed. Where an access road is to cross a stream or drainage way, the applicant must follow FEMA regulations pertaining to constructing a roadway structure in a floodplain zone.*

No permanent access is proposed by this application. The applicants state landowners will be consulted to find the best and most agreeable routes to allow temporary construction access as necessary. The applicants will be required to obtain any necessary permits for areas within the application area under FEMA jurisdiction.

6. *The lowest point of the rotor blades shall be at least 50 feet above ground level at the base of each tower.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

7. *All lubricants and/or hazardous materials to be located on the premises in connection with the WECS facility shall be kept and transported in accordance with all state and federal regulations.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

8. *No lights shall be installed on the towers unless required by the Federal Aviation Administration (FAA). If lighting is required, then only the installation of red lights shall be permitted. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment. At no point shall white, strobe lights be permitted.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

9. *Structures for wind turbines shall be self-supporting tubular towers painted a neutral color such as a white or pale gray. No lattice structure shall be used. No logos or advertisements are allowed on these structures. Each turbine shall be marked with a visible identification number located no higher than fifteen (15) feet above ground level.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

10. *At the end of the project's or an individual turbine's or tower's useful life, all WECS equipment shall be removed from the site and the foundation for the base of each tower shall be removed such that each location can be covered over with a minimum of 18 inches of topsoil and re-seeded with native grass. Any request greater than the minimum requirements shall be negotiated between the WECS Developer and the landowner at or before the time of decommissioning. Access roads shall be removed to the landowner's satisfaction, and the ground shall be restored to a use compatible with surrounding use. The requirement to remove access roads shall not apply to roads in existence before the WECS application was filed. The landowner may choose to have access roads left intact.*

Decommissioning is addressed in the private lease agreements between the applicant and property owners; however, it is the opinion of staff that an agreement between the applicant and Marion County shall be in place prior to commencement of construction. Expedition has provided a draft Decommissioning Agreement in the application packet. Expedition Wind has significant commitments in its Transmission Easement Agreements to take full responsibility for decommissioning providing for removal of improvements, restoration of land, security guarantees and default provisions. Further, as a part of the ancillary agreements and after approval of the zoning, Expedition proposes to incorporate this CUP (if approved) with the final and agreed decommissioning standards associated with the other six CUPs

11. *The WECS and its associated facilities shall not be operated so as to cause microwave, television, radio, telecommunications or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law as to occupied residential structures existing as of the date of the CUP approval by Marion County. In the event the WECS and its associated facilities or its operations cause such interference, the applicant shall take timely measures reasonably necessary to correct the problem.*

It is the opinion of staff that no transmission line structure shall be allowed to interfere with the transmission or receiving capabilities of any public or emergency telecommunication tower or device. Any interference shall be mitigated by Expedition Wind, LLC at its expense and shall incorporate this CUP (if approved) into the agreement(s) covering the existing six CUPs providing

cash/security to assure that all such issues are mitigated and resolved to County standards as agreed between Expedition Wind and the County. It is also the opinion of staff that any impacts to landowners shall be addressed by the applicant to a degree that is mutually agreeable by both parties.

- 12. Reasonable measures shall be identified to mitigate specific adverse visual impacts such as reflections, shadow flicker, and blade glint affecting occupied residential structures existing as of the date of the CUP approval by Marion County, and within or immediately adjacent to the project area, such as planting trees, installing awnings, etc.*

To the extent this requirement is relevant to the current request, the applicants state in their submission information they are taking all reasonable measures to work with landowners to mitigate any adverse visual impacts from the transmission lines and structure as practical.

- 13. The applicant shall identify the potential fire risk associated with the project, including both prescribed burning and non-prescribed burning (natural or accidental). This shall include fire within the site, escape from the site, and the effects of fire originating from outside the site. Also address high angle rescue. It is important to be aware that PRESCRIBED BURNING, or range burning is a common practice in this area. Mitigation plans are to show how the towers and equipment are protected from fire within the site and from fire originating from outside the site. PRESCRIBED BURNING is defined as the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental (weather) conditions in accordance with a written prescription that is designed to confine the fire to a predetermined area and to accomplish planned land management objectives. The applicant shall acknowledge that an owner, lessee, or occupant of any agricultural land is not liable for property damage caused by or resulting from prescribed burning their own land on the land owned by, leased by, or occupied by the WECS if the prescribed burning is conducted by the procedures stated above.*

The applicants are required to submit a mitigation plan to account for potential fires related to range burning, structural failures of turbines, or any other similar emergency occurring within the combined WECS area. Said plan shall include any necessary considerations for transmission lines as well as turbines, and shall be made available to the Marion County Zoning Administrator and all Fire Departments serving the County prior to building permit approval.

- 14. If the WECS project area contains riparian watershed areas, native prairie grasses, or other sensitive areas designated by the county, the applicant shall identify the manner in which the WECS project shall comply with the following requirements:*

- A. The manner in which the riparian watershed areas, native prairie grass areas, or sensitive areas on any site shall be preserved, or shall be substituted for open space as approved by the County.*
- B. No clearing or grading shall be permitted within 125' from the centerline of any drainage area, unless otherwise permitted by the County.*

C. Any development that is determined by the county to fall within the limits of the historical Chisholm Trail, Santa Fe Trail, or related historic natural or manmade feature shall comply with the following requirements:

- 1) Any trees that are determined to endanger the preservation of trail ruts or diminish the visibility of a trail shall be removed under the direction of the County or the County's appointed designee.*
- 2) Interpretive signage as approved by the County shall be provided, if applicable.*
- 3) To the extent reasonably feasible, WECS projects should be designed, constructed and operated so as to have the minimal impact on existing historical or cultural resources, including the designation on the Development Plan and Construction Plans of areas designated as "off limits" to construction or operations activities.*

The applicants acknowledge and agree to comply with the County's regulation as they related to the location and installation of transmission lines within riparian areas and/or drainageways. Expedition Wind contracted Westwood Professional Services to perform a cultural review, and concluded no features stated above occur within the subject property. This CUP area does not fall within the limits of the historic Chisholm Trail or Santa Fe Trail.

15. An overview of the existing environment issues shall be documented and filed to include information regarding:

- A. Wildlife Habitat;*
- B. Bird Migration and the potential for bird strikes;*
- C. Flora - vegetation species, threatened species (officially listed), critical habitat and habitat conditions for such species;*
- D. Fauna - species, habitat assessment, threatened species (officially listed), migratory species, critical habitat and habitat conditions for such species;*
- E. Geoconservation - sites of geoconservation significance listed on the state/national database (All of Marion County is located in the Flint Hills);*
- F. Flood zones*

The applicants state transmission facilities will avoid wildlife habitat disturbance by utilizing private, previously disturbed row crop agricultural and livestock grazing land wherever possible. The results from the compiled environmental reports submitted as part of the application indicate a low probability of significant adverse impact on wildlife.

16. *Soil Erosion, Sediment Control & Storm Water Runoff Applicant shall develop a Soil Erosion, Sediment Control & Storm Water Runoff Plan. The Plan shall address what types of erosion control measures will be used during each phase of the project. Said plan shall identify plans for:*

- A. Grading;*
- B. Construction and drainage of access roads and turbine pads;*
- C. Necessary soil information;*
- D. Design features to maintain down-stream water quality;*
- E. Re-vegetation to ensure slope stability;*
- F. Restoring the site after temporary project activities. The Soil Erosion, Sediment Control & Storm Water Runoff Plan shall also include practices regarding:*
 - 1) Disposal or storage of excavated materials;*
 - 2) Protecting exposed soil;*
 - 3) Stabilizing restored material and removal of silt fences or barriers when the area is stabilized;*
 - 4) Maintenance of erosion controls throughout the life of the project. A Soil Erosion, Sediment Control and Stormwater Runoff Plan is included in the application packet, see Attachment 5.*

The submittal includes provisions for a Soil Erosion, Sediment Control, & Stormwater Runoff Plan to account for any necessary erosion and sediment control, as well as the implementation of stormwater best management practices.

17. *Other Lighting and Utility Standards. No light source greater than (1) one foot-candle shall be directed onto any public right-of-way, directed so as to cause glare onto any vehicle roadway, or cause light trespass onto any residentially used or zoned property. Security or safety lighting shall also be designed to avoid excess light trespass and glare. Lighting sources of all kinds shall be adequately shielded and positioned to avoid glare or direct visibility of the light source from adjoining property.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

18. *Noise. The audible noise created by the WECS shall not exceed 55 decibels at all times measured at the property line of any non-participating property within the boundary of the project. Turbines shall be moved, or modified, or removed (and decommissioned) from service if necessary, to comply with this condition.*

Staff does not believe this is applicable as no other WECS related development is proposed by this application.

STAFF RECOMMENDATION:

Based on information submitted as part of the application and the Article 19 factors discussed above, staff recommends the requested Conditional Use Permit be APPROVED, subject to the following conditions:

1. The location of the transmission lines shall conform with the approved site plan as submitted.
2. Prior to the development of the transmission lines within the subject property, all required local, state and federal permits shall be obtained and copies submitted to the County.

SUGGESTED MOTIONS:

Item PC-19-04, the Application for a Wind Energy Conversion System (WECS) Conditional Use Permit by Expedition Wind, LLC on behalf of multiple land owners for a collection of properties in South-Central Marion County, Kansas, I move to:

1. Recommend approval of the proposed Conditional Use Permit with conditions as presented.
2. Recommend approval of the proposed Conditional Use Permit with conditions as revised.
3. Recommend denial of the proposed Conditional Use Permit.