

**RESOLUTION NO. 24-14**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS GRANTING A CONDITIONAL USE PERMIT FOR A COMMERCIAL/UTILITY SCALE SOLAR ENERGY CONVERSION SYSTEM LOCATED IN THE NORTHWEST CORNER OF THE INTERSECTION OF E. 1450 ROAD/U.S. HIGHWAYS 24 AND 59 AND N. 1900 ROAD, TWO PARCELS AT THE NORTHWEST CORNER OF E 1400 AND U.S. HIGHWAY 24/59 AND IN THE SOUTHWEST CORNER OF THE INTERSECTION OF E. 1500 AND N. 2000 ROADS.**

WHEREAS, the Lawrence-Douglas County Metropolitan Planning Commission, after holding a public hearing on December 18, 2023 following due and lawful notice pursuant to K.S.A. 12-757 and the *Zoning and Land Use Regulations for the Unincorporated Territory of Douglas County, Kansas*, as codified in Chapter 12, Article 3 of the Douglas County Code and as amended (the "Zoning Regulations"), has recommended that the Board of County Commissioners of Douglas County (the "Board") deny a conditional use permit for a *Commercial/Utility Scale Solar Energy Conversion System* on approximately 1,105 acres located near the intersection of E. 1450 Road/U.S. Highways 24 and 59 and N. 1900 Road and two parcels at the northwest corner of E. 1400 Road and US Highway 24/59 and in the southwest corner of the intersection of E. 1500 and N. 2000 Roads , and bearing the legal description provided in Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AS FOLLOWS:

- I. The Board hereby finds that the statutory provisions for approval of a Conditional Use Permit have been fully complied with and hereby grants the conditional use permit for that real property in Douglas County, Kansas described above, in accordance with Conditional Use Permit, No. CUP-23-00312 to have the following conditional use '*Commercial/Utility Scale Solar Energy Conversion System*' subject to the conditions noted in Section II and approved the modification requested from Section 12-306-49.05(o)(1) to allow electrical interconnections (the CAB lines) to be located above ground.
- II. Approval of the Conditional Use Permit and the permitted conditional use are subject to the general conditions established in Chapter 12, Article 3 of the Code of Douglas County, 2020 Edition, as amended, and are also subject to the following conditions:

Conditions of Approval:

The applicant shall provide revised plans and materials with the following changes:

- a. The Proposed Conditions Site Plan shall be revised with the following changes:
  - i. Setbacks for each parcel shall be noted and labeled on each parcel, as shown and noted in the graphic included in Section i of Appendix A, Code Review, of this report.

- ii. Off-street parking spaces shown for the operation and maintenance building shall be dimensioned with a note that the parking area and access drive shall be paved.
  - iii. The location of all exterior lighting shall be shown. If the lights face roadways or developed residential properties, angled lighting fixtures may not be used; the light fixtures would need to be installed perpendicular to the pole to avoid off-site glare.
  - iv. The landscape option for each adjacent residential buffer shall be noted on the plan.
  - v. The approved construction route map shall be included in the plan.  
The construction traffic route map shall show the interior access drives in blue, to avoid confusion with the restricted routes which are shown in red.
  - vi. The Decommissioning, and Reclamation Plan shall be revised to note the following:
    - 1. The piles shall be completely removed by being pulled up when decommissioned.
    - 2. A new road maintenance agreement, including the route map, shall be executed by the Operator and the applicable governing bodies prior to the commencement of decommissioning.
  - vii. The Plan shall list the approved Conditions and Restrictions of Use.
- b. The Operator shall execute a road maintenance agreement with the governing bodies of Douglas County and Grant Township prior to the issuance of the CUP permit.
- i. The agreement shall contain the approved construction route map.
  - ii. The agreement shall identify the timing and amount of payments to be made by the Operator to the township or county for increased road maintenance costs resulting from the construction of the project.
  - iii. The agreement shall identify the designated construction routes to be used for access to the project, the anticipated costs to improve those roadways to support construction access, and the anticipated costs to maintain those roadways during each year of CUP construction.
  - iv. The agreement shall identify penalties to be assessed if the designated construction routes are not followed.
- c. The Operator shall enter into a contract with the Board of County Commissioners to finance any required third-party reviews or inspections required by these conditions.
- d. The Operator shall obtain Board of County Commissioners approval of a final stormwater management study prior to issuance of the CUP permit. The County engineer will review the study and forward approval recommendations to the Board. The stormwater study for the Project must include calculations and plan documents in sufficient detail to identify:
- i. Stormwater conveyance – the location and required capacity of ditches, channels and culverts carrying concentrated flow from each project area,

- through the project, and to points of discharge;
- ii. Stormwater detention – the location and design of each detention basin proposed to control rates of runoff to predeveloped conditions; and
  - iii. Analysis of public roadway culverts – at all points of discharge crossing public roadways, provide a review of existing capacity and a preliminary design for necessary replacements.
- e. The Operator shall revise the Vegetation Management and Agrivoltaic Plan to outline the various potential phases of agrivoltaics and provide more detailed information on the agrivoltaic activities being proposed.
- i. The plan will be provided to the Board of County Commissioners with a staff recommendation for action.
- f. The specific plantings for each landscaped buffer shall be determined with the following process:
- i. The applicant shall notify the owners of residences that are adjacent to the project (identified on the plan) through certified mail of the landscape options, and the buffer area location. The applicant shall provide Planning with a list of the adjacent property owners, proof of mailing of notification, and property owner's response.
  - ii. If a response is received within 30 days of the date of mailing, the selected buffer landscaping shall be noted on the plan for that residence. If no response is received within 30 days of the date of mailing, the applicant may select the landscape option for this area based on availability of plants.
  - iii. If the property owner waives the option of buffering landscaping, a written waiver, signed by the property owner, must be provided to the Planning Office and recorded with the Register of Deeds at the applicant's request. The plan shall identify the buffer areas that have been waived.

#### Conditions and Restrictions of Use:

1. The approval of the Kansas Sky Commercial/Utility Scale Solar Energy Conversion System (CSECS) (the Project) shall be valid for 25 years from the date of the Board of County Commissioner's approval. Continuation of the use beyond that date will require the submittal and approval of a new conditional use permit.
2. Construction traffic shall travel only on the approved routes and intersections shown on the approved construction route map. Construction traffic shall not travel on roads identified as restricted routes or intersections.
  - i. The term 'construction traffic' refers to all traffic generated as a result of the construction activity. This includes personnel, employees, workers, and contractors as well as material hauling, deliveries, and heavy equipment, but excludes traffic occurring in the event of or due to an emergency involving life, health or safety.
3. Limit on construction activity:
  - i. Pile driving shall occur only between the hours of 7 AM and 5 PM, Monday through Friday, with the following exception: If the Project schedule is

impacted by ongoing weather delays, the applicant may submit a written request to allow pile driving operations on a limited number of Saturdays during the hours of 8 AM to 5 PM.

- A. The request must be made to the Zoning and Codes Director at least five days prior to the requested Saturday operation. The Director may administratively approve the request for up to four Saturdays. A request for additional Saturdays must be reviewed and approved by the Board of County Commissioners.
- ii. Except as provided in iii, below, all other construction activity, including staging and traffic, shall occur only between the hours of 6 AM and 7 PM, Monday through Friday, with the following exception: If the Project schedule is impacted by ongoing weather delays, the applicant may submit a written request to allow all other construction activity on a limited number of Saturdays during the hours of 8am to 5pm.
  - A. The request must be made to the Zoning and Codes Director at least five days prior to the requested Saturday operation. The Director may administratively approve the request for up to four Saturdays. A request for additional Saturdays must be reviewed and approved by the Board of County Commissioners.
- iii. Notwithstanding subsection ii., above, construction activity on Saturdays and Sundays is permitted during daylight hours if the sound generated by such construction activity is below 60dB measured at the property line or 500 feet from any residence, which sound measurements shall be conducted per industry standards ANSI 12.9 Part 3 and S12.18 for measuring outdoor sound pressure levels and measured over a period of not less than 10 minutes using an ANSI S1.4 Type 1 or Type 2 sound level meter calibrated within the last 12 months.
  - A. Light vehicular traffic, excluding heavy equipment, to and from the site is permitted and not considered for purposes of measuring the sound maximum in subsection iii.
- iv. Any solid waste produced by construction activities shall be disposed of in accordance with Douglas County's Chapter 10: Solid Waste Management Code.
- e. If the solar panels create hazardous or unreasonable glare not adequately contemplated by the Solar Glare Hazard Analysis, additional glare reducing measures, as described in Section 12-306-49.05.f shall be implemented to limit glare.
- f. The Operator shall conduct bird mortality surveys for the first two years of operation using measures outlined in the guidance document "Mortality Monitoring Design for Utility-Scale Solar Power Facilities" prepared by the US Geological Survey and US Fish and Wildlife Service and conduct insect surveys for the first two years of operation. The survey results shall be provided to the KS Department of Wildlife and Parks and the US Fish and Wildlife Service and to the Zoning and Codes Office for the file.

- g. If the potential bat-roost tree is to be removed, removal shall not occur in June or July.
- h. A maximum of 5% of the site area may be graded.
  - i. If more than 5% of the site area is proposed to be graded, the Operator shall seek a modification from the Board of County Commissioners. A modification is required prior to grading of more than 5% of the site area.
  - ii. Fine grading, which would be required for reclamation or seeding, is not included in this limitation. This type of grading does not create significant topographic change but smooths the disturbed areas, so they are suitable for planting.
- i. Height. Solar panels shall not exceed 15 feet in height when oriented at maximum tilt.
  - i. The Board of County Commissioners may approve a modification to allow panels of greater height, if found to be necessary to accommodate slopes without grading or to accommodate agrivoltaics, provided the height of the solar panels do not negatively impact nearby land uses or the character of the area.
- j. Concentrating Solar Thermal Devices are prohibited.
- k. Pesticides. Any pesticides (both insecticides and herbicides) shall be applied only by a pesticide applicator certified by the Kansas Department of Agriculture.
  - i. The Zoning and Codes Office shall be provided with the name and contact information of the certified applicator prior to the application of any pesticides.
- l. Signage. Emergency contact information shall be posted at the site. Perimeter signage required at a minimum of 500-foot spacings.
- m. Lighting. If any changes to the approved exterior lighting are proposed, a lighting plan shall be provided to the Planning Office for approval prior to installation.
- n. The sound level generated by the facility shall not exceed 60 dBA (decibels) at the property line or 500 feet from an existing residence (building permit plans have been submitted or the residence is on-site at time of conditional use permit approval.)
  - i. The Operator shall contract with a qualified professional, approved by the Zoning and Codes Director, at the Operator's expense, to measure the noise levels at the closest impacted residences after construction is completed. The measurements shall be taken within one month of the release of the Certificate of Completion to verify the noise impact meets the project noise level threshold.
- o. All electrical interconnection and distribution lines within the site shall be located underground, with the exception of generation tie lines from the project substation to a utility substation, unless the Board of County Commissioners approves a modification from this requirement. If a modification is approved, it shall be noted on the plan with the approval date.

- p. Liability Insurance. The Operator shall provide general liability insurance, showing general liability insurance coverage for the lifespan of the project encompassing installation and operation through decommissioning. Evidence shall be provided annually to the Director of Zoning and Codes in the form of a certificate of insurance.
- q. The facility shall comply with all applicable local, state, and federal regulatory standards including, but not limited to, the Endangered Species Act, Clean Water Act, the International Building Code, National Fire Protection Association 855 Standards, and the National Electric Code, as amended.
- r. Transfer of Operator. If the Operator listed on the approved conditional use permit plans to sell or otherwise transfer their responsibilities to an entity not listed on the conditional use permit, the listed Operator shall notify the Zoning and Codes Director of this proposed change. Furthermore, the new Operator shall notify the Board of County Commissioners and the Zoning and Codes Director in writing, acknowledging their acceptance of responsibility and intent to comply with all conditions listed in the approved conditional use permit.
  - i. The Board of County Commissioners may approve the transfer of Operator if they find the proposed Operator has demonstrated their ability to strictly conform to all applicable performance standards detailed in these Regulations as well as applicable Local, State, and Federal laws or regulations.
- s. Extraordinary Event. Within 3 days of an extraordinary event, as defined in the Zoning Regulations, the Operator shall provide written notice of the event to the Zoning and Codes Director, noting the cause and the degree of damage associated with the event.
  - i. Within 30 days of the event, the Operator shall provide the Zoning and Codes Director with a mitigation plan noting the steps they will take to mitigate any negative impacts. Additional mitigation steps may be required by the Zoning and Codes
  - ii. If the additional mitigation steps required by the Zoning and Codes Office are unacceptable to the Operator, the Operator may appeal to the Board of County Commissioners.
  - iii. Nothing in this subsection (i) shall limit the right of the Operator to perform routine or necessary repairs or make in kind replacements.
- t. Reviews. The solar facility shall be reviewed for compliance with the standards of the conditional use permit 1 year after release of the Certificate of Completion and every 5 years thereafter through the life of the conditional use permit. These reviews may be conducted by a third-party firm, selected by the Director of Zoning and Codes, and, during the first ten (10) years of the project, financed by the Operator.
  - i. If a third-party review is utilized and the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
- u. Twelve to twenty-four months from the release of the Certificate of Completion, and with the first five-year review, and in each five-year review thereafter, the

Operator shall provide a detailed agrivoltaic report listing the agrivoltaic area and the type of agrivoltaic activities achieved. Each report shall demonstrate a measurable shift to vegetation management by grazing and shall incorporate other activities such as research and/or specialty crops.

- i. The intent is for the agrivoltaic activity to increase and/or diversify each five-year period unless the Operator provides evidence that the expansion was not feasible or possible.
- ii. The Zoning and Codes Director will evaluate the agrivoltaic report and provide a summary to the Board of County Commissioners noting the progress, identifying any challenges, and setting goals for the next five-year period that have been coordinated with the Operator.
- iii. A third party may be used for this evaluation, at the Operator's expense. If a third-party review is utilized and the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
- iv. If the area utilized for row crops increases within the 5-year period or is proposed with the new 5-year plan, a revised drainage study shall be provided by the Operator. The study will determine if additional stormwater detention is needed to manage the additional stormwater flow.

This study will be placed on the Board of County Commissioners' agenda for consideration and action, with the County Engineer's recommendation.

If additional detention is required and the necessary grading would increase the total grading to more than the permitted 5% of the total site area, a modification can be requested from the Board of County Commissioners.
- v. Safety. The Operator shall update the Emergency Services and Fire Safety Plan annually in collaboration with Emergency Management, and provide new copies to the system owner, the applicable fire district, emergency response agencies, Douglas County Emergency Management, and the Zoning and Codes Office.
  - i. Any specialty response equipment required to adequately manage Extraordinary Events will be provided, updated, and/or replaced by the Operator, as needed and at the Operator's expense.
  - ii. Annual Emergency and Extraordinary Event response training shall be provided for all emergency response stakeholders on the plan, site, equipment, and processes required to assure their safety and effective management during an event.
- w. No topsoil shall be removed from the site, except as permitted by Section 12-306-49.05.h. After rough grading, topsoil shall be redistributed uniformly on the surface of areas to be vegetated.
- x. Soil Testing. Soil tests shall be taken in an approved location before construction begins, when construction is complete, prior to renewing a

conditional use permit, prior to beginning decommissioning and reclamation, and following decommissioning/reclamation of the site to evaluate the soil health and/or contamination and develop a remediation program, if needed.

- y. The soil sampling plan shall include 1). Total carbon (organic and inorganic), 2). Phospholipid fatty acid (PFLA) for soil health, and 3). Heavy metals such as lead and cadmium.
  - i. The samples shall be taken in compliance with the measures identified in Section 12-306-49.06(d)(17)
  - ii. The sampling and testing shall be conducted by a third-party agency at the Operator's expense.
  - iii.. The Zoning and Codes Director and the Operator shall coordinate the selection of the consultants performing the soil tests.
  - iv. If a third-party review is utilized and the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
- z. Decommissioning/Reclamation. The Operator shall notify the Zoning and Codes Director when decommissioning and reclamation phases begin and when decommissioning and reclamation is completed.
  - i. A third-party inspector shall be utilized for the review of the decommissioning and reclamation to ensure the approved plans are being followed, at the Operator's expense.
  - ii. If a third-party review is utilized and the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
  - iii. The Operator shall execute a Road Maintenance Agreement with the applicable governing bodies, regarding the approved route and any necessary road improvement and maintenance measures, to be financed by the Operator.
- aa. Bond Requirement. The Operator shall post a bond, with the Douglas County Clerk, establish an escrow account, or provide such other financial security deemed acceptable by the County, in an amount equal to the estimated decommissioning costs, to ensure proper decommission and reclamation of the site.
  - i. The County shall contract with an independent third party for estimated decommissioning and reclamation costs, at the Operator's expense. If the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
  - ii. The bond, or other financial security, shall be approved by the County Commission and posted prior to the commencement of the use/issuance of a Certificate of Completion, in an amount equal to the estimated decommissioning costs, to ensure proper decommissioning and



reclamation of the site. The bond, or other financial security, shall include a mechanism for adjustment over the life of the project.


- iii. The bond, or other financial security, shall be adjusted for inflation annually.
  - iv. The Solar Facility owner or Operator shall engage a qualified individual, approved by the Zoning and Codes Director, to recalculate the estimated cost of decommissioning at an interval of every five years, and every year for the final five years of the conditional use permit. If the recalculated estimated cost of decommissioning exceeds the previous estimated cost of decommissioning, then the owner or Operator shall adjust their financial security to meet the new cost estimate. If the recalculated estimated cost of decommissioning is less than the previous estimated cost of decommissioning, then the County may approve reducing the amount of the security to the recalculated estimate of decommissioning cost.
- bb. Groundwater analysis
- i. An optional water analysis of active wells within one-quarter mile of the site area shall be offered by the Operator prior to the installation of the equipment. The offer shall be made to all owners of property within  $\frac{1}{4}$  mile of the site area by certified mail, at least one-month prior to the installation.
  - ii. A copy of the certified letter and a list of property owners notified shall be provided to the Planning office along with a list of all property owners who requested the testing and the results of that testing. This must occur prior to the release of building permits.
  - iii. The test shall analyze the water in the nearby wells for substances such as lead and cadmium, as determined with the conditional use permit, and shall include a pesticide panel.
  - iv. The results of ground water testing shall be provided to the Director of Zoning and Codes and sent by certified mail to the landowner.
  - v. The Zoning and Codes Director may contract with a third-party agency to conduct the tests and review the findings of the groundwater analysis, at the Operator's expense.
    - A. The Zoning and Codes Director and the Operator shall coordinate the selection of the third-party agency performing the water samples and tests.
    - B. If the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.
- cc. The Operator shall contract with a special inspector and/or Plan Reviewer, approved by the Zoning and Codes Director, for construction plan review and all required construction inspections, and code enforcement complaints during the construction period, as determined by the Zoning and Codes Director, at the Operator's expense.
- i. If the selected firm or the cost of the review is unacceptable to the Operator, the Operator may submit a request to the Board of County Commissioners for an alternate third-party review.

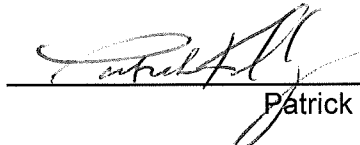
- dd. The laydown yard shall be reclaimed and vegetated as shown on the vegetation plan within 6 months of completion of construction of the Project.
- ee. The Operator/applicant shall file a vegetation bond in the amount of \$1,100 per acre, for each acre within the limit of disturbance as shown on the approved final Proposed Conditions Site Plan, with the Douglas County Clerk's Office prior to the issuance of the building permit.
  - i. The vegetation bond shall be released by the Zoning and Codes Director when soil disturbing activities are complete and final stabilization of all disturbed areas has been achieved using the following criteria used by the Kansas Department of Health and Environment (KDHE) for the closure of the National Pollutant Discharge Elimination System (NPDES) permit:
    - A. Perennial vegetation, roads, Project facilities, pavement, buildings, or structures cover all areas which have been disturbed.
    - B. Vegetation must have a density of at least 70 percent compared to a typical undisturbed condition at or near the site.
- ff. In the event that the Zoning and Codes Director reasonably determines that the Operator is conducting construction activities that are inconsistent with the approved Environmental Sound Study, and that such activities have caused, or are causing, significant adverse impacts on area residents with respect to construction noise, the Zoning and Codes Director shall work with the Operator to determine appropriate mitigation measures.
  - i. The Operator may appeal the mitigation measures to the Board of County Commissioners.
- III. Failure of the applicant, owner, or any successor or assign to abide by the requirements of Chapter 12, Article 3 of the Code of Douglas County, 2020 Edition, as amended, or the special conditions established with this resolution, shall be cause for the County to revoke Conditional Use Permit No. CUP-23-00079, in accordance with Douglas County Code § 12-307-2.11.
- IV. If any section, clause, sentence or phrase of this Resolution is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this Resolution.
- V. This Resolution shall be in full force and effect from and after its adoption by the Board and its publication once in the office County newspaper.

ADOPTED this 22nd day of May, 2024.

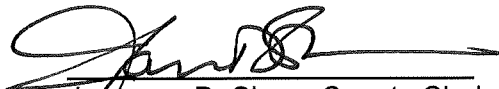
BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, KANSAS

  
\_\_\_\_\_  
Karen Willey, Chair

  
\_\_\_\_\_  
Shannon Reid, Vice Chair

  
\_\_\_\_\_  
Patrick Kelly, Member

ATTEST:

  
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Jameson D. Shew, County Clerk