

**JULY 2024  
CLARK COUNTY  
BOARD OF ADJUSTMENT  
STAFF REPORT**

**TUESDAY – JULY 16, 2024 – 9:00 a.m.**

**CLARK COUNTY BOARD OF ADJUSTMENT**

**ISSUE #1 CONDITIONAL USE**

**Applicant: SD RNG Interconnect, LLC**

**Owner: Riverview, LLP**

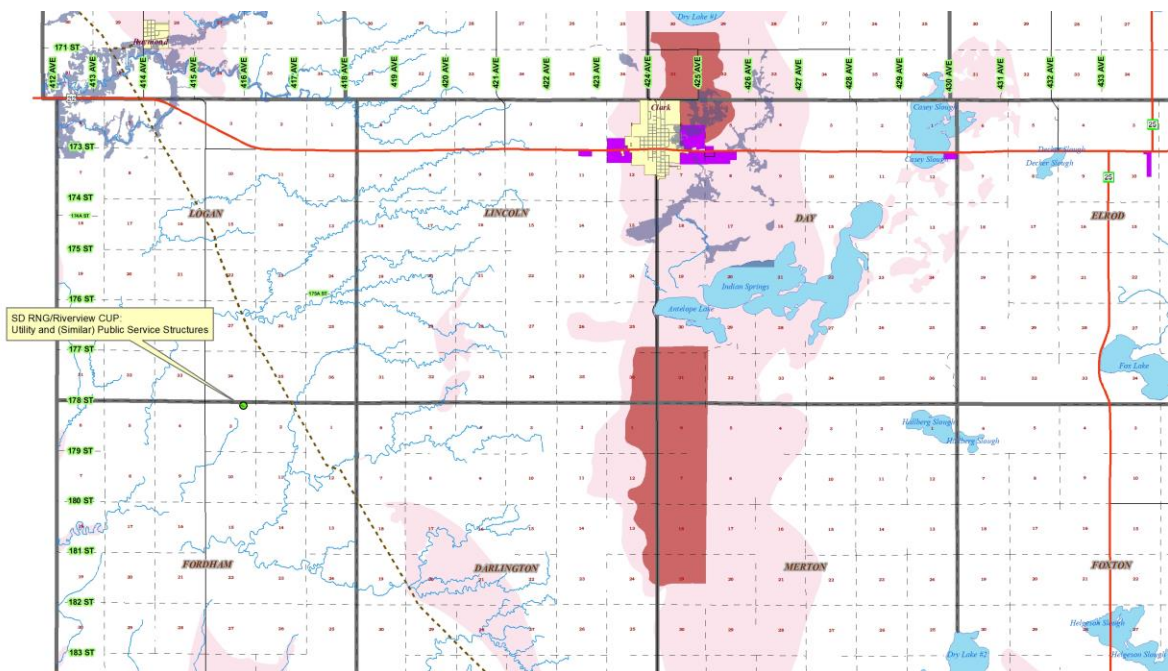
**Property Description:**

- Tract A in Lot 1, Riverview Addition in the Northeast Quarter of Section 3, Township 115 North, Range 59 West of the 5<sup>th</sup> Prime Meridian, Clark County, South Dakota.

**Request:** The applicant seeks to operate a renewable natural gas unloading facility as a facility similar to other essential public services.

**Lat/Long (Existing Approach):** 44.805074°; -97.903136°

**Action Item – Conditional Use Permit – Public utility and public service structures including ... gas regulator stations, pipelines... and similar essential public utilities and service structures (2.04.04.13)**

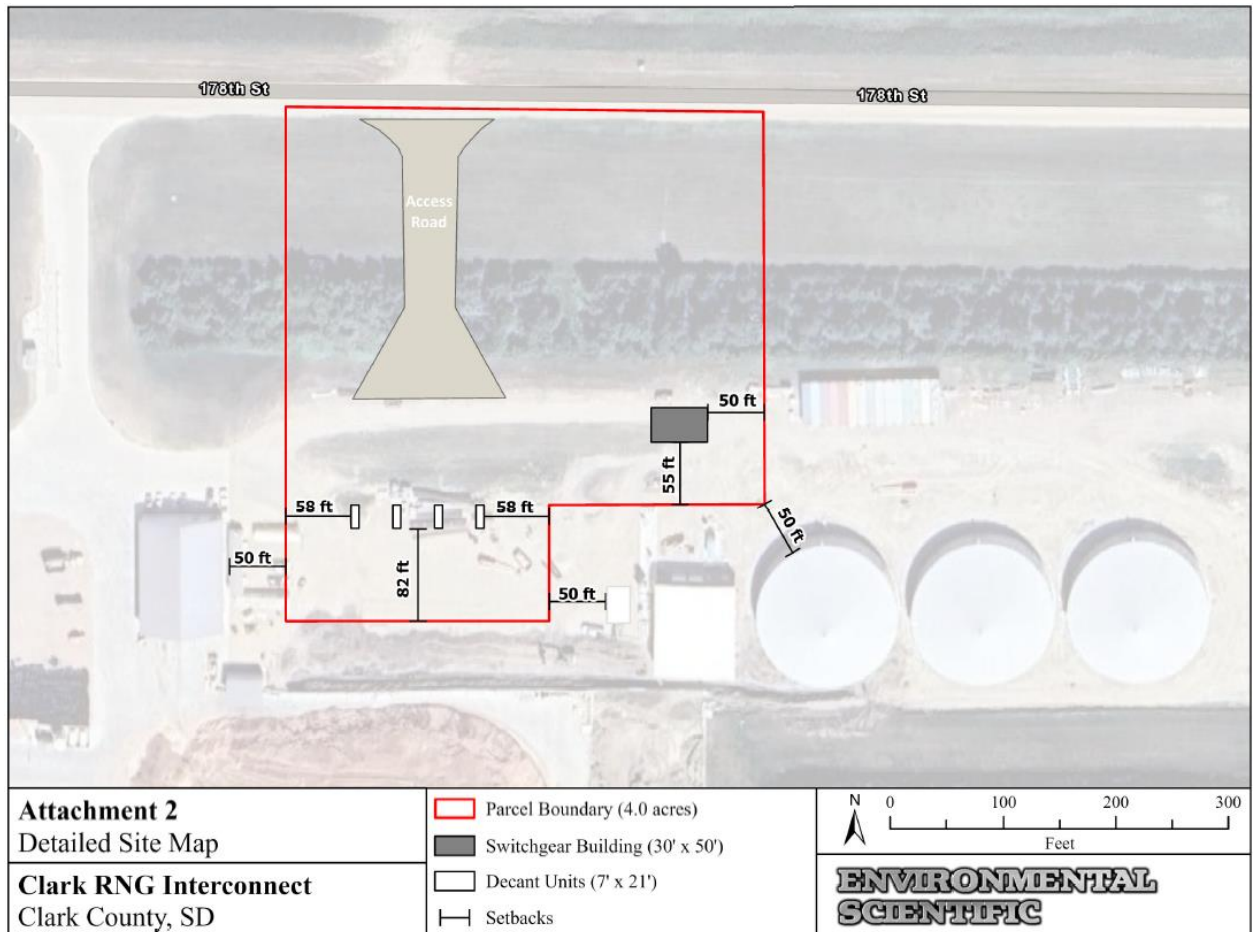


**Zoning Designation:** Agricultural

**History/Issue(s):**

Specifics of Request:

1. On December 17, 2019 Riverview was granted conditional use permit for a 15,370 AU CAFO (Dairy.)
  - a. A condition was to maintain a South Dakota General Permit from SDDANR and provide updated manure management plans upon request.
  - b. In 2022 Riverview sought permit to improve its manure management system by installing a methane digester. (SDDANR approved the update, and permit was requested for the digester and associated facilities as an accessory use.)
  - c. The methane digester creates natural gas, which is being piped to the main pipeline located north and east of the site.
  - d. The digester and sale of natural gas is managed by a business which includes the applicant.
    - Though it may seem odd, it's similar to one entity getting a gravel pit permit, another using it for rock, another using it as a site for a batch plant and another using it for fill material.



2. The facility includes:
  - a. 4 unloading connections (decant units)
  - b. 30' x 50' Equipment building (electrical and communications).
  - c. All structures will meet front, side and rear yard setbacks.

3. The intent is to accept natural gas from methane digesters at other dairies operated by Riverview and unload to be connected / sold to the pipeline as is done with the natural gas generated on-site.
  - a. Up to 8 trucks are expected for daily delivery.
4. Applicant requests a new approach on 178<sup>th</sup> Street to be located approximately 300 feet east of the existing approach.
5. The haul route for this facility is substantially the same as the haul route for the dairy (5.5 miles south of US 212 on 415<sup>th</sup> Ave; ¾ mile east on 178<sup>th</sup> Street).
6. The applicant requests to be added as a party to Riverview's Haul Road Agreement already in place for the dairy.
  - a. Staff recommends the haul road agreement remain exclusively with Riverview Dairy. Riverview would be responsible for repairs to the road if it is determined that damage is the result of operation at the dairy and/or this facility.
7. No significant changes to lighting, are garbage delivery are proposed.
8. Aside from vehicle traffic/running trucks, there is no expectation for additional noise or odor generated from the unloading of natural gas trucks.
9. The application did not specify how much of the shelterbelt north of the facility would be removed to accommodate this use.



Ordinance and Comprehensive Land Use Plan regarding this and similar requests:

1. The comprehensive land use plan makes little reference of utility structures such as this. On pages 24 and 25 mention is made of placing development in areas which maximize efficiency of utility service provision, but little direction is given to how to develop/permit utility structures such as gas regulating structures.
2. The Zoning Ordinance defines "Utility" as: *any entity engaged in this state in the generation, transmission or distribution of electric energy including, but not limited to, a private investor owned utility, cooperatively owned utility, and a public or municipal utility.*
  - a. December 2022 the Board approved a Conditional Use Permit to Northern Natural Gas (Berkshire Hathaway Energy) as a public utility/essential public service (gas regulator) one mile east of this proposed facility.
3. No specific requirements are listed for public utilities such as this structure.
4. General requirements for conditionals uses were addressed above.
5. No new septic tanks are proposed in relation to this request.
6. No signs other than safety, and site identification signs are proposed with this request.
7. The Board has the authority to establish conditions for conditionals uses. The Board may require that approval be subject to the condition that the site only accept natural gas generated at other facilities owned / operated by Riverview.

Staff Summary:

The primary question the Board needs to consider with this request is whether the proposed use meets the definition of the public utility/essential public service as other privately owned natural gas operators (such as Northern Natural Gas) have been determined to. If so, the Board is empowered to issue the permit; then the primary consideration is whether conditions need to be added to the permit. If not, then the Board is not empowered to issue the permit and it should be denied. However, if the permit is denied, staff asks that the Board determine whether this proposed use should be considered accessory to the permitted concentrated animal feeding operation if the site only accepts natural gas generated from other Riverview Dairies.

*Staff Recommendation:*

Conditional Use Permit – **Public utility/essential public services/similar facilities** The Board may postpone the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

**1. Effective Date and Transferability:**

- a. This permit becomes effective upon signing of the Letter of Assurance and payment of the applicable recording fee.
- b. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Grantor, and are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement.
- c. This permit shall automatically expire in the event operations of the Dairy on [adjoining legal description] ceases; or if the property upon which this facility is located is no longer owned by the owner/operator of the dairy.

**2. General Requirements:**

- a. There will be no storage of junk on site.
- b. In accordance with SDCL 11-10-6, documentation that all structures will be constructed in accordance with the most recent version of the International Building Code, if applicable, shall be submitted with any applicable building permit application.
- c. Applicant agrees to obtain all required state and federal permits or licenses for operation of the facility.
- d. Only natural gas generated by the owner of the dairy may be accepted at this site.

**3. Haul Road Agreements:**

- a. The Haul Road Agreement already on file for the use of Riverview Dairy will be amended to include the operation of this facility.
- b. Any violation of the haul road agreement will be enforced upon the holder of the permit for the dairy.

**4. Violations**

- a. Grantor is put on notice that failure to abide by the requirements of this letter of assurance will result in a hearing of the Board of Adjustment to consider revocation of the conditional use permit associated herewith.