

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS
Minutes of Meeting
March 12, 2024

As reflected in posted agenda:

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84648770345> If you cannot connect via Zoom, you may submit written public comment to morgancountybcc@co.morgan.co.us by email by 4 p.m. on Monday March 11, 2024.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84648770345> listen via phone, please dial: 1-312-626-6799, Meeting ID: 846 4877 0345

To watch and/or listen to the meeting but not participate, you may do so by connecting via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84648770345> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 846 4877 0345

The Board of Morgan County Commissioners met Tuesday, March 12, 2024 at 9:02 a.m. Chairman Mark Arndt, Commissioner Jon Becker, and Commissioner Gordon Westhoff were in attendance. Chairman Arndt asked Morgan County Chief Deputy Clerk and Recorder, Randee Aleman to lead the meeting in the Pledge of Allegiance.

CITIZEN'S COMMENT

There was no citizen comment provided.

CONSENT AGENDA

1. Ratify the Board of County Commissioner's approval of FY 2025 EMTS Grant.
2. Ratify the Board of County Commissioner's approval of 2024 CNT 033, Chad Strange dba A Cut Above the Rest, Term of Contract March 7, 2024 through March 25, 2024

At this time, Commissioner Westhoff made a motion to approve items 1- 2 as presented; Commissioner Becker seconded the motion. The motion carried 3-0.

UNFINISHED BUSINESS

There was no unfinished business.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of Approval – Road Use Agreement for Pivot Solar 32, LLC

Morgan County Attorney, Kathryn Sellars presented the Board Road Use Agreement for Pivot Solar 32, LLC. She noted that it is located outside the city of Brush on County Roads 27 and T. She noted that it was approved last year by the board and this agreement is for the beginning of construction. She stated that this is pending staff approval for a road inventory and a traffic report.

Commissioner Becker made a motion to approve the Road Use Agreement for Pivot Solar 32, LLC as presented by County Attorney Kathryn Sellars, Commissioner Westhoff seconded the motion. The motion carried 3-0.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Morgan County Clerk and Recorder, Kevin Strauch stated that tomorrow is the last day for people to cure signatures and to receive overseas and military ballots. He noted that next Tuesday the Canvass Board will convene and then results will be official.

Commissioner Westhoff noted that there is a weather spotter training is tomorrow (March 13th) at Morgan Community College from six to eight pm in Bloedorn Lecture Hall.

Commissioners reviewed the calendar dated March 1, 2024 through March 12, 2024 with a change of the communications center meeting being moved to the 19th at the same time that it is currently scheduled.

Being no further business the meeting was then adjourned at 9:10 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified March 19, 2024)

2 COMMISSIONERS PROCEEDINGS

**THE BOARD OF COUNTY COMMISSIONERS
MORGAN COUNTY, COLORADO**

s/ Mark A. Arndt
Mark A. Arndt, Chairman

s/ Jon J. Becker
Jon J. Becker, Commissioner

s/ Gordon H. Westhoff
Gordon H. Westhoff, Commissioner

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch

PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:12 a.m. on Tuesday, March 12, 2024 in the Assembly Room of the Morgan County Administration Building.

Chairman Mark Arndt, Commissioner Jon Becker, and Commissioner Gordon Westhoff were present. Planning and Zoning Administrator Nicole Hay, Planning and Zoning Technician Jenafer Santos, IT Specialist Karol Kopetzky and Morgan County Attorney Kathryn Sellars were also present.

APPLICATION:

Applicant: Fortress Solar, LLC

Landowners: Shari A. Benotti, & Ruth Ann Odle

Fortress Solar, LLC, Solar Energy Facility; Phases I, II and III.

Legal Description: A part of Sections 3, 4, 5, 6, 7, 8, 9 and 10, Township 3 North, Range 55 West, a part of Sections 1 and 12, Township 3 North, Range 56 West, and a part of Section 32, Township 4 North, Range 55 of the 6th PM, Morgan County, Colorado.

Fortress Solar, LLC, BESS; Phases I, II and III.

Legal Description: A part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado.

Request: Fortress Solar, LLC has submitted a Special Use Permit Application to construct and operate an up to 600 MW Solar Photovoltaic Panel (PV) project in conjunction with a 2,400 MWh Battery Energy Storage System (BESS). Construction will take place in three phases. See attached site map.

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANTS: Fortress Solar I, LLC, Fortress Solar II, LLC and Fortress Solar III, LLC
OWNERS: Ruth Ann Odle and Shari A. Benotti

These applications are for Special Use Permits for the activities described below. The applicants are requesting six special use permits, representing the three phases of the entire build out of project. Each phase will consist of one solar collector facility and one battery energy storage system (BESS). Due to the relationship between the six applications and overlapping evaluation of site conditions which are common between applications, the Board of County Commissioners will conduct one public hearing for six applications, but each application must be evaluated separately under the applicable criteria and will require separate action by motion by the Board.

Fortress Solar I Energy Collector Facility

The applicant, Fortress Solar I, LLC, proposes a solar collector facility within a 1,305-acre project area. The facility will consist of photovoltaic (PV) panels, inverters and associated transformers, underground electric collection lines and/or above ground cabling, access roads, a project substation, security fencing, exterior lighting, an operations and maintenance building, and an approximate 1-1/4 mile generation tie (gen-tie) line connecting the solar collector facility to the point of interconnection. The applicant has also requested waivers of the setback requirements for several interior property lines and several rights-of-way along section lines.

This facility will have a maximum power output of 200 MWac. The project area is located in a part of Sections 5, 6, 7, and 8, Township 3 North, Range 55 West, and a part of Sections 1 and 12, Township 3

North, Range 56 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Fortress Solar I Battery Energy Storage System (BESS)

The applicant, Fortress Solar I, LLC, proposes a BESS within an approximate 7 acre project area. The BESS will be sited on a concrete pad. Vegetation within the BESS site will be removed and weed management plans will be prepared prior to the start of construction and following construction. The perimeter will be surrounded by security fence.

This facility will have a capacity of up to 800 MWhrs (a maximum power output of 200 MWac). The project area is located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Fortress Solar II Energy Collector Facility

The applicant, Fortress Solar II, LLC, proposes a solar collector facility within a 1,439-acre project area. The facility will consist of photovoltaic (PV) panels, inverters and associated transformers, underground electric collection lines and/or above ground cabling, access roads, a project substation, security fencing, exterior lighting, an operations and maintenance building, and a generation tie (gen-tie) line connecting the solar collector facility to the point of interconnection. The applicant has also requested waivers of the setback requirements for several interior property lines and several rights-of-way along section lines.

This facility will have a maximum power output of 200 MWac. The project area is located in a part of Sections 3, 4, 5, and 8, Township 3 North, Range 55 West and a part of Section 32, Township 4 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Fortress Solar II Battery Energy Storage System (BESS)

The applicant, Fortress Solar II, LLC, proposes a BESS within an approximate 7 acre project area. The BESS will be sited on a concrete pad. Vegetation within the BESS site will be removed and weed management plans will be prepared prior to the start of construction and following construction. The perimeter will be surrounded by security fence.

The facility will have a capacity of up to 800 MWhrs (a maximum power output of 200 MWac). The project area is located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Fortress Solar III Energy Collector Facility

The applicant, Fortress Solar III, LLC, proposes a solar collector facility within a 1,325-acre project area. The facility will consist of photovoltaic (PV) panels, inverters and associated transformers, underground electric collection lines and/or above ground cabling, access roads, a project substation, security fencing, exterior lighting, an operations and maintenance building, and a generation tie (gen-tie) line connecting the solar collector facility to the point of interconnection. The applicant has also requested waivers of the setback requirements for several interior property lines and several rights-of-way along section lines.

The facility will have a maximum power output of 200 MWac. The project area is located in a part of Sections 3, 9, and 10, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Fortress Solar III Battery Energy Storage System (BESS)

The applicant, Fortress Solar III, LLC, proposes a BESS within an approximate 7 acre project area. The BESS will be sited on a concrete pad. Vegetation within the BESS site will be removed and weed management plans will be prepared prior to the start of construction and following construction. The perimeter will be surrounded by security fence.

The facility will have a capacity of up to 800 MWhrs (a maximum power output of 200 MWac). The project area is located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Referral Responses

In addition to the permit applications, packets include responses from CDOT, BNSF Railway, City of Brush, Xcel Energy, WAPA, Division of Water Resources, Colorado Parks and Wildlife, and Morgan County Road & Bridge Department.

Property Interests and Easements

The applicants have no direct rights to use the properties for the purposes requested through the applications. The applicants' parent subsidiary entity has options to obtain the necessary property rights to the properties. To address this issue, staff is recommending a condition that the applicants must demonstrate requisite ownership or possession of the property prior to commencement of construction.

A utility easement is intended to be established for the proposed gen-tie line to interconnect to the Tri-State Story Substation west of the project and will be located over Tri-State property.

Brush Airport

The Brush Municipal Airport is less than a mile from the project area. The FAA Obstruction Evaluation Notice Criteria Tool (FAA 2022b) was used for 4 locations in the project area. Due to the proximity to the Brush Municipal airport, it was determined the project exceeds the notice criteria and a notice will be filed with the FAA at least 45 days prior to the start of construction. Once the FAA has completed an aeronautical study, a determination is issued regarding the impact to air navigation.

Drainage Plans

Matt Harris with Harris Engineering Consultants, Inc., the County's consulting engineer, reviewed the preliminary Hydrologic and Hydraulic Report, preliminary Water and Wind Erosion Control Plan, and associated preliminary site plan. He recommends the applicants submit additional information regarding the location and magnitude of offsite discharges as part of the final drainage plans submitted prior to construction. While the applicants represent that natural depressions on the property will be used to collect stormwater runoff, this method may result in significant ponding. To further refine site inundation depths and define potential "no-build" areas on the site plan, field infiltration tests are recommended as per Section 3.4.2 of the drainage study.

Haul Routes

Although all six applications reference County Road R.5 as a requested route, the applicant has confirmed it should be County Road R.6. The haul route map (figure 3) shows the correct location of County Road R.6, but is labeled incorrectly.

The applicants propose that the primary haul route and route for construction deliveries will be provided via County Road Q and will build a new 20 foot wide gravel road beyond the eastern terminus of County Road Q. The primary access for operations and construction commuter vehicles will be provided from County Road R.6 and the applicants will build a 20 foot wide gravel road beyond the eastern terminus of County Road R.6. This access will also be designated as the primary emergency vehicle access. A third access point for operations and construction commuter vehicles will be provided via County Road R and the applicants will build a 20 foot wide gravel road beyond the eastern terminus of County Road R. See Figure 3. A tire washout station will be installed at the entrance from County Road Q to reduce track out. See Appendix A-8.

The applicants have provided a detailed summary of haul routes and anticipate traffic numbers. See Memo from Tetra Tech to Morgan County Road & Bridge Department, dated December 11, 2023.

Planning Commission Meeting

A Planning Commission hearing was held on February 12, 2024, where the Commissioners heard from the Applicant's representative and the public.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar I Energy Collector Facility with the recommended conditions on a vote of 5 in favor and 1 opposed.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar I Battery Energy Storage System with the recommended conditions on a vote of 5 in favor and 1 opposed.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar II Energy Collector Facility with the recommended conditions on a vote of 5 in favor and 1 opposed.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar II Battery Energy Storage System with the recommended conditions on a vote of 5 in favor and 1 opposed.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar III Energy Collector Facility with the recommended conditions on a vote of 5 in favor and 1 opposed.

The Planning Commission recommended approval to the County Commissioners of the Fortress Solar III Battery Energy Storage System with the recommended conditions on a vote of 5 in favor and 1 opposed.

Updated Haul Route Information and Review by HDR

The County's third party consultant, HDR Engineering, made a site visit to review the conditions of the 3 county roads (Q, R and R.6). A memo from HDR with recommendations is included in the packet.

Three proposed options for road improvements are listed in HDR's memo. Morgan County Road & Bridge Department favors option 3 which includes the paving of County Road Q and upgrading County Road R to granular surface. If the Board of County Commissioners decide to require one of the options, condition number i for the solar applications will need to be updated.

Reducing the site access to 2 routes is recommended, utilizing County Road R for emergency and commuter traffic, and County Road Q for construction purposes. Access via County Road R.6 would be eliminated. The Planning Department has reached out to the Morgan County Ambulance Service, Morgan County Sheriff's Office, the Office of Emergency Management, the City of Brush and both the Brush Fire Chief and Assistant Chief regarding the use of County Road R. 6 and R for emergency access to the site. The Brush Fire Assistant Chief prefers the use of County Road R over using R.6 for emergency use and the other agencies/departments concur. If the Board of County Commissioners want to eliminate R.6, an additional condition will need to be added to any approval.

Additional Referrals and Information Received After Planning Commission Hearing

Additional referral responses were received from Tri-State Generation and Transmission Association, Inc. and Morgan County Conservation District.

The Applicant also provided an update on Community Contributions and ongoing initiatives.

Criteria for Evaluation

In reviewing these applications, the Planning Commission and Board of County Commissioners are required to make a finding that the criteria for granting a Use by Special Review in Section 2-395 of the Morgan County Zoning Regulations have been satisfied. In addition, the County shall consider whether each application for a solar collector facility complies with the requirements of the Solar Collector Regulations and each BESS complies with the requirements of the BESS Regulations in Zoning Regulations.

Section 2-395 Special Use Permit Criteria:

- A. The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. The property is located in the southeast planning area.

Chapter 2 – Plan Summary

2.II.A - Economic Development

Goal – Diversify the economy in Morgan County to broaden business employment opportunities for residents and to further economic growth.

All six projects would provide economic benefit to Morgan County through increased revenues to the county and school district tax bases through the taxation of the projects. To the extent possible the operator will seek to hire local contractors throughout construction and the life of the project.

Chapter 4 – Economic Development

Goal – Encourage the location of new industry and the expansion of existing businesses that will provide employment opportunities and increase the tax base to strengthen the economy of Morgan County.

Policy 10. Contribute to the Colorado New Energy Economy; work to attract and maintain renewable energy projects to capture this.

Chapter 5 - Environment

IX-Environmental Resources and Hazards Plan

Goal - To preserve the manmade and natural environment in order to enhance the quality of life in Morgan County.

All six projects will not impact wetlands or floodplains and will avoid adverse impacts on plant and wildlife species. These projects will encourage the use of renewable resources and production of electric power.

- B. The application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.
- C. The Site Plan conforms to the district design standards of Section 2-420 and Section 4-820 of the Morgan County Zoning Regulations.
- D. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

The applications will both have short-term impacts to off-site areas during construction and long-term impacts to off-site areas during the life of the project related to the use of County Roads. The level of impacts during construction and after construction is completed are likely differ in degree.

The off-site impacts during construction and the life of the property will need to be addressed by the Applicants. The execution of Road Use Agreement, as required by the Morgan County Zoning Regulations, is a proposed condition for approval. In addition, after receiving HDR's memo, Morgan County Road & Bridge agrees with the elimination of County Road R.6 as an access road and favors option 3 which includes the paving of County Road Q and upgrading County Road R to granular surface. Any necessary improvements to the access roads shall be constructed by the applicant and shall be governed by a public improvement agreement executed by the appropriate applicant(s). This issue is addressed in the recommended conditions in this staff report.

Once construction is completed, the glare report indicates no glare will impact neighboring properties.

Best management practices (BMP) will be implemented to protect newly established vegetation for Storm Water Management and Erosion Control.

- E. The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.

The closest residence to the project area will meet the required setback of 500 feet. The residence is near the southwest corner of Fortress Solar I. The parcels adjacent to the facility are zoned Agricultural Production District and are pastureland.

- F. The special use poses only the minimum amount of risk to the public health, safety and welfare as set by either federal, state or county regulation, whichever is strictest.

Granting the Special Use Permits will not increase risk to public health, safety, or welfare.

- G. The special use proposed is not planned to be developed on a non-conforming parcel.

All six projects are located on conforming parcels.

- H. The applicant has adequately documented a public need for the project, all pertinent technical information, adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.

The general purpose of all phases is to maximize energy production from available solar resources to deliver renewable electricity to the bulk power transmission system to serve the needs of electric utilities and their customers.

- I. For any special use requiring a supply of water for human consumption that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity, quality, and reliability. For any special use which does not require a supply of water for human consumption, an adequate source of water for the proposed use in terms of quantity and reliability must be obtained prior to commencement of the use.

All six phases are expected to require a supply of water both during construction and operation phases. Water for the project will be sourced from wells located on the property. If offsite water is required, water will be transported by truck to be stored in an onsite water tank and/or cisterns. DWR has provided a referral response and the wells on the property may not be permitted for the uses contemplated by the applicants. The applicants will be required pursuant to the criteria above in the Morgan County Zoning Regulations to obtain an appropriate supply of water prior to construction.

The following conditions are recommended for the special use permits:

1. Fortress Solar I Collector Facility Conditions

- a. Fortress Solar I, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar I, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the solar collector facility and may include, but are not limited to, interconnection/crossing agreements, final drainage & erosion control plan, signed and sealed geotechnical report, decommissioning plan, operations and maintenance plan, Liability Insurance Certificate, final locations for any laydown yard, a copy of the APEN issued by the Colorado Department of Public Health and Environment, Unanticipated Discovery plan, and an adequate supply of water.
- d. Fortress Solar I, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when Fortress Solar I, LLC commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.

- f. No poles shall exceed a height of 100 feet. Any poles that exceed this height will require prior approval from the County, upon a showing by Fortress Solar I, LLC that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from Fortress Solar I, LLC. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- g. The substation and solar collector facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- h. Prior the commencement of construction, Fortress Solar I, LLC will enter into a road use agreement for the use of any public road during construction. The agreement shall include the following:
 - a. A designated haul route or routes, subject to approval by the Morgan County Road & Bridge Department. A map showing the designated haul route to be used during construction.
 - b. A pre-construction baseline inventory of County roads on the designated haul route or routes to be used during construction to document their pre-construction condition, obtained by and paid for by the applicant.
 - c. A mitigation plan to address traffic congestion, control, and potential impacts to County roads on the designated haul route. The mitigation plan shall also include any dust mitigation activities.
 - d. A requirement that the applicant is to return any County roads to their pre-construction baseline condition.
 - e. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Fortress Solar I, LLC are not in default of any provision of the road use agreement. The County shall inspect the restored roads and Fortress Solar I, LLC shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Fortress Solar I, LLC shall be responsible for correcting or properly completing the restoration.
 - f. The residual fifteen percent (15%) retained by the County shall act as security for Fortress Solar I, LLC's guarantee that the restoration remains free of defect during a two-year warranty period. Fortress Solar I, LLC may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.
- i. Fortress Solar I, LLC shall make all necessary improvements to the access roads prior to commencement of construction. Fortress Solar I, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the

- improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar I, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.
- j. Prior to the commencement of construction, Fortress Solar I, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
 - k. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar I, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
 - l. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar I, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
 - m. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
 - n. Fortress Solar I, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
 - o. Fortress Solar I, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
 - p. Fortress Solar I, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar I, LLC for costs and fees and payment will be due by Fortress Solar I, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

2. Fortress Solar I BESS Facility Conditions

- a. Fortress Solar I, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar I, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversized/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Fortress Solar I, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when the Applicant commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Fortress Solar I, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility in Phase I govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities ("Temporary Areas") utilized after final construction is completed. Fortress Solar I, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

- j. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar I, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- k. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
- l. Fortress Solar I, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- m. Fortress Solar I, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- n. Fortress Solar I, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar I, LLC for costs and fees and payment will be due by Fortress Solar I, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

3. Fortress Solar II Collector Facility Conditions

- a. Fortress Solar II, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar II, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the solar collector facility and may include, but are not limited to, interconnection/crossing agreements, final drainage & erosion control plan, signed and sealed geotechnical report, decommissioning plan, operations and maintenance plan, Liability Insurance Certificate, final locations for any laydown yard, a copy of the APEN issued by the Colorado Department of Public Health and Environment, Unanticipated Discovery plan, and an adequate supply of water.
- d. Fortress Solar II, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The

County must be notified in writing when Fortress Solar II, LLC commences decommissioning.

- e. Any building greater than 120 sq. ft. will require a building permit.
- f. No poles shall exceed a height of 100 feet. Any poles that exceed this height will require prior approval from the County, upon a showing by Fortress Solar II, LLC that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from Fortress Solar II, LLC. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- g. The substation and solar collector facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- h. Prior the commencement of construction, Fortress Solar II, LLC will enter into a road use agreement for the use of any public road during construction. The agreement shall include the following:
 - i. A designated haul route or routes, subject to approval by the Morgan County Road & Bridge Department. A map showing the designated haul route to be used during construction.
 - ii. A pre-construction baseline inventory of County roads on the designated haul route or routes to be used during construction to document their pre-construction condition, obtained by and paid for by the applicant.
 - iii. A mitigation plan to address traffic congestion, control, and potential impacts to County roads on the designated haul route. The mitigation plan shall also include any dust mitigation activities.
 - iv. A requirement that the applicant is to return any County roads to their pre-construction baseline condition.
 - v. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Fortress Solar II, LLC are not in default of any provision of the road use agreement. The County shall inspect the restored roads and Fortress Solar II, LLC shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Fortress Solar II, LLC shall be responsible for correcting or properly completing the restoration.
 - vi. The residual fifteen percent (15%) retained by the County shall act as security for Fortress Solar II, LLC's guarantee that the restoration remains free of defect during a two-year warranty period. Fortress Solar II, LLC may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County.

The County may accept substitute or supplemental forms of security in its sole discretion.

- i. Fortress Solar II, LLC shall make all necessary improvements to the access roads prior to commencement of construction. Fortress Solar II, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar II, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.
- j. Prior to the commencement of construction, Fortress Solar II, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- k. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar II, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
- l. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar II, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- m. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
- n. Fortress Solar II, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- o. Fortress Solar II, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- p. Fortress Solar II, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar II, LLC for

costs and fees and payment will be due by Fortress Solar II, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

4. Fortress Solar II BESS Facility Conditions

- a. Fortress Solar II, LLC must demonstrate ownership or possession of the property prior to commencement of construction. The applicant can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Fortress Solar II, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when Fortress Solar II, LLC commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Fortress Solar II, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility in Phase II govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar II, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all

equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

- j. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar II, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- k. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
- l. Fortress Solar II, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- m. Fortress Solar II, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- n. Fortress Solar II, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar II, LLC for costs and fees and payment will be due by Fortress Solar II, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

5. Fortress Solar III Collector Facility Conditions

- a. Fortress Solar III, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar III, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the solar collector facility and may include, but are not limited to, interconnection/crossing agreements, final drainage & erosion control plan, signed and sealed geotechnical report, decommissioning plan, operations and maintenance plan, Liability Insurance Certificate, final locations for any laydown yard, a copy of the APEN issued by the Colorado Department of Public Health and Environment, Unanticipated Discovery plan, and an adequate supply of water.

- d. Fortress Solar III, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when the Applicant commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. No poles shall exceed a height of 100 feet. Any poles that exceed this height will require prior approval from the County, upon a showing by Fortress Solar III, LLC that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from Fortress Solar III, LLC. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- g. The substation and solar collector facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- h. Prior the commencement of construction, Fortress Solar III, LLC will enter into a road use agreement for the use of any public road during construction. The agreement shall include the following:
 - i. A designated haul route or routes, subject to approval by the Morgan County Road & Bridge Department. A map showing the designated haul route to be used during construction.
 - ii. A pre-construction baseline inventory of County roads on the designated haul route or routes to be used during construction to document their pre-construction condition, obtained by and paid for by the applicant.
 - iii. A mitigation plan to address traffic congestion, control, and potential impacts to County roads on the designated haul route. The mitigation plan shall also include any dust mitigation activities.
 - iv. A requirement that the applicant is to return any County roads to their pre-construction baseline condition.
 - v. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Fortress Solar III, LLC are not in default of any provision of the road use agreement. The County shall inspect the restored roads and Fortress Solar III, LLC shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Fortress Solar III, LLC shall be responsible for correcting or properly completing the restoration.
 - vi. The residual fifteen percent (15%) retained by the County shall act as security for Fortress Solar III, LLC's guarantee that the restoration remains free of defect during a two-year warranty period Fortress Solar III, LLC may at any time during the preliminary

acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.

- i. Fortress Solar III, LLC shall make all necessary improvements to the access roads prior to commencement of construction. Fortress Solar III, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar III, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.
- j. Prior to the commencement of construction, Fortress Solar III, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- k. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar III, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
- l. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar III, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- m. Construction occurring with $\frac{1}{4}$ quarter mile of any residence shall not commence earlier than 7 a.m.
- n. Fortress Solar III, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- o. Fortress Solar III, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.

- p. Fortress Solar III, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar III, LLC for costs and fees and payment will be due by Fortress Solar III, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

6. Fortress Solar III BESS Facility Conditions

- a. Fortress Solar III, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar III, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversized/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Fortress Solar III, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when the Applicant commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Fortress Solar III, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility in Phase III govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar III, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least

thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

- j. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Fortress Solar III, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- k. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.
- l. Fortress Solar III, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- m. Fortress Solar III, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- n. Fortress Solar III, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Fortress Solar III, LLC for costs and fees and payment will be due by Fortress Solar III, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

As per Sections 4-845 and 4-880 of the Morgan County Zoning Regulations, Fortress Solar I, LLC, Fortress Solar II, LLC, and Fortress Solar III, LLC are also requesting approval of the three year renewals for all six applications. The extension to a total of 6 years is being requested to accommodate the long lead time required to move through the interconnection processes and complete construction on a utility-scale project.

Nicole Hay,
Morgan County Planning Administrator

DISCUSSION: Board of County Commissioners to applicant:

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. Andrew Breyer with AYP Power presented this application to the Board of County Commissioners.

Chairman Arndt asked the applicants how they plan to address the concerns from the mineral owners?

Andrew Breyer answered they are still working through those issues.

Commissioner Westhoff asked where the Tri-State transmission line is in relevance to the project area?

Andrew Breyer stated that it goes east to west through the project.

PUBLIC COMMENT OPEN:

Jim Odle, 16218 HWY 71, Brush is in favor of this project. The type of ranch that will be used for this project is different than other areas of the County. There is sandy land to the west and the south, compared to what is on their ranch. 2/3 of that ranch was farmed. The biggest problem on that property is the weed problem along the railroad. They have a contract with a local spray outfit to spray those weeds once a month. Water is a concern to everybody, but the east side of the ranch is in a closed basin.

Debora Beck-Massey, 17660 Co. Rd. 29.6, Brush has concerns about this project. Burlington Northern has increased the length and the weight of their trains, resulting in vibration. How are they going to mitigate the vibrations when they are driving pylons into the ground? There are major concerns about prairie fires, not only with the BESS system but just general fires that tend to happen. How will this project affect the taxes for the residents of Sunny Acres? Where are the construction crews going to stay? Housing is at a premium in Morgan County. She also mentioned concerns about the sandy nature of the land, if emergency services will be able to access the project, and the blowing sand.

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Westhoff asked why the Division of Wildlife created the corridors through the solar facility guiding the wildlife to the railroad tracks and the highway?

Andrew Breyer answered he can't speak on behalf of CPW, but he is assuming it is because it's an existing Right-Of-Way.

Maya Lewis, Environmental Planner with Tetra Tech, 1560 Broadway, Denver stated that they provided CPW 2 corridor options and asked them for their opinion. The one shown was the one they had recommended.

Commissioner Westhoff asked if 6 feet enough to stabilize the arms for the solar panels?

Andrew Breyer stated it's 6-10 feet. He doesn't know the exact frequency of the pile driver vibration but they will be far enough away from residences that there shouldn't be any impact.

Loni Reiger, Senior Director for Health and Safety for AYPower, 11801 Austin, TX answered that they will be hammering in those pile drivers. The mitigation measures they use will be absorbers and dampers, similar to what Oil and Gas production uses for wells.

Commissioner Becker asked if they have done soils for the area yet?

Andrew Breyer stated they haven't done a geotechnical study, but they have studied the soil topology.

Commissioner Becker asked where their other projects in Colorado are?

Andrew Breyer, "We have a battery energy storage only in Pueblo Colorado called Village BESS."

Commissioner Becker asked if they have discussed training and what they should expect with the City of Brush and the Brush Fire Department?

Andrew Breyer answered that they have had preliminary discussions.

Commissioner Becker asked if they have looked at prior conditions for other similar projects?

Andrew Breyer said they have.

Commissioner Westhoff asked what their weed mitigation plan would be during construction? There are times when the spraying of weeds gets missed and those seeds will get scattered to the project area. There must be a weed mitigation plan.

Loni Reiger explained they have a vegetation management plan that will be implemented once operations are conducted. It will be adjusted to the type of vegetation, the weather, and what season it is.

Commissioner Becker asked if there was an impact study that was provided by MCEDC, as Fortress Solar is an investor.

Andrew Breyer, "No study."

Commissioner Becker referenced their presentation, mentioning in 30 years, it is expected to bring in 3 million dollars total. He would like to see how those numbers were arrived. There will be 36 employees on the ground after the completion of the project?

Andrew Breyer explained that it was partial on the ground. There is a makeup of personnel. He further explained the types of personnel that will be a part of the project.

Commissioner Becker stated it's important to see how many are based in Morgan County. He is assuming a majority of them won't be based in Morgan County, greatly reducing the economic impact.

Andrew Breyer stated it depends on the staffing makeup.

Commissioner Becker asked the applicants to explain how close they would allow vegetation to be near the BESS systems?

Maya Lewis explained that they would go with whatever the defensible area is recommended by the Fire Protection Agency.

Commissioner Becker asked if the example given in the presentation was the system they will be using for this project?

Andrew Breyer answered that the project has to evolve before selecting the specific system.

Commissioner Becker asked if they are all self-containing or are they all connected?

Loni Reiger answered that they are all self-contained. She further explained what the containers will be made of.

Commissioner Becker asked if they are guaranteeing they will be using lithium phosphate batteries when it comes time for construction?

Andrew Breyer answered that it is proposed.

Commissioner Becker asked how often the panels are upgraded?

Andrew Breyer clarified that they are made for a 20-year lifespan, but it depends on the panel degradation.

Chairman Arndt asked what is the risk if there is a fire and evacuation?

Loni Reiger explained that the system will have gas and fire monitors that are controlled remotely. They will do a plume study to show potential dispersion. She also noted they have an emergency response plan that will outline all of this.

Chairman Arndt asked what if 3 containers go up, what are the chemicals that come off of the plume of smoke that is a danger to those around, and what is our mileage?

Loni Reiger stated they would need to take a look at specific studies. Fires don't jump from battery to battery, they are designed to self-contain. She then explained some of the typical fire emergency responses and some of the chemical compounds in a lithium phosphate battery.

Commissioner Westhoff asked if they have had any experience with any BESS fires?

Loni Reiger mentioned she was involved with a BESS fire. They were older systems with no ventilation. Bringing on experts in the subject matter is crucial. The new systems they are proposing have ventilation, they have newer technology, and they have remote operating systems so that they can be shut off remotely.

Sheriff Dave Martin stated that items have been addressed relatively well. If failure of the system, there would be a unified command with his office, the fire chief, and emergency management, and use the national emergency response guideline to dictate the size of the evacuation area needed.

Attorney Kathryn Sellars noted that there is a proposed condition for a Public Improvement Agreement which is different than a Road Use Agreement. If the Board decides to direct the applicants to improve Co. Rd. R and Co. Rd Q, which is one of the recommendations from HDR, Inc., there will be a Public Improvement Agreement that will be put in place first to make sure that those public improvements are done before anything else is done.

Commissioner Westhoff recommended the Board do the same conditions as the previous BESS project that they heard.

Attorney Kathryn Sellars reiterated those previous conditions for the record as follows: An agreement with the Fire Protection District, the City of Brush, the sheriff's office, and emergency management concerning the provision of emergency and fire services of the BESS. That agreement should address training or any equipment necessary to respond to the incident at the BESS facility. The initial training should be provided to law enforcement, fire, ambulance, and the Morgan County Emergency Management Department prior to commencement of operations of the BESS with ongoing training and is to be reviewed every 3 years with those entities. The second condition delineated that a minor incident which is a failure or fire in one battery container that triggered an immediate shutdown of the affected

battery container, and that a major incident which is a failure or fire in 2 or more battery containers or when a fire expands beyond the defensible space, or an incident at the BESS facility that results in an order of evacuation or shelter in place. That a major incident will cause an immediate shutdown of the entire facility. The incident notification required within 3 days of the incident that would describe the nature, time, and duration of the incident. It must be mailed to all property owners within ½ mile of the facility and to several departments within the County and surrounding areas. Within 30 days, the applicant is required to deliver an after-action report to Planning and Zoning prepared by a qualified independent 3rd party with expertise on the subject matter that identifies any changes necessary to the BESS. After that, the Board would have a noticed public hearing to approve the restarting of the facility based upon the information. There was also a requirement to submit a fire mitigation plan and an emergency response plan and several sub conditions regarding those plans. Both of those plans are to be approved by the Fire Protection District. There is a 200-foot defensible space around the edge of the BESS facility, and the applicant must employ material that is non-flammable and will aid in the prevention of fire and suppression of vegetation and any other flammable items within that space.

Chairman Arndt also mentioned that the mineral rights were protected by the no-build zones for drilling. He asked the applicants what they have come up with in regard to those mineral owners?

Andrew Breyer stated that there are many mineral owners within the project area. Majority of the owners this satisfies their ability to build the project, but they can't get into more detail.

Commissioner Westhoff mentioned the applicants are requesting a 30-foot setback from section lines, and asked if they have approved that for other previous projects?

Director Nicole Hay answered they have waived that for section lines where there is no road that is actually built. In this case, there are no roads out there.

Commissioner Becker said his one concern is, do we have enough water in case of an incident?

Andrew Breyer stated they are proposing a 30,000-gallon tank for safety purposes.

Commissioner Becker asked if the Public Improvement Agreement is easier than a Road Use Agreement? Or are they essentially the same?

Attorney Kathryn Sellars answered that she wouldn't necessarily say it is easier. If the roads are improved, the importance of a Road Use Agreement may diminish.

Commissioner Westhoff moved to approve Fortress Solar I, LLC for a special use permit to construct a 200 MWac solar facility on parts of Sections 5, 6, 7, and 8, Township 3 North, Range 55 West, and a part of Sections 1 and 12, Township 3 North, Range 56 West of the 6th PM, Morgan County, Colorado with the Road Use agreement of option 3 with the improvement of Co. Rd. R and the paving of Co. Rd. Q and with the following conditions as discussed by the Planning Commission and written in the packet including the agreement with mineral holders for extraction and the waivers of the setbacks requested and the renewal requested of 3 years for Phase I.

Commissioner Becker seconded.

Motion carries 3-0.

Commissioner Westhoff moved to approve Fortress Solar II, LLC for a special use permit to construct a 200 MWac solar facility on parts of Sections 3, 4, 5, and 8, Township 3 North, Range 55 West and a part of Section 32, Township 4 North, Range 55 West of the 6th PM, Morgan County, Colorado with the Road Use agreement of option 3 with the improvement of Co. Rd. R and the paving of Co. Rd. Q and with the following conditions as discussed by the Planning Commission and written in the packet including the agreement with mineral holders for extraction and the waivers of the setbacks requested and the renewal requested of 3 years for Phase II.

Commissioner Becker seconded.

Motion carries 3-0.

Commissioner Westhoff moved to approve Fortress Solar III, LLC for a special use permit to construct a 200 MWac solar facility on parts of Sections 3, 9, and 10, Township 3 North, Range 55 West of the 6th

PM, Morgan County, Colorado with the Road Use agreement of option 3 with the improvement of Co. Rd. R and the paving of Co. Rd. Q and with the following conditions as discussed by the Planning Commission and written in the packet including the agreement with mineral holders for extraction and the waivers of the setbacks requested and the renewal requested of 3 years for Phase III.

Commissioner Becker seconded.

Motion carries 3-0.

Commissioner Becker moved to approve Fortress Solar BESS Phase I, legal description as already described and the request as already described with the conditions being the same BESS conditions that were applied to the Taelor Solar project adding in the conditions from the Planning Commission, also allowing for the extension of the 3 renewals and adding in the mineral rights as well.

Commissioner Westhoff seconded.

Motion carries 3-0.

Commissioner Becker moved to approve Fortress Solar BESS Phase II, the applicants being Fortress Solar II and the landowner being Ruth Ann Odle with the legal description as described prior and request as described prior, with all conditions that were applied to Solar BESS Phase I.

Commissioner Westhoff seconded.

Motion carries 3-0.

Commissioner Becker moved to approve Fortress Solar BESS Phase III, the applicants being Fortress Solar III and the landowner being Ruth Ann Odle with the legal description as described prior and request as described prior, with all conditions that were applied to Solar BESS Phase I.

Commissioner Westhoff seconded.

Motion carries 3-0.

Being no further business the meeting was then adjourned at 11:36 a.m.

Respectfully Submitted,
Jenafer Santos
Planning Technician