

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS
Minutes of Meeting
April 2, 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/86881358389> 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 April 1, 2024.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/86881358389> listen via phone, please dial: 1-312-626-6799, Meeting ID: 873 7658 7123

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/86881358389> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 868 8135 8389

The Board of Morgan County Commissioners met Tuesday, April 2, 2024 at 9:00 a.m. Chairman Mark Arndt (remote), Commissioner Jon Becker and Commissioner Gordon Westhoff were in attendance. Chairman Arndt asked Morgan County Chief Deputy County Clerk and Recorder, Randeale 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 Commissioners approval of meeting minutes dated March 19, 2024
2. Ratify the Board of County Commissioners approval of Contract 2022 CNT 107 Change Order Number 3, CML Security, signed March 4, 2024.
3. Ratify the Board of County Commissioners approval of Request for Waiver of Rental Fees for East Morgan County Hospital Foundation, signed March 18, 2024.
4. Ratify the Board of County Commissioners approval of Contract 2024 CNT 014, Regents of the University of Colorado, term of contract April 2, 2024 through April 1, 2027.
5. Ratify the Board of County Commissioners approval of Amendment to Contract 2024 AMD1 CNT 23-077, Intellectual Technology, Inc., term of contract March 5, 2024 until termination.
6. Ratify the Board of County Commissioners approval of Contract 2024 CNT 037, Scott Brindisi dba Duck Down Masonry, term of contract March 6, 2024 through July 1, 2024.
7. Ratify the Board of County Commissioners approval of Contract 2024 CNT 038, Y-Not Construction, LLC, term of Contract March 25, 2024 through June 1, 2024.
8. Ratify the Board of County Commissioners approval on assignment of debt collections to Wakefield and Associates, Client #231492.

At this time, Commissioner Westhoff made a motion to approve items 1-8 as presented; Commissioner Becker seconded the motion. The motion carried 3-0.

UNFINISHED BUSINESS

There was no unfinished business.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Swearing in of Morgan County Sheriff's Commander, Shauna Barbee

Commissioner Becker moved that this item be moved to the April 16th meeting. Commissioner Westhoff seconded the motion. The motion carried 3-0.

Consideration of Approval – PROCLAMATION – April 2024 as Child Abuse Awareness Month

Susanne Brown, from the Department of Human Services, presented the proclamation to the Board and read aloud the proclamation.

Colorado Children – Our Most Precious Resource

WHEREAS, children are key to the state's future success, prosperity, and quality of life; while children are our most precious resource, they are also our most vulnerable;

WHEREAS, children have a right to thrive, learn, and grow to their full potential; and

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WHEREAS, the prevention of child abuse and neglect strengthens Colorado’s families and communities and ensures the opportunity for children to develop in healthy, trusting families, schools, and neighborhoods and where that consequently, builds the foundation of society; and

WHEREAS, Morgan County is currently implementing initiatives for improving the safety and well-being of children and families across Colorado; and

WHEREAS, we must come together as partners to keep children safe, ensure that the voices of our children are heard by all, and extend a helping hand to children; and

WHEREAS, each of us plays a role in the prevention of child abuse and neglect. We encourage anyone concerned about the safety and well-being to report to 1-844-CO-4-KIDS.

WHEREAS, I call upon all community members to provide safe, stable, and nurturing relationships and environments for our children, free of violence, abuse and neglect, we can ensure that Colorado’s children will grow to their full potential as the next generation of leaders, helping to secure the future of this community, state, and nation; and

Therefore, we do hereby proclaim April 2024, CHILD ABUSE PREVENTION MONTH.

**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

At this time, Commissioner Westhoff made a motion to adopt the proclamation declaring April 2024 as Child Abuse Awareness Month in Morgan County, as presented with Commissioner Becker seconding the motion. The motion carried 3-0.

Chairman Arndt thanked the Department of Human Services for their important work.

Consideration of Approval – 2024 BCC 11 A Resolution Approving a Special Use Permit to Fortress Solar I, LLC for a Solar Collector Facility.

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

**RESOLUTION
2024 BCC 11**

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR I, LLC FOR A SOLAR COLLECTOR FACILITY LOCATED IN A PART OF SECTIONS 5 THROUGH 8, TOWNSHIP 3 NORTH, RANGE 55 WEST AND IN A PART OF SECTIONS 1 AND 12, TOWNSHIP 3 NORTH, RANGE 56 WEST OF THE 6TH P.M., MORGAN COUNTY, COLORADO AND GRANTING WAIVERS FROM SETBACKS FOR CERTAIN SECTION AND PROPERTY LINES

WHEREAS, Ruth Ann Odle and Shari A. Benotti (the “Owners”) own property located in Sections 5 through 8, Township 3 North, Range 55 West and part of Section 12, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Tri-State owns property located in part of Section 6, Township 3 North, Range 55 West and part of Section 1, Township 3 North, Range 56 West of the 6th P.M., Morgan County (“Tri-State Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar I, LLC (the “Applicant”), on behalf of and with authorization of the Owners, has applied for a special use permit for a solar collector facility to be located on the Property and a Gen-Tie transmission line across Tri-State’s Property (the “Application”);

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WHEREAS, by separate request, the Applicant requested waivers from the setback requirements from section lines and from setback requirements from property lines within the project boundary;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant, and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this "Resolution" or the "Permit").

2. FINDING OF FACT.

Subject to the Applicant, as the Operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will 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 life of the project.
 - ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.
- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.
- c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
- d. The off-site impacts during construction and the life of the property will need to be addressed by the Applicant. The execution of a road use agreement, as required by the Morgan County Zoning Regulations, is a condition for approval. To address the condition of the access routes, County Roads R and Q, the Applicant will complete the improvements in the condition and execute a public improvement agreement to ensure that the appropriate improvements are made to the designated County roads. Satisfaction of those conditions will mitigate the off-site impacts during construction. 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 is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
- f. This special use poses only the minimum amount of risk to public health, safety, and welfare and it will not increase risk to public health, safety or welfare.

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- g. The special use will not be located on a nonconforming parcel of land.
- h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of the project 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. 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 Applicant. The Applicant will be required pursuant to the criteria above in the Morgan County Zoning Regulations to obtain an appropriate supply of water prior to construction.
- j. The project's maximum power output is 200 MWac and will occupy a maximum project area of 1,305 acres as shown on the map attached to this Resolution as Exhibit A.
- k. The Applicant is the designated owner and operator of the solar collector facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar I, LLC shall demonstrate ownership or possession of the properties on which the solar collector facility and Gen-Tie transmission line will be located 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 properties.
- 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, public improvement 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. The Applicant and/or Owners 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 and/or Owners commences decommissioning.
- e. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be void panels, inverters, or other associated appurtenances.
- f. Photovoltaic (PV) panels and inverters shall only be located within the footprint as shown on the civil plans submitted by the Applicant. The gen-tie line shall be located in Section 1, Township 3 North, Range 56 West, and Section 6, Township 3 North, Range 55 West, all in the 6th P.M.
- g. Any building greater than 120 sq. ft. will require a building permit.
- h. 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 the Applicant that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from the Applicant. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- i. 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.

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- j. Prior to the commencement of construction, to the extent deemed necessary by the County after the completed improvements to County Roads R and Q, the Applicant 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 the Applicant are not in default of any provision of the road use agreement. The County shall inspect the restored roads and the Applicant 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. The Applicant 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 the Applicant's guarantee that the restoration remains free of defect during a two-year warranty period. The Applicant 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.
- h. County Road R.6 may not be used as a haul or access route to any phase of the overall project or during its operation. Only County Roads R and Q may be used during the construction and life of the project as designated in the Application.
- i. The Applicant shall make all necessary improvements to the access roads (County Roads R and Q) prior to commencement of construction. Specifically, the Applicant shall improve County Road R to a gravel surfaced road and County Road Q to a pavement surface. The Applicant 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, the Applicant 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. The public improvement agreement may be combined with the required road use agreement. In addition, the requirement to improve the County Roads is a condition of the approval of the special use permits issued to Fortress Solar II, LLC and Fortress Solar III, LLC for solar collector facilities and the three applicants may enter into a joint public improvement agreement with the County to satisfy this requirement.
- j. Prior to the commencement of construction, the Applicant 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. The Applicant 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

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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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- p. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and payment will be due by the Applicant within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- q. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- r. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- s. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

4. SETBACK WAIVER

- a. Setback requirements established in the Morgan County Zoning Regulations for the following section lines are waived, subject to the reserved rights of Morgan County:
 - i. Section line between Section 12, Township 3 North, Range 56 West and Section 7, Township 3 North, Range 55 West.
 - ii. Section line between Sections 7 and 8, Township 3 North, Range 55 West.
 - iii. Section line between Sections 6 and 7, Township 3 North, Range 55 West.
 - iv. Section line between the S½S½ of section 6 and the S½S½ of Section 5, Township 3 North, Range 55 West located within the project boundary.
 - v. The western portion of section line between Sections 5 and 8, Township 3 North, Range 55 West that is located internally within Fortress I Solar Collector Facility.
- b. Setback requirements established in the Morgan County Zoning Regulations for the following property lines are waived:
 - i. Property lines located within the E½ of Section 12, Township 3 North, Range 56 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary.
 - ii. Property lines located within Section 7, Township 3 North, Range 55 West, by excluding the property lines which are also section lines or constitute the project boundary.

5. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.
- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.

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- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

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

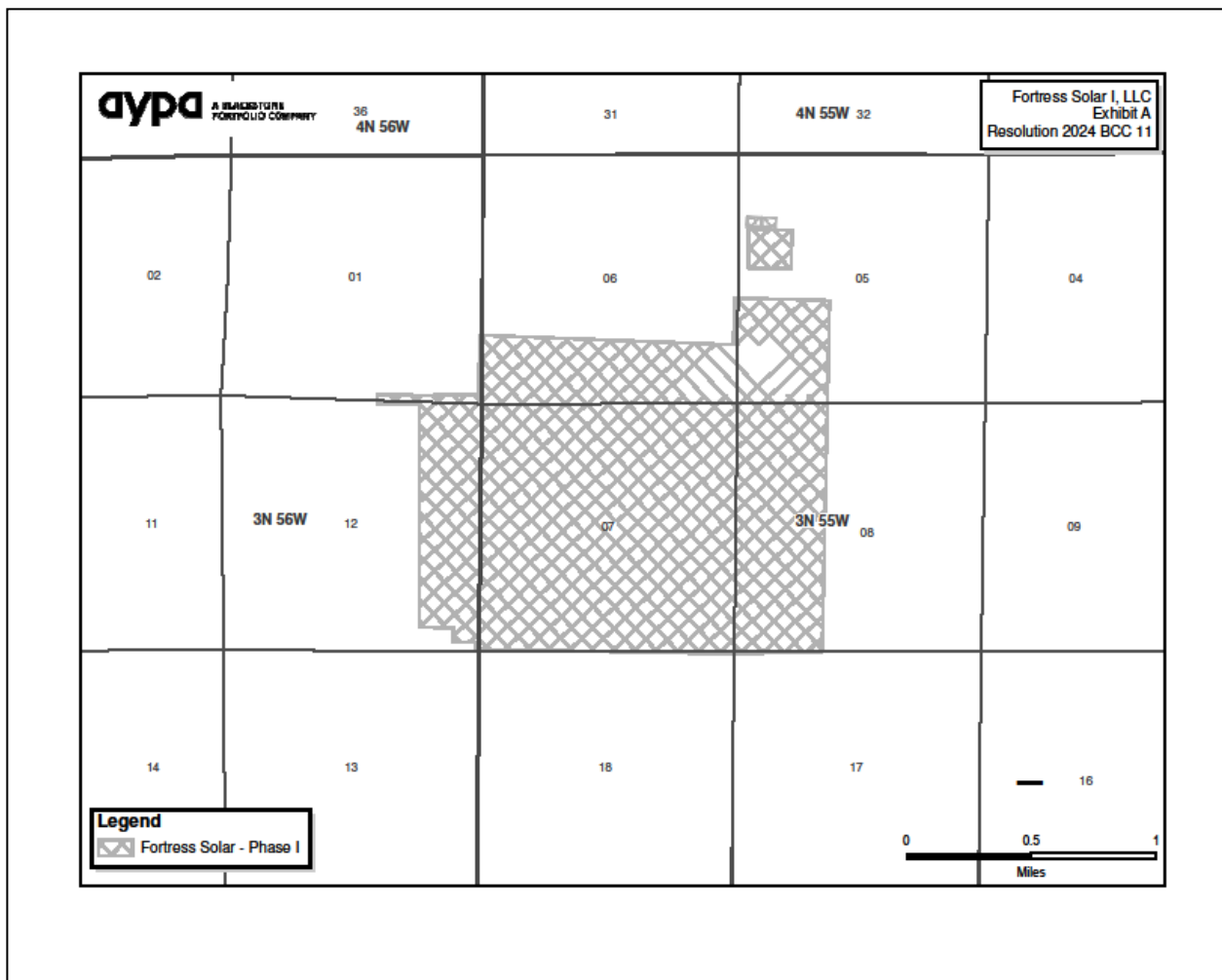
s/ Jon J. Becker
Jon J. Becker, Commissioner

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

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch



Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 11 A Resolution Approving a Special Use Permit to Fortress Solar I, LLC for a Solar Collector Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar I, LLC for a special use permit to allow an up to 200 MWac solar collector facility within a 1,305 acre project area. This facility is Phase 1 of a 3 phase project and would be located in a part of Sections 5 through 8, Township 3 North, Range 55 West, and in a part of Sections 1 and 12, Township 3 North, Range 56 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 11 reflects the outcome of that hearing and the

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approval of waivers from setbacks for certain section and property lines and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Becker made a motion to approve Resolution 2024 BCC 11 a Resolution Approving a Special Use Permit to Fortress Solar I, LLC for a Solar Collector Facility, as presented by Nicole Hay, Morgan County Planning and Zoning Administrator. Commissioner Westhoff seconded the motion and motion carried 3-0.

Consideration of Approval – 2024 BCC 12 A Resolution Approving a Special Use Permit to Fortress Solar I, LLC for a Battery Energy Storage Facility.

MORGAN COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS

RESOLUTION 2024 BCC 12

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR I, LLC FOR A BATTERY ENERGY STORAGE SYSTEM FACILITY LOCATED IN SECTION 5, TOWNSHIP 3 NORTH, RANGE 55 WEST OF THE 6th P.M., MORGAN COUNTY, COLORADO

WHEREAS, Ruth Ann Odle (the “Owner”) owns property located in Section 5, Township 3 North, Range 55 West of the 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar I, LLC (the “Applicant”), on behalf of and with authorization of the Owner has applied for a special use permit for a battery energy storage system facility (the “Application”) to be located on the Property;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDING OF FACT.

Subject to the Applicant, as the operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will 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 life of the project.
 - ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan, by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.

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- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.
- c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
- d. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures. During construction, any off-site mitigation for roads will be addressed through a road use agreement associated with Fortress Solar I Solar Collector facility construction. Best management practices (BMP) will be implemented to protect newly established vegetation for Storm Water Management and Erosion Control.
- e. The special use is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
- f. This special use poses only the minimum amount of risk to public health, safety, and welfare.
- g. The special use will not be located on a nonconforming parcel of land.
- h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of this project and the solar facility 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. Water is only needed during construction and will be supplied by trucks and sourced from an off-site location.
- j. The project's maximum has a capacity of up to 800 MWhrs (a maximum power output of 200 MWac) located within 7 acre project area as shown on the map attached to this Resolution as Exhibit A.
- k. The Applicant is the designated owner and operator of the BESS facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar I, LLC shall 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, and stormwater permits.
- 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.
- d. The Applicant and Owners 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 facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access to the facility at all times. The BESS facility shall be constructed and

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installed in the location which substantially conforms with the Civil Plan, dated October 24, 2023, as updated as required herein.

- g. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be any portion of the BESS facility.
- h. Prior to the commencement of construction, the Applicant 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. The County may require that the road use agreement for the related solar collector facility govern any road impacts related to the construction of the BESS facility or require a separate road use 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. The Applicant 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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable laws and regulations related to safety and emergency management during construction and on-going operations.
- n. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and the Applicant shall submit payment within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- o. Prior to commencement of construction, the Applicant shall supply evidence of, at a minimum, an agreement between the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant concerning the provision of emergency and fire services to the BESS. As part of the agreement, the Applicant shall provide training and equipment necessary to respond to any incident or failure of the BESS facility, or any portion of the facility. The initial training must be provided to law enforcement, fire, ambulance, and the Morgan County Emergency Management Department prior to the commencement of operations at the BESS facility. The agreement shall require ongoing training on a schedule determined by the parties to the agreement. The ongoing training shall be made available to all agencies for which the initial training is required in this condition. Every three years after the commencement of operations, the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant shall review the agreement to ensure adequate response training and equipment.
- p. A minor incident, defined as failure of or fire in one battery container, shall trigger an immediate shutdown of the effected battery container by the Applicant. A major incident is defined as occurrence of one or more of the following: 1) a failure of or fire in two or more battery containers, 2) when a fire expands beyond the defensible space required in condition (s), or 3) an incident at the BESS facility results in an order of evacuation or shelter in place to residents in the vicinity of the facility. A major incident shall trigger an immediate shutdown of the entire BESS facility by the Applicant. Upon the occurrence of either type of incident, the Applicant shall issue an incident notification within three (3) days of the incident. The incident notification will describe the time, duration or nature of incident and must be mailed to all property owners within a half mile of the BESS facility at the addresses of record through the Morgan County Assessor's Office; the County Planning and Zoning Department; the City of Brush; Brush Rural Fire

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Protection District; Morgan County Sheriff's Office; Morgan County Ambulance Services and Morgan County Emergency Management Department. Within thirty (30) days of the incident, the Applicant shall deliver to the County Planning and Zoning Department an after-action report prepared by a qualified independent third-party with expertise in subject matter and shall identify any changes to the operations of the BESS facility necessary to maintain life and safety within the BESS facility and the neighboring residential properties. No operations may occur in the battery container or at BESS facility, as applicable based upon the type of incident, until the after-action report has been considered by the Board of County Commissioners at a noticed public hearing and the Board of County Commissioners approves restarting operations at the BESS facility, or within the battery container. Such a decision shall be made based upon the impact of the failure on neighboring residential properties, the threat and continuing threat to public safety, the response to the incident, cause of the failure and whether the Applicant has implemented or is in the process of implementing changes to the operations of the BESS facility, or battery container, necessary to maintain life and safety within the BESS facility and the neighboring residential properties. Notice of the hearing shall be provided in the same manner as public notice for a permit for a use by special review as provided in the Morgan County Zoning Regulations, as amended. If the Board of County Commissioners decides that the BESS facility or the battery container, as applicable, may not be returned to operation, the Board of County Commissioners may direct the Applicant to take any necessary steps to protect the public safety and welfare or alternative, schedule a hearing to revoke this Permit.

- q. Prior to construction, the Applicant will submit a fire mitigation plan and emergency operations plan. These plans may be submitted as one plan at the Applicant's discretion; however, the plans or plan must address the following:
 - i. The fire mitigation plan shall include a site plan which includes strategic information for first responders including access points and road, gates and fence access restrictions, lock box locations, fire command center or response location(s), water supply location water source and control critical fire protection system information, site hazards, and high-level emergency response plan notes.
 - ii. The emergency response plan shall provide operational steps by site personnel and first responders if an incident or failure occurs. The plan should include equipment description and overview, emergency access, a site map, access points, staging areas, hazard evaluations, signage, and safety protocols.
- r. The Applicant must obtain the approval from the Brush Rural Fire Protection District for the plans required in condition (q) above. That approval must be obtained prior to the plans being submitted to the County.
- s. Due the high probability of wildland and grassland fires in Morgan County as established through the Morgan County Plan Element to the 2021 Northeast Colorado Regional Hazard Mitigation Plan, the BESS facility must be surrounded by a defensible space of at least 200 feet in width from the edge of the BESS facility. Within this defensible space, the Applicant must employ material which is nonflammable and will aid in the prevention of fire and suppress any vegetation or other flammable items. Conditions or materials which will create dust, such as the employment of dirt only in the defensible space, are also not permitted.
- t. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- u. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- v. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

4. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.
- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.
- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

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DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

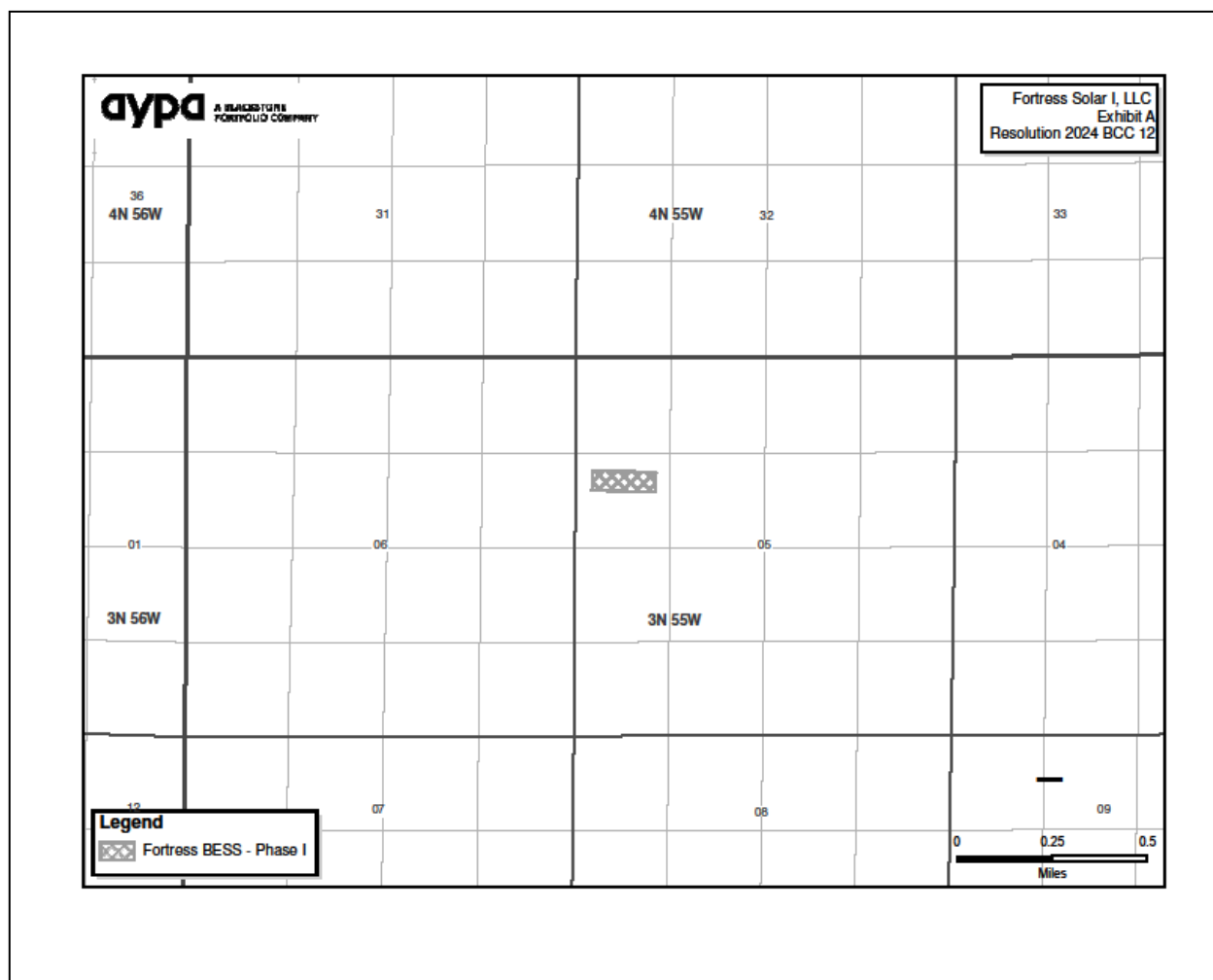
s/ Mark A. Arndt
Mark A. Arndt, Chairman

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

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

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch



Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 12 A Resolution Approving a Special Use Pert to Fortress Solar I, LLC for a Battery Energy Storage Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar I, LLC for a special use permit to allow an up to 800 MWhr battery energy storage system within a 7 acre project area. This facility is Phase 1 of a 3 phase project and would be located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 12 reflects the outcome of that hearing and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Westhoff noted that instead of “Battery Energy Storage Facility” it should be “Battery Energy Storage System Facility” throughout the resolution. Director Hay, noted that he was correct. County Attorney Kathryn Sellars noted that this could be corrected on the Resolution with an amendment. She also noted a typo that needed corrected in Condition P. It refers to Condition R when it should be referring to Condition S.

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Commissioner Westhoff made a motion to approve Resolution 2024 BCC 12 A Resolution Approving a Special Use Permit to Fortress Solar I, LLC for a Battery Energy Storage Facility, as presented by Nicole Hay, Morgan County Planning and Zoning Administrator with the corrections amended. Commissioner Becker seconded the motion and motion carried 3-0.

Consideration of Approval – 2024 BCC 13 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Solar Collector Facility.

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

**RESOLUTION
2024 BCC 13**

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR II, LLC FOR A SOLAR COLLECTOR FACILITY LOCATED IN A PART OF SECTIONS 3, 4, 5, 6, 8, 9, AND 10, TOWNSHIP 3 NORTH, RANGE 55 WEST, IN A PART OF SECTION 32, TOWNSHIP 4 NORTH, RANGE 55 WEST, AND PART OF SECTION 1, TOWNSHIP 3 NORTH, RANGE 56 WEST OF THE 6TH P.M., MORGAN COUNTY, COLORADO AND GRANTING WAIVERS FROM SETBACKS FOR CERTAIN SECTION AND PROPERTY LINES

WHEREAS, Ruth Ann Odle (the “Owner”) owns property located in Sections 3, 4, 5, 8, 9, and 10, Township 3 North, Range 55 West and in Section 32, Township 4 North, Range 55 West of the 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Tri-State owns property located in part of Section 6, Township 3 North, Range 55 West and part of Section 1, Township 3 North, Range 56 West of the 6th P.M., Morgan County (“Tri-State Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar II, LLC (the “Applicant”), on behalf of and with authorization of the Owners, has applied for a special use permit for a solar collector facility to be located on the Property and a Gen-Tie transmission line across Tri-State’s Property (the “Application”);

WHEREAS, by separate request, the Applicant requested waivers from the setback requirements from section lines and from setback requirements from property lines within the project boundary;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant, and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

- a. The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDING OF FACT.

Subject to the Applicant, as the Operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will 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 life of the project.

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- ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.
 - iv.
- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.
- c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
- d. The off-site impacts during construction and the life of the property will need to be addressed by the Applicant. The execution of a road use agreement, as required by the Morgan County Zoning Regulations, is a condition for approval. To address the condition of the access routes, County Roads R and Q, the Applicant will complete the improvements in the condition and execute a public improvement agreement to ensure that the appropriate improvements are made to the designated County roads. Satisfaction of those conditions will mitigate the off-site impacts during construction. 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 is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
- f. This special use poses only the minimum amount of risk to public health, safety, and welfare and it will not increase risk to public health, safety or welfare.
- g. The special use will not be located on a nonconforming parcel of land.
- h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of the project 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. 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 Applicant. The Applicant will be required pursuant to the criteria above in the Morgan County Zoning Regulations to obtain an appropriate supply of water prior to construction.
- j. The project's maximum power output is 200 MWac and will occupy a maximum project area of 1,439 acres as shown on the map attached to this Resolution as Exhibit A.
- k. The Applicant is the designated owner and operator of the solar collector facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar II, LLC shall demonstrate ownership or possession of the properties on which the solar collector facility and Gen-Tie transmission line will be located prior to commencement of construction. Fortress Solar II, LLC can demonstrate satisfaction with this condition through vested title in its name, or a

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lease or other agreement directly with the property owner allowing the permitted use to be conducted on the properties.

- 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, public improvement 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. The Applicant and/or Owner 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 and/or Owner commences decommissioning.
- e. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be void panels, inverters or other associated appurtenances.
- f. Photovoltaic (PV) panels and inverters shall only be located within the footprint as shown on the civil plans submitted by the Applicant. The gen-tie line shall be located in Section 1, Township 3 North, Range 56 West, and Section 6, Township 3 North, Range 55 West, all in the 6th P.M.
- g. Any building greater than 120 sq. ft. will require a building permit.
- h. 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 the Applicant that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from the Applicant. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- i. 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.
- j. Prior to the commencement of construction, to the extent deemed necessary by the County after the completed improvements to County Roads R and Q, the Applicant 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 the Applicant are not in default of any provision of the road use agreement. The County shall inspect the restored roads and the Applicant 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. The Applicant 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 the Applicant's guarantee that the restoration remains free of defect during a two-year warranty period. The Applicant may at any time during the preliminary acceptance or

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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.

- h. County Road R.6 may not be used as a haul or access route to any phase of the overall project or during its operation. Only County Roads R and Q may be used during the construction and life of the project as designated in the Application.
- i. The Applicant shall make all necessary improvements to the access roads (County Roads R and Q) prior to commencement of construction. Specifically, the Applicant shall improve County Road R to a gravel surfaced road and County Road Q to a pavement surface. The Applicant 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, the Applicant 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. The public improvement agreement may be combined with the required road use agreement. In addition, the requirement to improve the County Roads is a condition of the approval of the special use permits issued to Fortress Solar I, LLC and Fortress Solar III, LLC for solar collector facilities and the three applicants may enter into a joint public improvement agreement with the County to satisfy this requirement.
- j. Prior to the commencement of construction, the Applicant 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. The Applicant 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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- p. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and payment will be due by the Applicant within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- q. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- r. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- s. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

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4. SETBACK WAIVER

- a. Setback requirements established in the Morgan County Zoning Regulations for the following section lines are waived, subject to the reserved rights of Morgan County:
 - i. Section line between Section 32, Township 4 North, Range 55 West and Section 5, Township 3 North, Range 55 West.
 - ii. Section line between Sections 5 and 8, Township 3 North, Range 55 West that is located internally within Fortress Solar II Collector Facility
 - iii. Section line between Sections 4 and 9, Township 3 North, Range 55 West
 - iv. Section line between the W $\frac{1}{2}$ of section 3 and the W $\frac{1}{2}$ of Section 10, Township 3 North, Range 55 West that is located internally within Fortress Solar II Collector Facility.
 - v. Section line between Sections 3 and 4, Township 3 North, Range 55 West.
 - vi. Section line between Sections 8 and 9, Township 3 North, Range 55 West. This waiver is only valid if Fortress Solar III Collector Facility, approved in Resolution 2024 BCC 15 is constructed. If Fortress Solar III Collector Facility is not constructed, this waiver is void.
 - vii. The northern portion of section line between Sections 8 and 9, Township 3 North, Range 55 West that is located internally within Fortress Solar II Collector Facility
 - viii. The northern portion of section line between Sections 9 and 10, Township 3 North, Range 55 West that is located internally within Fortress Solar II Collector Facility
- b. Setback requirements established in the Morgan County Zoning Regulations for the following property lines are waived:
 - i. Property lines located within Section 5, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary.
 - ii. Property lines located within Section 8, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary.
 - iii. Property lines located within Section 4, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary.
 - iv. Property lines located within the W $\frac{1}{2}$ of Section 3, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary. This waiver is only valid if Fortress Solar III Collector Facility, approved in Resolution 2024 BCC 15 is constructed. This waiver as it relates to the property line between SE $\frac{1}{4}$ of said Section 3 and the SW $\frac{1}{4}$ of said Section 3 is void if the Fortress Solar III Collector Facility is not constructed.
 - v. Property lines located within Section 10, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary. This waiver is only valid if Fortress Solar III Collector Facility, approved in Resolution 2024 BCC 15 is constructed. This waiver as it relates to the property line between NE $\frac{1}{4}$ of said Section 10 and the NW $\frac{1}{4}$ of said Section 10 is void if Fortress Solar III Collector Facility is not constructed.

5. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.

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- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.
- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

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DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

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

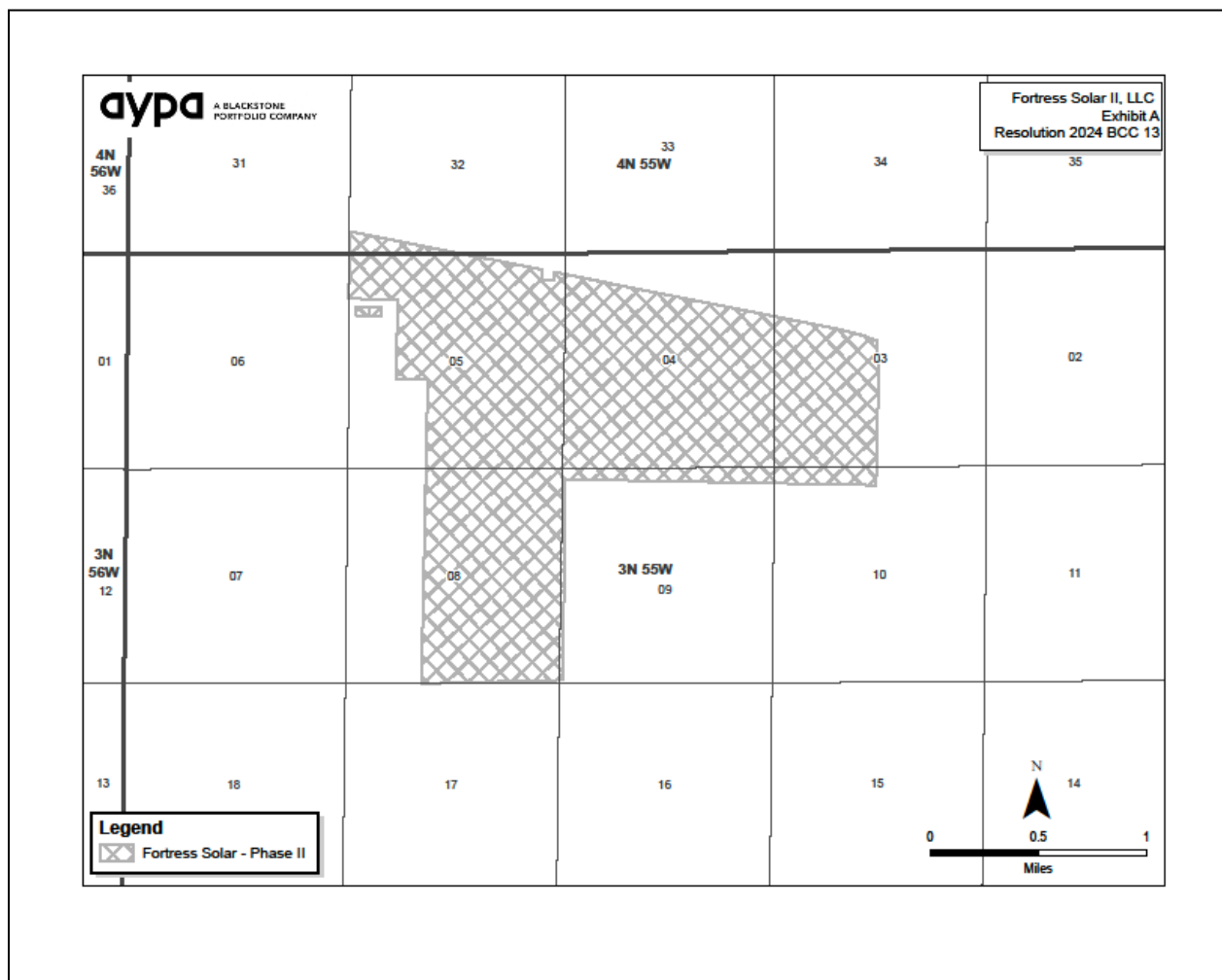
s/ Jon J. Becker
Jon J. Becker, Commissioner

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

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch



Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 13 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Solar Collector Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar II, LLC for a special use permit to allow an up to 200 MWac solar collector facility within a 1,439 acre project area. This facility is Phase 2 of a 3 phase project and would be located in a part of Sections 3, 4, 5, 6, 8, 9, and 10, Township 3 North, Range 55 West, in a part of section 32, Township 4 North, Range 55 West, and in a part of Section 1, Township 3 North, Range 56 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 13 reflects the outcome of that hearing and the approval of waivers from setbacks for certain section and property lines and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Becker made a to motion approve Resolution 2024 BCC 13 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Solar Collector Facility. as presented by Nicole Hay, Morgan County Planning and Zoning Administrator. Commissioner Westhoff seconded the motion and motion carried 3-0.

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Consideration of Approval – 2024 BCC 14 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Battery Energy Storage System Facility.

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

**RESOLUTION
2024 BCC 14**

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR II, LLC FOR A BATTERY ENERGY STORAGE SYSTEM FACILITY LOCATED IN SECTION 5, TOWNSHIP 3 NORTH, RANGE 55 WEST OF THE 6th P.M., MORGAN COUNTY, COLORADO

WHEREAS, Ruth Ann Odle (the “Owner”) owns property located in Section 5, Township 3 North, Range 55 West of the 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar II, LLC (the “Applicant”), on behalf of and with authorization of the Owner has applied for a special use permit for a battery energy storage system facility (the “Application”) to be located on the Property;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant, and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDING OF FACT.

Subject to the Applicant, as the operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will 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 life of the project.
 - ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan, by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.
 - iv.
- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.

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- c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
- d. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures. During construction, any off-site mitigation for roads will be addressed through a road use agreement associated with Fortress Solar II Solar Collector facility construction. Best management practices (BMP) will be implemented to protect newly established vegetation for Storm Water Management and Erosion Control.
- e. The special use is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
- f. This special use poses only the minimum amount of risk to public health, safety, and welfare.
- g. The special use will not be located on a nonconforming parcel of land.
- h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of this project and the solar facility 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. Water is only needed during construction and will be supplied by trucks and sourced from an off-site location.
- j. The project's maximum has a capacity of up to 800 MWhrs (a maximum power output of 200 MWac) located within 7 acre project area as shown on the map attached to this Resolution as Exhibit A.
- k. The Applicant is the designated owner and operator of the BESS facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar II, LLC shall 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, and stormwater permits.
- 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.
- d. The Applicant and Owners 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 facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access to the facility at all times. The BESS facility shall be constructed and installed in the location which substantially conforms with the Civil Plan, dated October 24, 2023, as updated as required herein.

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- g. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be any portion of the BESS facility.
- h. Prior to the commencement of construction, the Applicant 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. The County may require that the road use agreement for the related solar collector facility govern any road impacts related to the construction of the BESS facility or require a separate road use 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. The Applicant 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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable laws and regulations related to safety and emergency management during construction and on-going operations.
- n. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and the Applicant shall submit payment within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- o. Prior to commencement of construction, the Applicant shall supply evidence of, at a minimum, an agreement between the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant concerning the provision of emergency and fire services to the BESS. As part of the agreement, the Applicant shall provide training and equipment necessary to respond to any incident or failure of the BESS facility, or any portion of the facility. The initial training must be provided to law enforcement, fire, ambulance, and the Morgan County Emergency Management Department prior to the commencement of operations at the BESS facility. The agreement shall require ongoing training on a schedule determined by the parties to the agreement. The ongoing training shall be made available to all agencies for which the initial training is required in this condition. Every three years after the commencement of operations, the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant shall review the agreement to ensure adequate response training and equipment.
- p. A minor incident, defined as failure of or fire in one battery container, shall trigger an immediate shutdown of the effected battery container by the Applicant. A major incident is defined as occurrence of one or more of the following: 1) a failure of or fire in two or more battery containers, 2) when a fire expands beyond the defensible space required in condition (s), or 3) an incident at the BESS facility results in an order of evacuation or shelter in place to residents in the vicinity of the facility. A major incident shall trigger an immediate shutdown of the entire BESS facility by the Applicant. Upon the occurrence of either type of incident, the Applicant shall issue an incident notification within three (3) days of the incident. The incident notification will describe the time, duration or nature of incident and must be mailed to all property owners within a half mile of the BESS facility at the addresses of record through the Morgan County Assessor's Office; the County Planning and Zoning Department; the City of Brush; Brush Rural Fire Protection District; Morgan County Sheriff's Office; Morgan County Ambulance Services and Morgan County Emergency Management Department. Within thirty (30) days of the incident, the Applicant shall deliver to the County Planning and Zoning Department an after-action report

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prepared by a qualified independent third-party with expertise in subject matter and shall identify any changes to the operations of the BESS facility necessary to maintain life and safety within the BESS facility and the neighboring residential properties. No operations may occur in the battery container or at BESS facility, as applicable based upon the type of incident, until the after-action report has been considered by the Board of County Commissioners at a noticed public hearing and the Board of County Commissioners approves restarting operations at the BESS facility, or within the battery container. Such a decision shall be made based upon the impact of the failure on neighboring residential properties, the threat and continuing threat to public safety, the response to the incident, cause of the failure and whether the Applicant has implemented or is in the process of implementing changes to the operations of the BESS facility, or battery container, necessary to maintain life and safety within the BESS facility and the neighboring residential properties. Notice of the hearing shall be provided in the same manner as public notice for a permit for a use by special review as provided in the Morgan County Zoning Regulations, as amended. If the Board of County Commissioners decides that the BESS facility or the battery container, as applicable, may not be returned to operation, the Board of County Commissioners may direct the Applicant to take any necessary steps to protect the public safety and welfare or alternative, schedule a hearing to revoke this Permit.

- q. Prior to construction, the Applicant will submit a fire mitigation plan and emergency operations plan. These plans may be submitted as one plan at the Applicant's discretion; however, the plans or plan must address the following:
 - i. The fire mitigation plan shall include a site plan which includes strategic information for first responders including access points and road, gates and fence access restrictions, lock box locations, fire command center or response location(s), water supply location water source and control critical fire protection system information, site hazards, and high-level emergency response plan notes.
 - ii. The emergency response plan shall provide operational steps by site personnel and first responders if an incident or failure occurs. The plan should include equipment description and overview, emergency access, a site map, access points, staging areas, hazard evaluations, signage, and safety protocols.
- r. The Applicant must obtain the approval from the Brush Rural Fire Protection District for the plans required in condition (q) above. That approval must be obtained prior to the plans being submitted to the County.
- s. Due the high probability of wildland and grassland fires in Morgan County as established through the Morgan County Plan Element to the 2021 Northeast Colorado Regional Hazard Mitigation Plan, the BESS facility must be surrounded by a defensible space of at least 200 feet in width from the edge of the BESS facility. Within this defensible space, the Applicant must employ material which is nonflammable and will aid in the prevention of fire and suppress any vegetation or other flammable items. Conditions or materials which will create dust, such as the employment of dirt only in the defensible space, are also not permitted.
- t. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- u. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- v. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

4. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.
- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.
- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

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

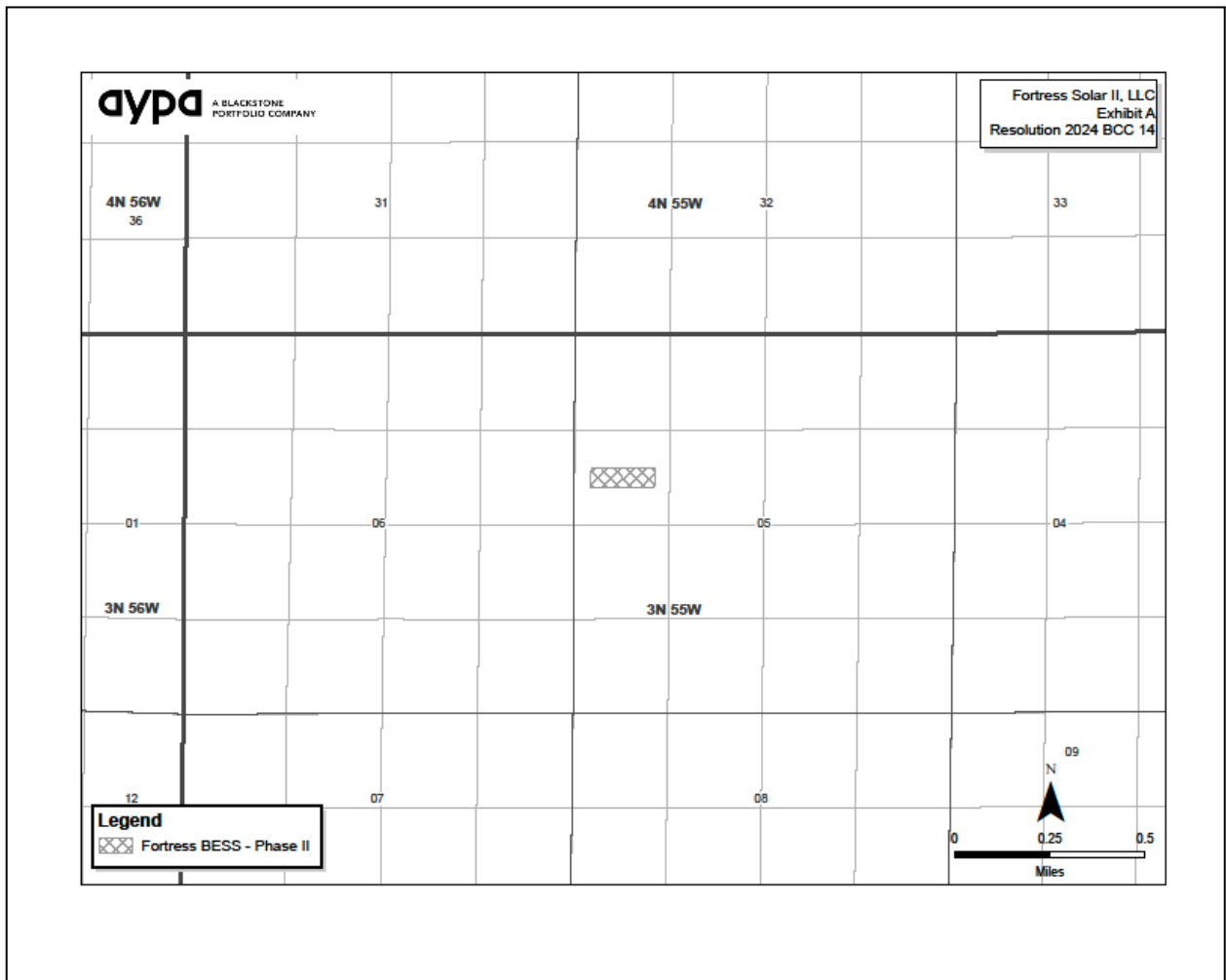
s/ Jon J. Becker
Jon J. Becker, Commissioner

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

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch



Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 14 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Battery Energy Storage System Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar II, LLC for a special use permit to allow an up to 800 MWhr battery energy storage system within a 7 acre project area. This facility is Phase 2 of a 3 phase project and would be located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 14 reflects the outcome of that hearing and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Westhoff made a motion approve Resolution Consideration of Approval – 2024 BCC 14 A Resolution Approving a Special Use Permit to Fortress Solar II, LLC for a Battery Energy Storage System Facility as presented by Nicole Hay, Morgan County Planning and Zoning Administrator as amended in 2024 BCC 12. Commissioner Becker seconded the motion and motion carried 3-0.

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Consideration of Approval – 2024 BCC 15 A Resolution Approving a Special Use Permit to Fortress Solar III, LLC for a Solar Collector Facility.

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

**RESOLUTION
2024 BCC 15**

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR III, LLC FOR A SOLAR COLLECTOR FACILITY LOCATED IN A PART OF SECTIONS 3, 6, 9 AND 10, TOWNSHIP 3 NORTH, RANGE 55 WEST AND PART OF SECTION 1, TOWNSHIP 3 NORTH, RANGE 56 WEST, OF THE 6TH P.M., MORGAN COUNTY, COLORADO AND GRANTING WAIVERS FROM SETBACKS FOR CERTAIN SECTION AND PROPERTY LINES

WHEREAS, Ruth Ann Odle (the “Owner”) owns property located in Sections 3, 9 and 10, Township 3 North, Range 55 West, 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Tri-State owns property located in part of Section 6, Township 3 North, Range 55 West and part of Section 1, Township 3 North, Range 56 West of the 6th P.M., Morgan County (“Tri-State Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar III, LLC (the “Applicant”), on behalf of and with authorization of the Owner, has applied for a special use permit for a solar collector facility to be located on the Property and a Gen-Tie transmission line across Tri-State’s Property (the “Application”);

WHEREAS, by separate request, the Applicant requested waivers from the setback requirements from section lines and from setback requirements from property lines within the project boundary;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant, and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

- 1. APPROVAL.**
The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).
- 2. FINDING OF FACT.**

Subject to the Applicant, as the Operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - i. The project will 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 life of the project.
 - ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.

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- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.
- c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
- d. The off-site impacts during construction and the life of the property will need to be addressed by the Applicant. The execution of a road use agreement, as required by the Morgan County Zoning Regulations, is a condition for approval. To address the condition of the access routes, County Roads R and Q, the Applicant will complete the improvements in the condition and execute a public improvement agreement to ensure that the appropriate improvements are made to the designated County roads. Satisfaction of those conditions will mitigate the off-site impacts during construction. 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 is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
- f. This special use poses only the minimum amount of risk to public health, safety, and welfare and it will not increase risk to public health, safety or welfare.
- g. The special use will not be located on a nonconforming parcel of land.
- h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of the project 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. 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 Applicant. The Applicant will be required pursuant to the criteria above in the Morgan County Zoning Regulations to obtain an appropriate supply of water prior to construction.
- j. The project's maximum power output is 200 MWac and will occupy a maximum project area of 1,325 acres as shown on the map attached to this Resolution as Exhibit A.
- k. The Applicant is the designated owner and operator of the solar collector facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar III, LLC shall demonstrate ownership or possession of the properties on which the solar collector facility and Gen-Tie transmission line will be located 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 properties.
- 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, public improvement 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. The Applicant and/or Owner 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 and/or Owner commences decommissioning.
- e. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be void panels, inverters or other associated appurtenances.

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- f. Photovoltaic (PV) panels and inverters shall only be located within the footprint as shown on the civil plans submitted by the Applicant. The gen-tie line shall be located in Section 1, Township 3 North, Range 56 West, and Section 6, Township 3 North, Range 55 West, all in the 6th P.M.
- g. Any building greater than 120 sq. ft. will require a building permit.
- h. 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 the Applicant that such height is necessary. Such additional height may be approved by the County Planning Administrator upon application and request from the Applicant. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
- i. 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.
- j. Prior to the commencement of construction, to the extent deemed necessary by the County after the completed improvements to County Roads R and Q, the Applicant 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 the Applicant are not in default of any provision of the road use agreement. The County shall inspect the restored roads and the Applicant 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. The Applicant 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 the Applicant's guarantee that the restoration remains free of defect during a two-year warranty period. The Applicant 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.
- h. County Road R.6 may not be used as a haul or access route to any phase of the overall project or during its operation. Only County Roads R and Q may be used during the construction and life of the project as designated in the Application.
- i. The Applicant shall make all necessary improvements to the access roads (County Roads R and Q) prior to commencement of construction. Specifically, the Applicant shall improve County Road R to a gravel surfaced road and County Road Q to a pavement surface. The Applicant 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, the Applicant 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. The public improvement agreement may be combined with the required road use agreement. In addition, the requirement to improve the County Roads is a condition of the approval of the special use permits issued to Fortress Solar I, LLC and Fortress Solar II, LLC for solar collector facilities and the three applicants may enter into a joint public improvement agreement with the County to satisfy this requirement.
- j. Prior to the commencement of construction, the Applicant 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.

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- 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. The Applicant 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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- p. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and payment will be due by the Applicant within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- q. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- r. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- s. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

4. SETBACK WAIVER

- a. Setback requirements established in the Morgan County Zoning Regulations for the following section lines are waived, subject to the reserved rights of Morgan County:
 - i. Section line between Sections 8 and 9, Township 3 North, Range 55 West. This waiver is only valid if Fortress Solar II Collector Facility, approved in Resolution 2024 BCC 13 is constructed. If Fortress Solar II Collector Facility is not constructed, this waiver is void.
 - ii. The portion of section line between Sections 9 and 10, Township 3 North, Range 55 West that is located internally within Fortress Solar III Collector Facility.
 - iii. Section line between the E½ of section 3 and the E½ of Section 10, Township 3 North, Range 55 West that is located internally within Fortress Solar III Collector Facility.
- b. Setback requirements established in the Morgan County Zoning Regulations for the following property lines are waived:
 - i. Property lines located within the E½ of Section 3, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary. This waiver is only valid if Fortress Solar II Collector Facility, approved in Resolution 2024 BCC 13 is constructed. This waiver as it relates to the property line between SE¼ of said Section 3 and the SW¼ of said Section 3 is void if the Fortress Solar II Collector Facility is not constructed.
 - ii. Property lines located within Section 10, Township 3 North, Range 55 West, within the project boundary, by excluding the property lines which are also section lines or constitute the project boundary. This waiver is only valid if

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Fortress Solar II Collector Facility, approved in Resolution 2024 BCC 13 is constructed. This waiver as it relates to the property line between NE¼ of said Section 10 and the NW¼ of said Section 10 is void if Fortress Solar II Collector Facility is not constructed.

5. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.
- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.
- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

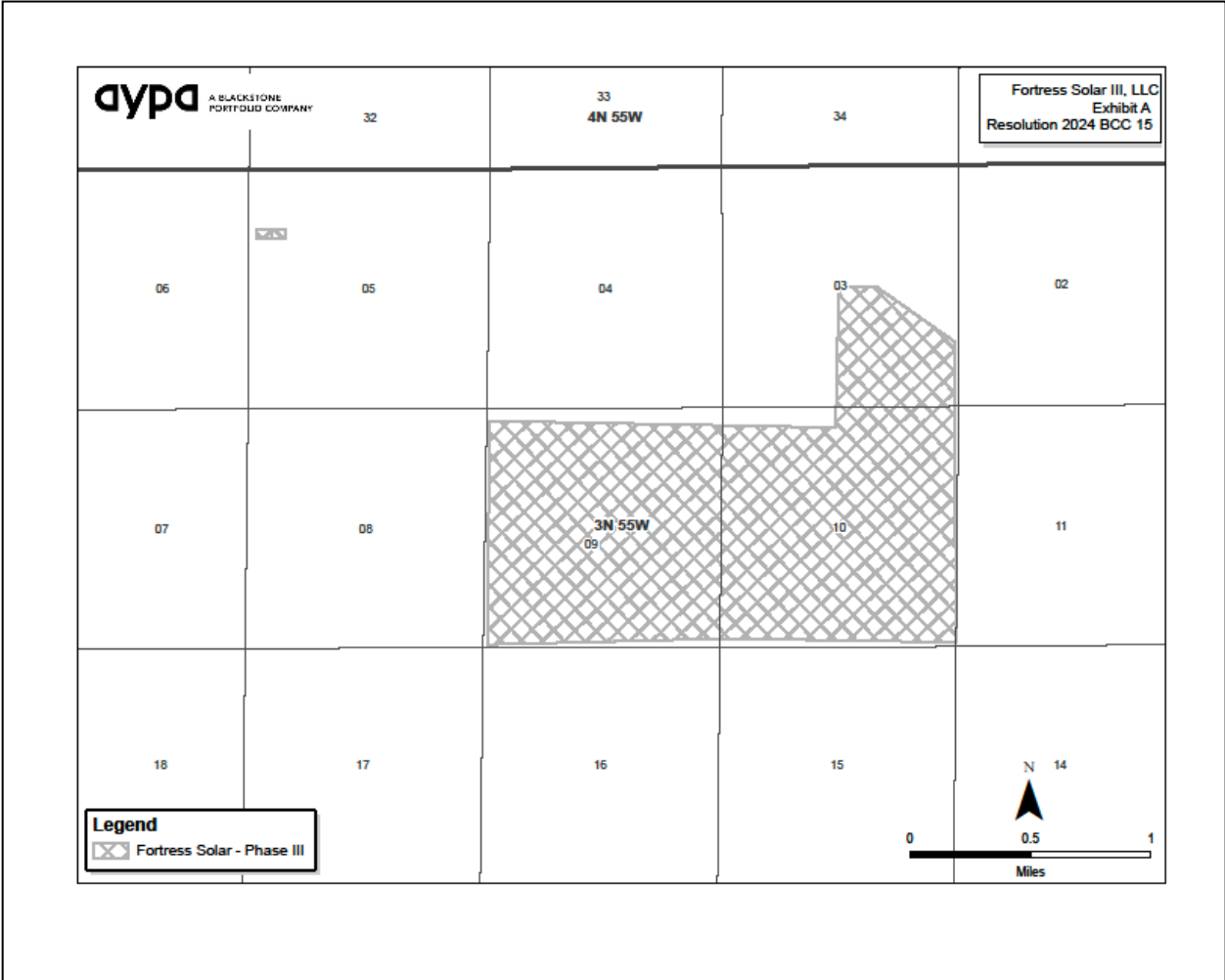
s/ Mark A. Arndt
Mark A. Arndt, Chairman

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

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

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch



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Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 15 A Resolution Approving a Special Use Permit to Fortress Solar III, LLC for a Solar Collector Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar III, LLC for a special use permit to allow an up to 200 MWac solar collector facility within a 1,325 acre project area. This facility is Phase 3 of a 3 phase project and would be located in a part of Sections 3, 6, 9, and 10, Township 3 North, Range 55 West and in a part of Section 1, Township 3 North, Range 56 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 15 reflects the outcome of that hearing and the approval of waivers from setbacks for certain section and property lines and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Westhoff asked how many total acres would be used for these solar projects. Director Hay noted that it is over 4,000 acres.

Commissioner Becker made a motion to approve Resolution Consideration of Approval – 2024 BCC 15 A Resolution Approving a Special Use Permit to Fortress Solar III, LLC for a Solar Collector Facility as presented by Nicole Hay, Morgan County Planning and Zoning Administrator. Commissioner Westhoff seconded the motion and motion carried 3-0.

Consideration of Approval – 2024 BCC 16 A Resolution Approving Special Use Permit to Fortress Solar III, LLC for a Battery Energy Storage System Facility.

MORGAN COUNTY, COLORADO BOARD OF COUNTY COMMISSIONERS

RESOLUTION 2024 BCC 16

A RESOLUTION GRANTING A SPECIAL USE PERMIT TO FORTRESS SOLAR III, LLC FOR A BATTERY ENERGY STORAGE SYSTEM FACILITY LOCATED IN SECTION 5, TOWNSHIP 3 NORTH, RANGE 55 WEST OF THE 6th P.M., MORGAN COUNTY, COLORADO

WHEREAS, Ruth Ann Odle (the “Owner”) owns property located in Section 5, Township 3 North, Range 55 West of the 6th P.M., Morgan County, Colorado (“Property”) in the Agriculture Production zone;

WHEREAS, Fortress Solar III, LLC (the “Applicant”), on behalf of and with authorization of the Owner has applied for a special use permit for a battery energy storage system facility (the “Application”) to be located on the Property;

WHEREAS, after holding a duly noticed public hearing on February 12, 2024, the Morgan County Planning Commission recommended that the Application be conditionally approved;

WHEREAS, on March 12, 2024, the Board of County Commissioners of Morgan County, Colorado held a public hearing on the Application;

WHEREAS, notice of the public hearing before the Board of County Commissioners was properly published and the notice was properly posted at the Property;

WHEREAS, during the public hearing the Board of County Commissioners received testimony and evidence from staff, the Applicant, and the public; and

WHEREAS, after considering all relevant testimony and evidence, the Board of County Commissioners desires to approve the Application, subject to certain conditions set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. APPROVAL.

The Application is hereby granted, subject to the conditions set forth herein. This Resolution shall constitute the special use permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDING OF FACT.

Subject to the Applicant, as the operator, satisfying and complying with all conditions set forth herein, the following findings are made:

- a. The use and location are in conformance with the Morgan County Comprehensive Plan. Specifically:

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- i. The project will 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 life of the project.
 - ii. The project conforms to the Goal and Policy 10 in Chapter 4 of the Comprehensive Plan, by encouraging 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. The project contributes to the Colorado New Energy Economy, by attracting and maintaining renewable energy projects to capture this.
 - iii. Preserving the manmade and natural environment in order to enhance the quality of life in Morgan County. The project will not impact wetlands or drainage patterns. These projects will encourage use of renewable resources and production of electric power.
- b. The application is complete and presents a clear picture of how the use is to be arranged on the site.
 - c. Subject to the conditions below, the site conforms to the district design standards of the Morgan County Zoning Regulations, specifically Secs. 2-420 and 4-820.
 - d. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures. During construction, any off-site mitigation for roads will be addressed through a road use agreement associated with Fortress Solar III Solar Collector facility construction. Best management practices (BMP) will be implemented to protect newly established vegetation for Storm Water Management and Erosion Control.
 - e. The special use is compatible with surrounding uses and buffering is not necessary because the adjacent uses are compatible. Residences are more than the County's 500-foot setback requirement. The parcels adjacent to the facility are zoned Agricultural Production and are pastureland.
 - f. This special use poses only the minimum amount of risk to public health, safety, and welfare.
 - g. The special use will not be located on a nonconforming parcel of land.
 - h. The Applicant has adequately documented a public need for the project in the form of increased economic development. The Applicant has submitted all pertinent technical information, has demonstrated that it has adequate financial resources to implement the project, and has paid all County fees and review costs. The general purpose of this project and the solar facility 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. The Applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability. Water is only needed during construction and will be supplied by trucks and sourced from an off-site location.
 - j. The project's maximum has a capacity of up to 800 MWhrs (a maximum power output of 200 MWac) located within 7 acre project area as shown on the map attached to this Resolution as Exhibit A.
 - k. The Applicant is the designated owner and operator of the BESS facility approved by this Permit.

3. CONDITIONS.

The approval of the use by special review is conditioned upon the following:

- a. Fortress Solar III, LLC shall 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, and stormwater permits.
- 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.
- d. The Applicant and Owners 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.

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- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access to the facility at all times. The BESS facility shall be constructed and installed in the location which substantially conforms with the Civil Plan, dated October 24, 2023, as updated as required herein.
- g. Prior to construction, the Applicant shall submit updated civil plans which including the identified points of access for mineral rights owners. These points of access shall be any portion of the BESS facility.
- h. Prior to the commencement of construction, the Applicant 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. The County may require that the road use agreement for the related solar collector facility govern any road impacts related to the construction of the BESS facility or require a separate road use 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. The Applicant 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 the Applicant 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. The Applicant 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. The Applicant shall comply with all applicable laws and regulations related to safety and emergency management during construction and on-going operations.
- n. The Applicant shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice the Applicant for costs and fees and the Applicant shall submit payment within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- o. Prior to commencement of construction, the Applicant shall supply evidence of, at a minimum, an agreement between the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant concerning the provision of emergency and fire services to the BESS. As part of the agreement, the Applicant shall provide training and equipment necessary to respond to any incident or failure of the BESS facility, or any portion of the facility. The initial training must be provided to law enforcement, fire, ambulance, and the Morgan County Emergency Management Department prior to the commencement of operations at the BESS facility. The agreement shall require ongoing training on a schedule determined by the parties to the agreement. The ongoing training shall be made available to all agencies for which the initial training is required in this condition. Every three years after the commencement of operations, the Brush Rural Fire Protection District, Morgan County Sheriff's Office, and Morgan County Emergency Management Department and the Applicant shall review the agreement to ensure adequate response training and equipment.
- p. A minor incident, defined as failure of or fire in one battery container, shall trigger an immediate shutdown of the effected battery container by the Applicant. A major incident is defined as occurrence of one or more of the following: 1) a failure of or fire in two or more battery containers, 2) when a fire expands beyond the defensible space required in condition (s), or 3) an incident at the BESS facility results in an order of evacuation or shelter in place to residents in the vicinity of the facility. A major incident shall trigger an immediate shutdown of the entire BESS facility by the Applicant. Upon the occurrence of either type of incident, the Applicant shall issue an incident notification within three (3) days of the incident. The incident notification will describe the time, duration or nature of incident and must be mailed to all property owners within a half mile of the BESS facility at the addresses of record through the Morgan County Assessor's Office; the County Planning and Zoning Department; the City of Brush; Brush Rural Fire Protection

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District; Morgan County Sheriff's Office; Morgan County Ambulance Services and Morgan County Emergency Management Department. Within thirty (30) days of the incident, the Applicant shall deliver to the County Planning and Zoning Department an after-action report prepared by a qualified independent third-party with expertise in subject matter and shall identify any changes to the operations of the BESS facility necessary to maintain life and safety within the BESS facility and the neighboring residential properties. No operations may occur in the battery container or at BESS facility, as applicable based upon the type of incident, until the after-action report has been considered by the Board of County Commissioners at a noticed public hearing and the Board of County Commissioners approves restarting operations at the BESS facility, or within the battery container. Such a decision shall be made based upon the impact of the failure on neighboring residential properties, the threat and continuing threat to public safety, the response to the incident, cause of the failure and whether the Applicant has implemented or is in the process of implementing changes to the operations of the BESS facility, or battery container, necessary to maintain life and safety within the BESS facility and the neighboring residential properties. Notice of the hearing shall be provided in the same manner as public notice for a permit for a use by special review as provided in the Morgan County Zoning Regulations, as amended. If the Board of County Commissioners decides that the BESS facility or the battery container, as applicable, may not be returned to operation, the Board of County Commissioners may direct the Applicant to take any necessary steps to protect the public safety and welfare or alternative, schedule a hearing to revoke this Permit.

- q. Prior to construction, the Applicant will submit a fire mitigation plan and emergency operations plan. These plans may be submitted as one plan at the Applicant's discretion; however, the plans or plan must address the following:
 - i. The fire mitigation plan shall include a site plan which includes strategic information for first responders including access points and road, gates and fence access restrictions, lock box locations, fire command center or response location(s), water supply location water source and control critical fire protection system information, site hazards, and high-level emergency response plan notes.
 - ii. The emergency response plan shall provide operational steps by site personnel and first responders if an incident or failure occurs. The plan should include equipment description and overview, emergency access, a site map, access points, staging areas, hazard evaluations, signage, and safety protocols.
- r. The Applicant must obtain the approval from the Brush Rural Fire Protection District for the plans required in condition (q) above. That approval must be obtained prior to the plans being submitted to the County.
- s. Due the high probability of wildland and grassland fires in Morgan County as established through the Morgan County Plan Element to the 2021 Northeast Colorado Regional Hazard Mitigation Plan, the BESS facility must be surrounded by a defensible space of at least 200 feet in width from the edge of the BESS facility. Within this defensible space, the Applicant must employ material which is nonflammable and will aid in the prevention of fire and suppress any vegetation or other flammable items. Conditions or materials which will create dust, such as the employment of dirt only in the defensible space, are also not permitted.
- t. The Applicant shall pay the applicable Permit Fee, as adopted by the County Commissioners prior to construction.
- u. The project shall be substantially constructed, and the facility installed within six (6) years of the date of approval below. Failure to satisfy this condition shall result in the expiration of this Permit.
- v. This Permit is subject to all applicable provisions of the Morgan County Zoning Regulations.

4. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the Morgan County Zoning Regulations. County Representatives are authorized to inspect the Property at any reasonable time upon notice to the appropriate Owner and the Applicant.
- b. This approval is conditioned on compliance with all information and representations contained in the Application and presented by the Applicant, which are incorporated into this Resolution.
- c. The Applicant shall comply and ensure compliance by third parties with all requirements, conditions and design standards set forth herein. Noncompliance shall be grounds for revocation of this permit by the Morgan County Board of Commissioners after notice and hearing. All conditions and terms of this approval run with the land and apply to any subsequent operators or owners of the facility and the Property.

DATED this 2nd day of April, 2024, *nunc pro tunc* March 12, 2024.

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

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

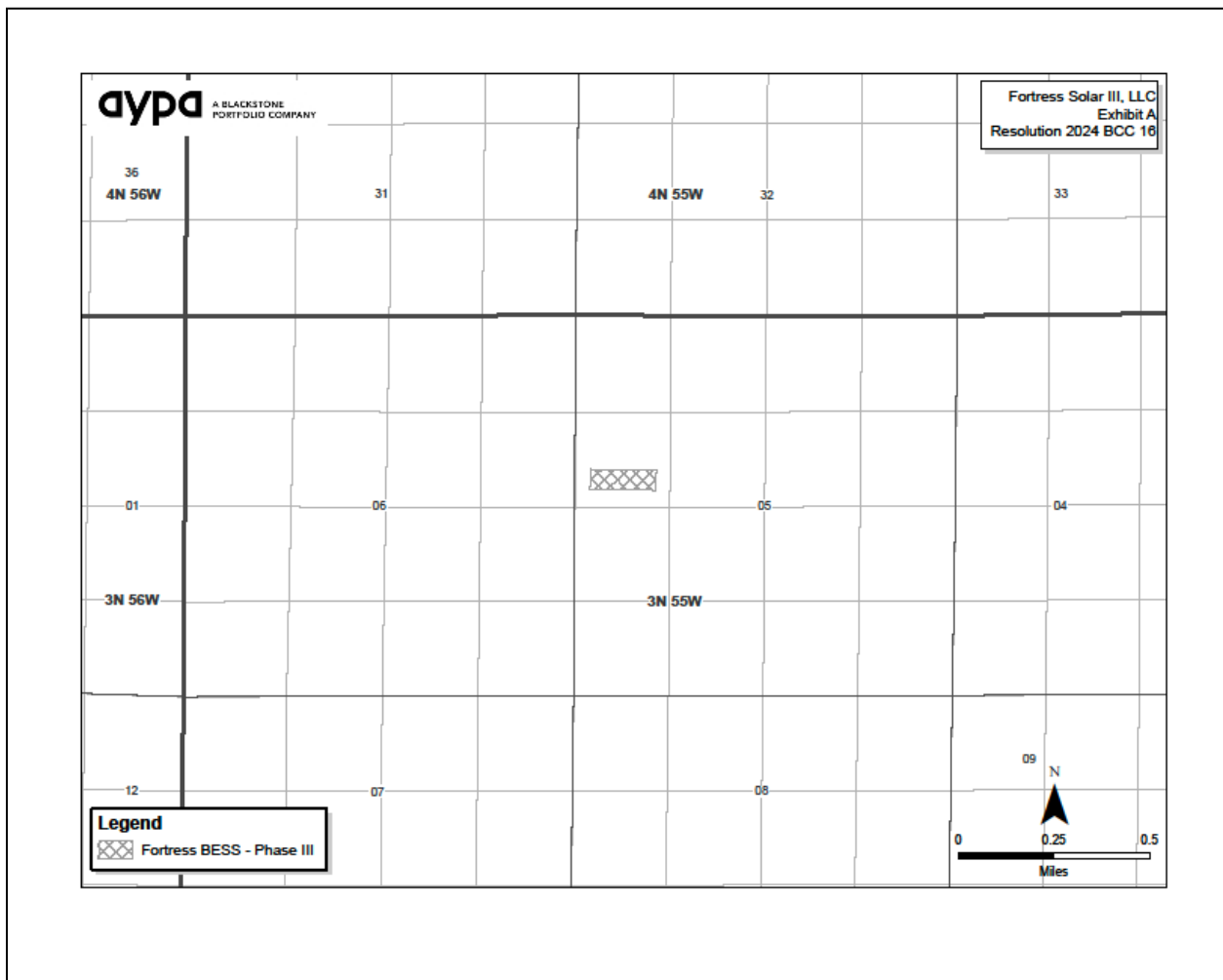
s/ Jon J. Becker
Jon J. Becker, Commissioner

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

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch



Nicole Hay, Morgan County Planning and Zoning Administrator, presented to the Board Resolution 2024 BCC 16 A Resolution Approving Special Use Permit to Fortress Solar III, LLC for a Battery Energy Storage System Facility. Ms. Hay stated that on February 12, 2024, the Planning Commission held a public hearing on an application submitted by Fortress Solar III, LLC for a special use permit to allow an up to 800 MWhr battery energy storage system within a 7 acre project area. This facility is Phase 3 of a 3 phase project and would be located in a part of Section 5, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The Planning Commission recommended conditional approval on a vote of 5 in favor and 1 opposed. On March 12, 2024, the Board of County Commissioners considered all relevant testimony and evidence and conditionally approved the application. Resolution 2024 BCC 16 reflects the outcome of that hearing and a 3 year renewal to extend the permit to a total of 6 years.

Commissioner Westhoff made a motion to approve Resolution Consideration of Approval 2024 BCC 16 A Resolution Approving Special Use Permit to Fortress Solar III, LLC for a Battery Energy Storage Facility as presented by Nicole Hay, Morgan County Planning and Zoning Administrator as amended in 2024 BCC 12. Commissioner Becker seconded the motion and motion carried 3-0.

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COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

County Clerk and Recorder, Kevin Strauch noted that the special election for CD4 will happen concurrently with the June 25th Primary Election.

Commissioners reviewed the calendar dated March 29, 2024 through April 9, 2024 with no changes.

Being no further business the meeting was then adjourned at 9:26 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified April 16, 2024)

**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