

COMMISSIONERS PROCEEDINGS 1

BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting

October 4, 2022

As reflected in posted agenda:

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/83012921039> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 830 1292 1039

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/83012921039> 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 October 3, 2022.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/83012921039> to listen via phone, please dial: 1-312-626-6799, Meeting ID: 830 1292 1039

The Board of Morgan County Commissioners met Tuesday, October 4, 2022 at 9:02 a.m. with Chairman Jon Becker, Commissioner Mark Arndt and Commissioner Gordon Westhoff in attendance. Chairman Becker asked Morgan County Planning and Zoning Administrator Nicole Hay, 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 September 14, 2022
2. Ratify the Board of County Commissioners approval of meeting minutes dated September 20, 2022
3. Ratify the Board of County Commissioners approval of meeting minutes dated September 27, 2022
4. Ratify the Board of County Commissioners approval of Contract 2022 CNT 098, Joseph R. Hewgley & Associates, Term of Contract August 23, 2022 through completion
5. Ratify the Board of County Commissioners approval of Contract 2022 CNT 101, Buchanan Construction, Term of Contract September 1, 2022 through completion
6. Ratify the Board of County Commissioners approval of Contract 2022 CNT 102, Geo-Synthetic Systems LLC, Term of Contract September 28, 2022 through completion
7. Ratify the Board of County Commissioners approval of Contract 2022 CNT 103, Dahl & Sons Construction, Term of Contract September 22, 2022 through completion
8. Ratify Chairman Jon Becker's signature on the License/Crossing Agreement, signed July 19, 2022
9. Ratify Chairman Jon Becker's signature on the CCI Legislative Committee Commissioner Designation Form, signed September 28, 2022
10. Ratify Chairman Jon Becker's signature on the Victim Assistance Grant Application Form, signed September 23, 2022
11. Ratify Chairman Jon Becker's signature on the Veterans Affairs Monthly Report – September 2022, signed October 3, 2022
12. Ratify the Board of County Commissioners approval on Morgan County Fairgrounds Fee Waiver Request for the American Legion Auxiliary Trillion Trees, approved September 23, 2022
13. Ratify the Board of County Commissioners approval on assignment of debt collections to Wakefield and Associates, Client #211278, #220842.

At this time, Commissioner Westhoff made a motion to approve items 1-13 as presented, Commissioner Arndt seconded the motion. At this time the motion carried 3-0.

UNFINISHED BUSINESS

There was no unfinished business.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of Approval – Rescinding Resolution 2022 BCC 18 Due To Duplication Of Numbers and replacing with Resolution 2022 BCC 20 (A Resolution Updating The Financial Authority Of County Officials And Employees Relating To County Bank Accounts)

MORGAN COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

RESOLUTION NO. 2022 BCC 20

2 COMMISSIONERS PROCEEDINGS

**A RESOLUTION UPDATING THE FINANCIAL AUTHORITY OF COUNTY OFFICIALS AND
EMPLOYEES RELATING TO COUNTY BANK ACCOUNTS**

WHEREAS, the County Commissioners desire to update which County officials have authority to open or close accounts; endorse for cash, deposit, negotiation, collection; sign checks or orders for payment; or execute fund withdrawal requests from County bank accounts on behalf of the County.

NOW THEREFORE be it resolved by the Morgan County Board of County Commissioners as follows:

Section 1. The following County Officials are hereby authorized to open or close accounts; endorse for cash, deposit, negotiation, collection; sign checks or orders for payment; or execute fund withdrawal request from the following County bank account.

- a. Bank of Colorado, Morgan County, Board of Commissioners Account Number 6700006937
Jon J. Becker, County Commissioner
Gordon H. Westhoff, County Commissioner
Mark A. Arndt, County Commissioner
Kevin L. Strauch, County Clerk and Recorder
Robert A. Sagel, County Treasurer

Section 2. No withdrawal request shall be effective unless execute by two of the above-named individuals.

Section 3. All previous authorizations relating to the same subject matter are hereby repealed.

APPROVED this 4th day of October 2022.

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

s/Jon J. Becker
Jon J. Becker, Chairman

s/Gordon H. Westhoff
Gordon Westhoff, Commissioner

s/Mark A. Arndt
Mark A. Arndt, Commissioner

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch

Commissioner Arndt presented to the Board for approval Resolution 2022 BCC 020, a Resolution Rescinding Resolution 2022 BCC 18 Due To Duplication Of Numbers and replacing with Resolution 2022 BCC 20 (A Resolution Updating The Financial Authority Of County Officials And Employees Relating To County Bank Accounts). Commissioner Arndt explained that when Resolution BCC 18 was presented it was a duplicate number 18 had already been used so the Board is resending BCC 18 that is titled Resolution Updating the Financial Authority of County Official and Employees Relating to County Bank Accounts and replacing it with resolution 2022 BCC 20. He stated that it is exactly same resolution just a new resolution number.

Commissioner Arndt made the motion to approve Resolution 2022 BCC 020, a Resolution Rescinding Resolution 2022 BCC 18 Due To Duplication Of Numbers and replacing with Resolution 2022 BCC 20 (A Resolution Updating The Financial Authority Of County Officials And Employees Relating To County Bank Accounts) as presented. Commissioner Westhoff seconded the motion and motion carried 3-0.

Consideration of Approval – Resolution 2022 BCC 21 A Resolution Approving The Purchase And Sale Agreement For The Sale Of County Property To Bohmco, LLC

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

**RESOLUTION
2022 BCC 21**

**A RESOLUTION APPROVING THE PURCHASE AND SALE AGREEMENT FOR THE SALE OF
COUNTY PROPERTY TO TROY D. BOHM**

WHEREAS, Morgan County (“County”) is the owner of real property in Morgan County, Colorado (the “Property”);

COMMISSIONERS PROCEEDINGS 3

WHEREAS, Bohmco, LLC desires to purchase and County desires to sell the Property;

WHEREAS, the Property is not being used for any governmental purposes; and

WHEREAS, the Board of County Commissioners finds and determines that it would be in the best interests of the County and its residents to sell the Property.

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

Section 1. The Purchase and Sale Agreement between the County and Troy D. Bohm, a copy of which is attached hereto and incorporated herein as **Exhibit A**, is hereby approved and adopted, and the Chair of the Board of County Commissioner is authorized to execute the Agreement. The Chair is further authorized to execute any related documents required to accomplish the County’s sale of the Property, including all title- and closing-related documents.

APPROVED this 4th day of October, 2022.

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

s/Jon J. Becker
Jon J. Becker, Chairman

s/Gordon H. Westhoff
Gordon Westhoff, Commissioner

s/Mark A. Arndt
Mark A. Arndt, Commissioner

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch

Commissioner Westhoff presented to the Board for approval Resolution 2022 BCC 021, Approving The Purchase And Sale Agreement For The Sale Of County Property To Bohmco, LLC. Commissioner Westhoff stated that Mr. Bohm approached the County with an offer to purchase the property, so the County put out an RFP for other citizens to bid. He explained that the property is located in Brush and is 1.9 acres. Commissioner Westhoff explained that Mr. Bohm was the highest bidder in the amount of \$25,001.00; this resolution reflects the purchase of that property to Bohmco, LLC

Commissioner Westhoff made the motion to approve Resolution 2022 BCC 021, a Resolution Approving The Purchase And Sale Agreement For The Sale Of County Property To Bohmco, LLC in the amount of \$25,001.00 as presented. Commissioner Arndt seconded the motion and motion carried 3-0. Commissioner Arndt noted that the land was sold as is and there are no guarantees.

Consideration of Approval – Resolution 2022 BCC 22 A Resolution Approving A Permit For An Activity Of State Interest (“1041” Permit) To Public Service Company Of Colorado DbA As Xcel Energy For Electric Transmission Lines And Substation In Morgan County

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

RESOLUTION NO. 2022 BCC 22

A RESOLUTION APPROVING A PERMIT FOR AN ACTIVITY OF STATE INTEREST (“1041 PERMIT) TO PUBLIC SERVICE COMPANY OF COLORADO DBA AS XCEL ENERGY FOR ELECTRIC TRANSMISSION LINES AND SUBSTATION IN MORGAN COUNTY

WHEREAS, Public Service Company of Colorado, dba as Xcel Energy (“Xcel”), submitted an application for a permit for an activity of state interest (“1041 Permit”);

WHEREAS, Xcel’s application sought approval of approximately 48 miles of 345-kV transmission lines and a new substation, known as the Canal Crossing Substation, which are part of Xcel’s Colorado’s Power Pathway Project;

WHEREAS, in its application, Xcel further requested a partial waiver from Section 3-305(2)(b)(iii) of Morgan County’s 1041 Regulations (“1041 Regulations”) to not be required to submit title information listed in that subsection;

4 COMMISSIONERS PROCEEDINGS

WHEREAS, prior to the submission of the application and in conformity with Section 3-304(1) of the 1041 Regulations, on April 26, 2022, the Morgan County Board of County Commissioners (“Board of County Commissioners”) determined that no preliminary application would be required;

WHEREAS, on July 13, 2022, the County Planning Director granted the partial waiver requested by Xcel and the application was considered complete;

WHEREAS, a public hearing before the Board of County Commissioners on the application was scheduled for September 14, 2022;

WHEREAS, notice of the hearing was provided in accordance with Section 2-301 of the 1041 Regulations;

WHEREAS, on September 14, 2022, the Board of County Commissioners held a duly noticed public hearing on the application and received testimony and evidence from the applicant and public on the application;

WHEREAS, the Board of County Commissioners continued the public hearing to September 27, 2022 directing staff to address several outstanding issues and concerns;

WHEREAS, the Board of County Commissioners conducted the continued public hearing on September 27, 2022 and received additional testimony and evidence from staff, the public and the applicant; 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 1041 permit (hereinafter referred to as this “Resolution” or the “Permit”).

2. FINDING OF FACT.

Subject to the applicant meeting and complying with all conditions set forth herein, the following findings are made in accordance with the criteria found in Section 3-306 of the 1041 Regulations:

a. *The health, welfare and safety of the citizens of this County will be protected and served.*

There are no anticipated substantial adverse impacts to the health, welfare and safety of the County’s citizens. Subject to the conditions set forth in this Permit, the impacts to agricultural land will be minimal as the right-of-way is 150 feet wide and certain agricultural activities may continue in the right of way. Although transmission lines can generate electromagnetic fields, Xcel’s lines will comply with all applicable laws, including the National Electric Code. Moreover, most of the lines will be in sparsely populated areas.

b. *The natural and socio-economic environment of this County will be protected and enhanced.*

Impacts to the natural environment are anticipated to be temporary and limited in nature. Most impacts will occur during the construction phase, and Xcel will be required to use best management practices to avoid harm to areas outside of the lines’ right-of-way. Some relatively minor temporary economic benefits are expected as construction crews work on the Project. However, because the crews will be relatively small and the construction will be temporary, the direct economic benefits are not anticipated to be substantial. The installation of the transmission lines will provide additional opportunity for power generation projects to connect to Xcel’s system. Landowners may benefit by contracting for the use of their land for solar and wind generation projects that would otherwise not occur. These generation projects will come with benefits and drawbacks. New jobs will be available and construction crews will use local businesses. However, wind and solar projects have additional impacts on the area, including use of agricultural land, and noise, visual, and wildlife impacts.

c. *All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way, wherever uses are compatible, have been adequately assessed and the proposed action represents the best interests of the people of this County and represents the best utilization of resources in the impact area.*

Xcel has provided a Routing and Siting Study as Attachment A to its application. Xcel undertook substantial efforts to engage with the public. See Section 3.4.1 for Segment 1 and Section 3.4.3 for Canal Crossing Substation and Segment 2 of the Routing and Siting Study for more information. The Routing and Siting addresses how Xcel considered a variety of factors in selecting the route of the transmission lines and how the route was modified to address these factors. A substantial portion of the route for the transmission line is in the public right-of-way. The transmission line

COMMISSIONERS PROCEEDINGS 5

routing and substation siting study information is set forth in Attachment A to Xcel’s application. Section 11 of Xcel’s narrative addresses alternatives considered by Xcel.

- d. *A satisfactory program to mitigate and minimize adverse impacts has been presented.*

There are no anticipated non-mitigated adverse impacts other than the potential impact on County roadways, the potential for construction-related pollution of irrigation ditches, canals, and waterways, and un-remediated land subsequent to construction activity. These concerns are adequately mitigated via the condition for Xcel to enter into a road use agreement with the County which will requiring Xcel to return any damaged County roadways to their condition prior to Xcel-caused damage and operate on designated haul routes. Xcel will be required to fully remediate land, including irrigation ditches, damaged by its construction activities. See Section 12 of Xcel’s narrative for additional details regarding how it will mitigate and minimize adverse impacts.

- e. *The nature and location or expansion of the facility complies with all applicable provisions of the master plan of this County, and other applicable regional, metropolitan, state, and national plans.*

The project is compatible with the County’s master plan. It protects the agricultural character of the County, improves the state’s renewable energy opportunities and brings renewable energy opportunities to the County.

- f. *The nature and location or expansion of the facility complements the existing and reasonably foreseeable needs of the service area and of the area immediately affected by the facility.*

The project is not anticipated to cause significant changes to the use of land in its area. Following construction, agricultural activities along the transmission line route can continue outside of the small area occupied by the transmission poles and the Canal Crossing Substation footprint.

- g. *The nature and location or expansion of the facility does not unduly or unreasonably impact existing community services.*

No additional governmental services are required by the project.

- h. *The nature and location or expansion of the facility will not create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services, as determined by the Board.*

No additional governmental services are required by the project during or after construction. There may be impacts on County roadways, which can be mitigated by requiring Xcel to prepare a traffic plan and remediate any damage caused to County roadways.

- i. *The facility site or expansion area is not in an area with general meteorological and climatological conditions which would unreasonably interfere with or obstruct normal operations and maintenance.*

The equipment will be designed to withstand unusual meteorological events. The transmission lines and substation will be able to function normally in a wide range of County weather conditions.

- j. *The nature and location of the facility or expansion will not adversely affect the water rights of any upstream, downstream, or agricultural users, adjacent communities or other water users.*

No water rights will be impacted by the Project.

- k. *Adequate water supplies are available for facility needs.*

Water for construction activities will be trucked into the location and obtained from local permitted water sources. Large quantities of water are not necessary for the project.

- l. *The nature and location of the facility or expansion will not unduly interfere with any existing easements for or rights-of-way, for other utilities, canals, mineral claims, or roads.*

As part of the land rights process, Xcel will identify existing easements and rights-of-way for other utilities, canals, mineral claims, or roads and will not cause any undue interference with existing easements or rights-of-way during construction and operation of Pathway.

- m. *Adequate electric, gas, telephone, water, sewage, and other utilities exist or shall be developed to service the site.*

Any utilities required for the project will be adequate.

6 COMMISSIONERS PROCEEDINGS

- n. *The nature and location for expansion of the facility will not interfere with any significant wildlife habitat or adversely affect any endangered wildlife species, unique natural resource or historic landmark within the impact area.*

There will be impacts during construction of the Project, including increased construction equipment impact, noise, and dust. There could be sediment run off from the construction activities into irrigation ditches and other waterways. However, Xcel represents that it will implement best management practices to control sediment and runoff into canals and waterways during construction. Xcel will be regulated by CDPHE and is required to follow state standards to control fugitive construction dust. Once operational, most environmental impacts will be limited.

The transmission line route will span wetlands. Xcel believes it will be able to span most wetlands and therefore, will not adversely impact them. However, if a wetland cannot be spanned, Xcel will need to obtain appropriate permits from the Army Corps of Engineers.

Xcel has conducted studies on the impact of the project on species in the area and has been engaged with Colorado Parks and Wildlife regarding the routing and related impacts of the transmission lines in the area. There will be impacts to habitat due to clearing activities for construction. However, these impacts should be limited to the 150-foot right-of-way.

- o. *The nature and location or expansion of the facility, including expected growth and development related to the operation and provision of service, will not significantly deteriorate water or air quality in the impact area.*

Drainage facilities will be constructed to address the increased impervious area caused by the substation. Best management practices will be followed during construction to minimize run-off into waterways and irrigation ditches. There will be increased air pollution from fugitive dust, fumes, and construction equipment exhaust. Because the majority of the construction activity will occur in sparsely-populated areas, the impacts are anticipated to be minimal. The County retains its nuisance-enforcement authority and will regulate Xcel's construction activity if it results in adverse impacts to the neighboring properties.

- p. *The geological and topographic features of the site are adequate for all construction, clearing, grading, drainage, vegetation, and other needs of the facility construction or expansion.*

The substation location is flat and minimal grading activity is expected. The majority of the transmission line route is also relatively flat. Therefore, no major topographic issues are expected. There will be clearing of vegetation within the 150-foot right-of-way to facilitate construction activities. Any damages will be reclaimed upon completion of construction.

- q. *The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels.*

There is some risk of runoff from the construction area into local waterways and irrigation ditches. However, Xcel will employ best management practices to avoid any significant issues. Upon completion of construction, the transmission line infrastructure will span most wetlands and waterways. If wetlands or waterways of the United States cannot be avoided, Xcel will be required to obtain federal permits.

- r. *The proposed project will not have a significantly adverse net effect on the capacities or functioning of streams, lakes and reservoirs in the impact area, nor on the permeability, volume, recharge capability, and depth of aquifers in the impact area.*

See Section (q), above. There will be no impact on aquifers.

- s. *The benefits of the proposed developments outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.*

Minimal loss of agricultural land is anticipated. There could be some impact on natural resources, primarily resulting from impact of construction activity on wildlife habitat. However, Xcel is working with CPW to limit these impacts. The proposed development will provide some short terms economic benefit to local businesses during construction. The longer term benefits include the opportunity for renewable power generation operations in the County to connect to the transmission facilities and the related environmental impacts of clean energy sources (wind and solar).

- t. *The applicant has obtained or will obtain all property rights, permits, and approvals necessary for the proposed project, including surface, mineral, and water rights and easements for drainage, disposal, utilities, access, etc. If the applicant has not obtained all necessary property rights, permits and approvals, the Board may, at its discretion, grant the permit conditioned upon completion of the acquisition of such rights prior to issuance of a zoning or building permit by the County.*

COMMISSIONERS PROCEEDINGS 7

Xcel will be required to obtain all necessary property rights for the transmission lines prior to commencement of construction. Xcel is unlikely to have the rights for all property in the County at commencement of construction, but will not commence construction on any section until the underlying rights are acquired.

- u. *The proposed project will not present an unreasonable risk of exposure to or release of toxic or hazardous substances within the impact area. The determination of effects of the project shall include the following considerations:*
 - (i) *The means by which outdoor storage facilities for fuel, raw materials, equipment and related items are adequately enclosed by a fence or wall;*
 - (ii) *The likelihood of hazardous materials or wastes being moved off the site by natural causes or forces;*
 - (iii) *Containment of inflammable or explosive liquids, solids or gases.*

No hazardous material is involved in the project other than fuel, lubricants, and coolants for machinery, which Xcel will store at its temporary construction areas. The County will be issuing permits for these temporary areas and will require that such material be stored appropriately in a manner that minimizes the risk of any spills.

- v. *The scope and nature of the proposed project will not create duplicate services within the County.*

The transmission lines and substation fill a need for more transmission-related capacity for renewable energy generation facilities. They will not duplicate existing services in the County.

- w. *If the purpose and need for the proposed project are to meet the needs of an increasing population within the County, area and community development and population trends demonstrate clearly a need for such development.*

The project is not aimed at meeting the needs of the County due to its increasing population.

3. CONDITIONS.

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

- a. Prior to beginning construction on each parcel, all necessary land use, environmental, and construction permits, approvals and authorizations for that work will be obtained 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.
- b. Any equipment additions at the Pawnee substation which are included in the Power Pathway project are not approved as part of this 1041 permit. Xcel is required to obtain any applicable land use approval for any equipment additions at the Pawnee substation.
- c. No poles shall exceed a height of 190 feet. Xcel shall notify the County Planning Administrator of the location for poles that exceed 140 feet in height with an explanation of the reason for the excess height.
- d. The Canal Crossing Substation shall be enclosed by a security fence at least 10 feet tall and be secured at all times.
- e. Prior the commencement of construction in Morgan County, Xcel will enter into a road use agreement for the use of any public road during construction which shall include the following:
 - i. A map showing which County roads will be used during construction.
 - ii. A pre-construction baseline inventory of County roads 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 to be used during construction. The mitigation plan shall also include any dust mitigation activities.
 - iv. A requirement that the applicant 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

8 COMMISSIONERS PROCEEDINGS

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 Xcel is not in default of any provision of the road use agreement. The County shall inspect the restored roads and Xcel 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. Xcel 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 Xcel's guarantee that the restoration remains free of defect during a two-year warranty period. Xcel 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.
- f. Prior the commencement of construction on any parcel, Xcel must obtain all necessary 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. Any new access from County roads will require a driveway permit issued by the Morgan County Road and Bridge Department.
- g. The County will require temporary use permits for all temporary construction areas, any staging or laydown areas, or other temporary areas for construction activities ("Temporary Areas"). Xcel is required to obtain a temporary use permits for all Temporary Areas prior to placing any equipment, materials or any other items associated with the Pathway Project in the temporary construction area. To obtain a temporary use permit, at a minimum, Xcel 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 in the case of concrete batch plants, a copy of the APEN issued by the Colorado Department of Public Health and Environment. Temporary use permits issued for Temporary Areas may not be issued for a period longer than one year. There is no limit on the number renewals for the temporary use permits; however, Xcel must notify the County at least thirty (30) days prior to the end of a permit of its intent to renew. It shall be a condition of every temporary use permit issued under this provision 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, in accordance with paragraph 10 below. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
- h. The temporary use permit previously granted to Xcel at the northeast corner of County Road F and County Road 18 and due to expire shall become part of this 1041 permit and subject to the provision in paragraph 7 above.
- i. Prior to use of any helicopters in connection with the initial construction of the Power Pathway project, Xcel shall provide at least thirty (30) days' written notice to the County Planning Administrator of the location of the helicopter fly yard and dates and hours of helicopter use. Xcel shall comply with all FAA requirements, including but not limited to, notice of evacuation to residences.
- j. Within one year from completion of construction of the project, all Temporary Areas and transmission lines rights of way, not needed for Xcel's on-going operations in Morgan County or not used for crop production, shall be reclaimed and/or reseeded as soon as practicable, 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. Xcel 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 after notice to Xcel and an opportunity for abatement upon thirty (30) days' notice. If Xcel fails to abate the nuisance, the County may abate the nuisance and invoice Xcel for such costs. Failure of Xcel to abate the nuisance or pay the costs may be grounds for revocation of this Permit.
- m. Xcel shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
- n. A drainage plan for the substation must be submitted for County review prior to the commencement of construction of the substation.
- o. Xcel shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Xcel for costs and fees and payment will be due by

COMMISSIONERS PROCEEDINGS 9

Xcel within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

- p. The centerline of the transmission poles shall be offset from existing water wells by the legally permissible re-drilling radius plus thirty-five (35) feet (“Restricted Area”), unless Xcel obtains the necessary real property rights that permit Xcel to limit the water well owner’s ability to operate, maintain or replace an existing water well in the Restricted Area, or portion thereof, that is within Xcel’s right of way. Evidence of such permission shall be provided to the County Planning Department.
- q. Xcel shall use reasonable efforts to minimize the impacts to the use of farming equipment and agricultural operations when selecting pole placements.

4. GENERAL PROVISIONS.

- a. The Board of County Commissioners retains continuing jurisdiction over this Permit to ensure compliance with this Permit and the 1041 Regulations. County Representatives are authorized to inspect the property upon which the Project will be located at any reasonable time upon notice to the owner and Xcel.
- b. This approval is conditioned on compliance with all information and representations contained in the application and presented by the Xcel, which are incorporated into this Permit.
- c. Xcel shall comply and ensure compliance by its contractors and agents 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 pursuant to the procedures in the 1041 Regulations.

APPROVED this 4th day of October, 2022.

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

s/Jon J. Becker
Jon J. Becker, Chairman

s/Gordon H. Westhoff
Gordon Westhoff, Commissioner

s/Mark A. Arndt
Mark A. Arndt, Commissioner

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch

Morgan County Planning and Zoning Administrator, Nicole Hay along with Morgan County Attorney Kathryn Sellars appearing remotely presented to the Board for approval Resolution 2022 BCC 022, a Resolution Approving A Permit For An Activity Of State Interest (“1041” Permit) To Public Service Company Of Colorado DbA As Xcel Energy For Electric Transmission Lines And Substation In Morgan County. Ms. Sellars stated per the Board’s direction there is a draft resolution with some exceptions in the packet. She stated that the resolution contains the conditions from the previous staff reports.

Ms. Sellars stated that with Condition F that is related to the roads there has been a sentence added, which states any new access from County roads will require a driveway permit issued by the Morgan County Road and Bridge Department.

As per Condition L, let it be revised to read “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 after notice to Xcel and an opportunity for abatement upon (30) days’ notice. If Xcel fails to abate the nuisance, the County may abate the nuisance and invoice Xcel for such costs. Failure of Xcel to abate the nuisance or pay the costs may be grounds for revocation of this Permit”.

The last condition presented with changes proposed was Condition P, which is the water well condition that was discussed at the last meeting. There was some investigating that needed to be done as for the radius for re-drilling. The conclusion of that investigation is that the radius is going to vary upon the facts related to the well including what the well is used for, how it was originally permitted, if it was permitted and whether or not it is a designated basin. With these finding that is the reason that the 50 feet was removed due to it not being accurate for all the wells that could be in this project. She explained that 35 feet was added based upon the information provided from Xcel.

10 COMMISSIONERS PROCEEDINGS

There was a comment from Xcel’s council regarding the language regarding the exception as it currently reads “unless Xcel obtains the necessary real property rights that permit Xcel to limit the water well owner’s ability to operate, maintain or replace existing water well within such restricted areas”. Xcel was concerned that the restricted area may be broader than their proposed right of way. Ms. Sellers recommended that additional language be added to state “to replace an existing water well in the portion in the restricted area that Xcel right of way and that evidence of such permission shall be provided to the County Planning Department”.

Ms. Sellars stated that a formal response was sent yesterday from Xcel on this condition along with a drawing of the proposed right way and a radius as an example, the response will be part of the record.

The Board continued further discussion continued with Ms. Sellars about the changes to the conditions.

Commissioner Arndt made the motion to approve Resolution 2022 BCC 012, with the amendments in letter L and item P regarding existing water wells by the recommendations of the County Attorney and taking into consideration some of Xcel’s concerns. Commissioner Westhoff seconded the motion and motion carried 3-0.

At this time, the Board took a short recess at 9:45a.m.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Morgan County Clerk and Recorder, Kevin Strauch stated that the Public Logic and Accuracy Testing for the 2022 General Election is October 4, 2022 and everyone is invited, public or elected officials.

No other reports were made.

PUBLIC HEARING

Chairman Becker called the hearing to order at 9:52 a.m. in the Assembly Room of the Morgan County Administration Building. Present were, Chairman Jon Becker, Commissioner Mark Arndt and Commissioner Gordon Westhoff, Morgan County Planning and Zoning Administrator, Nicole Hay and Morgan County Attorney Kathryn Sellars.

- 1. Applicant:** Gary and Deb Vondy
Landowner: Dola Smith
Legal Description: Parcel in the E½SE¼ of Section 17, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado. Also known as 15089 County Road 26 and 15115 County Road 26, Brush, Colorado 80723.
Request: Minor Subdivision to plat approximately 15.09 acres into two lots.

Ms. Hay explained that this application is for a 2-lot Minor Subdivision of 15.09 acres located in the E½SE¼ of Section 17, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado. Also known as 15089 County Road 26 and 15115 County Road 26, Brush, Colorado 80723.

There are currently two single-family residences on each proposed Lot. The property is zoned agricultural.

The applicants are requesting approval of the minor subdivision to create two new lots. Lot 1 – 12.98 acres and Lot 2 – 2.11 acres.

Section 8-195 of the Morgan County Subdivision Regulations requires review of the listed criteria and compliance to be determined prior to approval of the proposed subdivision.

In reviewing an application for a minor subdivision the Planning Commission and the Board of County Commissioners shall apply the following criteria as listed from Section 8-195 of the Morgan County Subdivision Regulations:

- (A) Whether the application documents are complete and present a clear picture of how the subdivision is to be laid out including all infrastructure, easements, and access.
The application documents are complete:
- 1) Northeast Colorado Health Department has issued a letter regarding existing onsite wastewater treatment systems on Lots 1 and 2.
 - 2) Colorado Division of Water Resources has supplied available information for a domestic well permit. The well is located on Lot 1 and services both lots. A draft well-sharing and easement agreement between the parties to be recorded at closing.
 - 3) Both lots access from County Road 26. Road and Bridge has no objection to the continued use of the existing driveways that provide access.
 - 4) Property is located in the Brush Fire District.

COMMISSIONERS PROCEEDINGS 11

- 5) Soil map was provided by the Natural Resources Conservation Service.
 - 6) The applicant notified the mineral rights owners.
 - 7) Animal units will be per zoning requirements approved by the Morgan County Extension Service.
 - 8) Right to Farm notices were signed by both property owners and provided with the application.
 - 9) Lots 1 and 2 are developed as single family residences.
- (B) Whether the proposed subdivision is consistent with the Morgan County Comprehensive Plan. The subdivision is located in the south central planning area.
Chapter 2.II.C.1., County Wide
Goal: To encourage development where proposed development is compatible with existing land uses and access to public infrastructure is established-current residences have been there since 1973 and 1974.
- (C) Whether the proposed subdivision is compatible with surrounding land uses and is adequately buffered as needed.
This subdivision is located in the Agricultural Production District and buffering is not required, uses are compatible.

The following conditions are recommended by staff, if the Minor Subdivision is approved:

1. The shared well agreement to be executed and recorded contemporaneously with the minor subdivision plat.

It should be noted that a portion of the existing water line to Lot 2 may cross the property of a third party (Xcel). No express easement exists for water line on this property. It is the applicants' position that there is an implied easement for the water line across this property. If the Board desires to address this issue, it could require, prior to the approval of the subdivision, the applicants to obtain an express easement for the water line from Xcel or require the applicants to obtain a court order determining the legal status of the easement.

The Planning Commission recommended approval on a vote of 5 in favor and 0 opposed, 2 members were absent with the following recommended conditions:

1. The waterline needs to be surveyed.
2. Change radius around the well to possibly 30 feet instead of 10 feet in the well sharing agreement.

The applicant is agreeable to changing the radius around the well for maintenance from 10 to 30 feet in the well sharing agreement.

At this time, Chairman Becker asked the applicant if there is anything they would like to add to the application. Ray Laws of 811 Main Street in Fort Morgan, the attorney for the applicants stated that the well sharing agreement should be tight enough to cover the shared use of the well. He stated that the applicants have lived on the property since 1974 and that this process is only happening for planning purposes for the future. He stated that the line was plated by a surveyor and he and the applicant are confident it is accurate. He stated that there is a small parcel that the line crosses that is owned by Xcel, but all elements for an easement are met. He stated that he believes this is a complete application.

Commissioner Arndt asked about the boundaries of lot one which Ms. Hay showed and explained on the map as presented.

Commissioner Westhoff asked about the history of the water line that is present on the line. Mr. Vondy explained that he helped lay the line and that Xcel now owns part of the land that the water line crosses.

Chairman Becker asked about the cost of surveying the line and receiving an easement. Mr. Laws stated that this process would cost upwards of several thousand dollars.

Commissioner Arndt asked which lot would be responsible for the maintenance of the existing line. Mr. Laws stated that it would be the owners of lot two. Commissioner Arndt asked if there should be language inserted into the agreement explaining how the line could be moved if needed, with Mr. Laws stating that can be added with no problems.

Commissioner Arndt asked if there is any language in the agreement that explains the legal ramifications of the owners choose to change their water source. Mr. Laws stated that he believed the language was broad enough to cover this circumstance, but he believes that further language could be helpful in the future.

Commissioner Arndt stated that he believes that there could be trouble if there are not enough specifics are in the agreement. Mr. Laws stated that the agreement would be recorded and that future owners can see the agreement when they buy either of the properties.

12 COMMISSIONERS PROCEEDINGS

Commissioner Westhoff stated his desire to see strengthened language to make sure there will be no conflict in the future.

Chairman Becker asked if there was anyone in the audience present or online who wished to make public comment in opposition or in favor of the application, noting no public comment and closed the public comment portion at this time and closed the public testimony.

At this time, Chairman Becker moved into discussion and decision.

Chairman Becker stated that a severability clause as well as a right to move the line from Xcel’s property would be necessary in the agreement. Mr. Laws stated that he understood and agreed.

Commissioner Westhoff made a motion to approve the application for a Minor Subdivision to plat approximately 15.09 acres into two lots with the legal description being a parcel in the E½SE¼ of Section 17, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado. Also known as 15089 County Road 26 and 15115 County Road 26, Brush, Colorado 80723, with the amended written agreement for the shared water well agreement requesting stronger language, severability of the well owners and potential movement of the waterline that is not currently located on the property if needed to lot one. The Applicant being Gary and Deb Vondy and landowner being Dola Smith, as presented by Morgan County Planning and Zoning Administrator, Nicole Hay. Commissioner Arndt clarified the motion as to have included in the water well agreement the ability for the landowners to relocate any portion that may not be on lot one at the current time to lot one as described and the applicant has the ability to bring that in and whatever suits them best. The motion was seconded by Commissioner Arndt. At this time, the motion carried 3-0.

- 2. Applicant:** Tim Naylor, Hannah Dutrow/AGPROfessionals
- Landowner:** Kraft Family Dairies, LLC
- Legal Description:** A parcel located in the S½ and the E½NE¼ of Section 27, Township 3 North, Range 57 West of the 6th PM, Morgan County, Colorado aka 13500 Co Rd 21, Fort Morgan, Colorado 80701
- Request:** Amended Use by Special Review Permit to expand the permitted Quail Ridge Dairy confinement operations from 9875 Animal Units to 15,000 Animal Units. In addition, they intend to install an additional parlor, two free stalls, and a dry pen within the existing footprint of the dairy operations.

Ms. Hay explained that this application is for an Amendment to a Special Use Permit and Vested Rights to allow for the expansion of an existing permitted Quail Ridge Dairy confinement operations which was originally granted by Resolution 2006 BCC 21 and is included in your packets. The original permitted area is located in the S½ and the E½NE¼ of Section 27, Township 3 North, Range 57 West of the 6th PM, Morgan County, Colorado and addressed as 13500 Co Rd 21, Fort Morgan, Colorado 80701

The owner is requesting an animal unit expansion from 9875 animal units to 15,000 animal units. In addition, they intend to install an additional parlor, two free stalls, and a dry pen within the existing footprint of the dairy operations. The property is zoned Agriculture Production.

In reviewing this application, the Planning Commission and Board of County Commissioners are required to make a finding that the criteria for granting a Use by Special Review in Section 2-345 of the Morgan County Zoning Regulations has been met.

Section 2-395 Special Use Permit Criteria and Staff Information:

- A. The use and its location as proposed are in conformance with the Morgan County Comprehensive Plan. Specifically:
 - The property is located in the south central planning area as defined by the Morgan County Comprehensive Plan. The area south of County Road Q remains agriculture and there are livestock confinement facilities that must be protected and allowed to expand. In this area Comprehensive Plan goals include:
 - Preserve and protect existing agricultural uses south of County Road Q.
 - The request to amend the 2006 special use permit will encourage the preservation and continuation of the industry.
- B. The application documents are complete and present a clear picture of how the use is to be arranged on the site.
- C. The Site Plan conforms to the district design standards of Section 2-420 and Section 4-200 of the Morgan County Zoning Regulations.
- D. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvement, site plan requirements or other mitigation measures.

COMMISSIONERS PROCEEDINGS 13

The operation is existing and the additional impacts are expected to be minimal. Proposed use impacts upon existing uses are detailed in the included Nuisance Control Plan and in the Preliminary Environmental System Design.

- E. The special use proposed has been made compatible with the surrounding uses and is adequately buffered from any incompatible uses by distance and topography.
Buffering from adjacent agricultural uses is not necessary as the proposed improvements will be within the existing dairy footprint.
- F. The special use poses no or minimal risk to the public health, safety and welfare.
Amending the original granted Special Use Permit will not increase risk to public health, safety or welfare.
- G. The special use proposed is not planned on a nonconforming parcel.
The proposed amendment is located on a conforming parcel.
- H. The applicant has adequately documented a public need for the project. 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 existing dairy operation supplies milk for consumption and to local processing facilities.
- I. For any special use requiring a supply of water that the applicant has demonstrated a source of water which is adequate for the proposed use in terms of quantity and reliability and in the case of human consumption, quantity, quality, and reliability.
Water is adequate using wells and Morgan County Quality Water.

This application was considered by the Planning Commission in a public hearing on September 12, 2022.

Our office received one letter of support from a neighboring landowner which is in your packet. Another neighboring landowner was present at the hearing who was not opposed to the expansion but had a question regarding the increased use of the dairy's well and the effects it would have on the water table and other livestock wells in the area. Chris Kraft, representing Kraft Family Dairy, LLC stated they have a court decree Plan of Augmentation and they have to replace the water for that well so there will not be any effect.

The Planning Commission recommended approval on a vote of 5 in favor and 0 opposed, 2 members were absent.

Kraft Family Dairies LLC are requesting an additional 5 years of vesting in addition for a total of 8 years. They plan to start construction of the dry cow pens as soon as the Amended Special Use Permit is issued. However, they are requesting the additional 8 years to commence construction of the new parlor and free stall barns depending on the dairy market conditions.

Commissioner Westhoff asked Ms. Hay if the applicant would have to renew the application yearly. She stated they did not.

At this time, Chairman Becker asked the applicant if there is anything they would like to add to the application, with Tim Naylor of Greeley represented the Kraft Family and the Dairy and presented background on the current operations, as well as the proposed additions. He explained the need for the proposed additional vesting time in order to take advantage of the dairy market. He further explained how they planned to protect the water and storm water on the property. He stated that Mr. Kraft and the dairy have an agreement to provide more water to either party if needed from Quality Water in the future. He further explained the nuisance management plan that would control pests, etc.

Commissioner Arndt asked the petitioner about the need for additional feed storage Mr. Naylor stated that the impact would be minimal.

Commissioner Arndt asked about the proposed anaerobic digester. Mr. Kraft of Fort Morgan stated that the anaerobic digester would minimize the smell of the additional cattle. He also explained that eventually there will be a nutrient recovery system that would help to minimize manure accumulation in the future.

Commissioner Westhoff asked if the digester would help to offset the additional water that would be needed for the increased cattle. Mr. Kraft explained that they have been working on the lagoons since 2015 and that the capacity would be met for the proposed additional cattle.

Commissioner Arndt asked about the vesting years needed. Mr. Kraft stated that the cattle market in Colorado is currently full and explained the process of how they would need to make use of it.

At this time, Chairman Becker asked if there was anyone in the audience present or online who wished to make public comment in opposition or in favor of the application, noting no public comment and closed the public comment portion at this time.

At this time, Chairman Becker moved into discussion and decision.

14 COMMISSIONERS PROCEEDINGS

Commissioner Arndt stated that he believed the approval would need to be in two resolutions, with Mr. Naylor stating that is how he has seen it done in the past.

Commissioner Arndt made a motion to approve the request for an Amended Use by Special Review Permit to expand the permitted Quail Ridge Dairy confinement operations from 9,875 Animal Units to 15,000 Animal Units as presented in the file. Commissioner Westhoff Seconded. The motion passed 3-0.

Commissioner Arndt moved to grant the request for the three year vesting of rights with the additional five years as requested for the total of 8 years of vesting of rights. Seconded by Westhoff. The motion passed 3-0.

Being no further business the meeting was then adjourned at 10:55 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified October 18, 2022)

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

s/Jon J. Becker
Jon J. Becker, Chairman

s/Gordon H. Westhoff
Gordon Westhoff, Commissioner

s/Mark A. Arndt
Mark A. Arndt, Commissioner

(SEAL)
ATTEST:

s/ Kevin Strauch
Kevin Strauch