

# COMMISSIONERS PROCEEDINGS 1

SPECIAL MEETING  
BOARD OF COUNTY COMMISSIONERS  
Minutes of Meeting  
May 28, 2025

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/89427062901> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 894 2706 2901

The Board of Morgan County Commissioners met Wednesday, May 28th, 2025 at 9:00 a.m. with Chairman Jon Becker, Commissioner Tim Malone and Commissioner Kelvin Bernhardt present. Chairman Becker asked Morgan County Sheriff, Dave Martin to lead the meeting in the Pledge of Allegiance.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of approval – Resolution 2025 BCC 23, A Resolution granting a four-lot minor subdivision, known as Greener Minor Subdivision

MORGAN COUNTY, COLORADO  
BOARD OF COUNTY COMMISSIONERS

RESOLUTION 2025 BCC 23

A RESOLUTION GRANTING A FOUR-LOT MINOR SUBDIVISION, KNOWN AS GREENER MINOR SUBDIVISION, LOCATED IN THE SE¼ OF SECTION 11, TOWNSHIP 2 NORTH, RANGE 60 WEST OF THE 6TH OF P.M., MORGAN COUNTY, COLORADO

WHEREAS, Buck Creek LandCO, LLC (the “Owner”) owns property located in the SE¼ of Section 11, Township 2 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado, (the “Property”);

WHEREAS, Jay Greener (the “Applicant”) on behalf of the Owner applied for a four-lot minor subdivision pursuant to the County’s Subdivision Regulations (“Application”);

WHEREAS, on April 28, 2025, the Morgan County Planning Commission held a duly noticed public hearing on the Application;

WHEREAS, during the public hearing, the Planning Commission received testimony and evidence from the Applicants, Morgan County staff, and the public and recommended approval;

WHEREAS, on May 6, 2025, the Board of County Commissioners (“Board”) held a duly noticed public hearing on the Application;

WHEREAS, during the public hearing, the Board received testimony and evidence from the Applicants, Morgan County staff, and the public; and

WHEREAS, the Board desires to approve the Application.

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

1. FINDINGS OF FACT

- The Board, having reviewed the application, all information provided and testimony heard, finds that:
- A. The application documents are complete and represent how the subdivision will be laid out including infrastructure, easements and access. A shared access acknowledgment has been signed and recorded in the records of the Morgan County Clerk and Recorder for the shared driveway off of County Road K.
  - B. The subdivision is in conformance with the Morgan County Comprehensive Plan and there is access to established public infrastructure.
  - C. The subdivision is compatible with surrounding land uses.

2. GENERAL PROVISIONS

- A. Any past, present, or future drainage problems on this site are the responsibility of the landowner and their successors and not that of Morgan County.
- B. Morgan County is not responsible for the quantity or quality of water supplied to this

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subdivision.

### 3. APPROVAL

The Board hereby approves the Greener Minor Subdivision, located in the SE¼ of Section 11, Township 2 North, Range 60 West of the 6<sup>th</sup> P.M., Morgan County, Colorado.

DATED this 28th day of May, 2025.

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

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

s/Timothy A. Malone  
Timothy A. Malone, Commissioner

s/Kelvin S. Bernhardt  
Kelvin S. Bernhardt, Commissioner

(SEAL)

**ATTEST:**

s/ Kevin Strauch  
Kevin Strauch

Nicole Hay, Morgan County Planning and Zoning Administrator presented to the Board for approval Resolution 2025 BCC 23, a Resolution granting a four-lot minor subdivision, known as Greener Minor Subdivision.

Commissioner Bernhardt made a motion to approve Resolution 2025 BCC 23 a Resolution granting a four-lot minor subdivision, known as Greener Minor Subdivision, as presented by Morgan County Planning and Zoning Administrator. Commissioner Malone seconded the motion. At this time, the motion carried 3-0.

**Consideration of approval – Road Use Agreement, South Platte Solar, LLC**

Nicole Hay, Morgan County Planning and Zoning Administrator presented to the Board for approval a Road Use Agreement, South Platte Solar, LLC. She noted that the Planning and Zoning department has received all necessary prerequisites for this agreement and that everything is in order.

Commissioner Malone made a motion to approve a Road Use Agreement, South Platte Solar, LLC, as presented by Morgan County Planning and Zoning Administrator. Commissioner Bernhardt seconded the motion. At this time, the motion carried 3-0.

Being no further business the meeting was adjourned at 9:05 a.m.

Respectfully Submitted,

Kevin Strauch  
Clerk to the Board

(Minutes ratified June 17, 2025)

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

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

s/Timothy A. Malone  
Timothy A. Malone, Commissioner

s/Kelvin S. Bernhardt  
Kelvin S. Bernhardt, Commissioner

(SEAL)

**ATTEST:**

s/ Kevin Strauch  
Kevin Strauch

## **PUBLIC HEARING**

Chairman Becker called the hearing to order at 9:08 a.m. on Wednesday, May 28, 2025 in the Assembly Room of the Morgan County Administration Building.

Chairman Jon Becker, Commissioner Kelvin Bernhardt, and Commissioner Tim Malone were present. Planning Administrator Nicole Hay, Planning Technician Jenafer Santos and IT Director Karol Kopetzky were also present.

### **NEW BUSINESS: Amended Plat**

**Applicant:** Josh Norell

**Landowner:** Ascend Equity LLC

**Legal Description:** Lot 2 of the Quiet Acres Subdivision in the SE¼SW¼ of Section 27, Township 4 North, Range 58 West of the 6<sup>th</sup> P.M., Morgan County, Colorado, otherwise known as 15445 Hwy 144, Fort Morgan, CO 80701.

**Request:** Amended Plat to relocate the existing road easement on Lot 2, of the Quiet Acres Subdivision.

### **APPLICATION OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

#### **APPLICANT: Josh Norell LANDOWNER: Ascend Equity LLC**

Josh Norell, as applicant, has submitted an application for an Amended Plat, related to Lots 1 and 2 of the Quiet Acres Subdivision. The purpose of the application is to vacate the 40' road easement as shown in the original plat of the Quiet Acres Subdivision over Lot 2 which serves Lot 1, decrease the size from 40 feet down to 20 feet, and relocate it to the west. This application does not request the change of the easement over Lot 1.

Lot 1 will continue to be able to use the relocated access easement over Lot 2. CDOT has issued a revised access permit to move the driveway access off of Highway 144.

The property is zoned Estate Residential and is in the Morgan Fire District.

Notice of the public hearing was mailed to the landowner of Lot 1 to the address listed on the County's Assessor site. Due to the letter not being returned and lack of response, Staff is assuming the landowner of Lot 1 consents to the smaller size and relocation of the easement.

In reviewing an application for an amended plat to vacate a right-of-way in a previously approved subdivision, the Board of County Commissioners shall apply the criteria as listed from Section 10-200(G)(5) of the Morgan County Subdivision Regulations.

- (a) The plat vacation complies with these Subdivision Regulations and the original conditions of approval of the recorded plat.
- (b) No nonconforming lots are created, and in the case of existing nonconforming lots, the nonconformity is not increased.  
*The lots are currently nonconforming and the nonconformity is not increasing.*
- (c) The approval will not adversely affect the public health, safety, and welfare.

- (d) No land is left, by reason of this vacation, without an established public right-of-way or private access easement connecting the land with an established public road.  
*Lots 1 and 2 access is still off of Highway 144. Lot 1 will use the smaller and relocated easement over Lot 2.*
- (e) A dedication or intent to dedicate has been established, where necessary.

Nicole Hay  
Morgan County Planning Administrator

**DISCUSSION:**

**Commissioner Bernhardt** asked if all parties involved are in approval?

**Nicole Hay** confirmed the owners of the two lots are.

At this time, **Chairman Becker** asked the applicant if there is anything they would like to add to the application. **Josh Norell with Ascend Equity LLC** presented this application to the Board of County Commissioners.

**PUBLIC COMMENT OPEN: None**

**PUBLIC COMMENT CLOSED:**

**BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Commissioner Bernhardt** motioned to approve the Amended Plat to reduce and relocate the existing road easement pm Lot 2 of the Quiet Acres Subdivision.

**Commissioner Malone** seconded.

**Motion carries, 3-0.**

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**NEW BUSINESS: Regulation Amendments regarding Variances**

**REGULATION AMENDMENT OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

**AMENDMENTS  
MORGAN COUNTY ZONING REGULATIONS**

Included with this summary are redlines of the proposed changes as outlined below.

Overview of proposed changes:

- A. Definitions. Addition of a definition for bulk requirements. This will clarify certain sections of the zoning regulations
- B. Powers and Duties of the Board of Adjustment. The proposed amendment will reference the new bulk requirement definition and remove variances regarding maximum number of residences permitted per parcel. The removal is proposed because it contradicts the special use regulations for maximum number of residences.

Nicole Hay  
Morgan County Planning Director

**DISCUSSION: None**

**PUBLIC COMMENT OPEN: None**  
**PUBLIC COMMENT CLOSED:**

**BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Commissioner Malone** motioned to approve the Zoning amendments related to the Variances as presented.

**Commissioner Bernhardt** seconded.

**Motion carries, 3-0.**

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**NEW BUSINESS: Regulation Amendments regarding Wireless Service Facilities**

**REGULATION AMENDMENT OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

**AMENDMENTS**  
**MORGAN COUNTY ZONING REGULATIONS**

Included with this summary are redlines of the proposed changes as outlined below.

Wireless Service Facilities. Removal of Section 4-715(D) that states wireless service facilities are considered a permitted use in all zoning districts and adding the permitted use to the use table. This was accidentally missed last year when the use table was created.

Nicole Hay  
Morgan County Planning Director

**DISCUSSION: None**

**PUBLIC COMMENT OPEN: None**  
**PUBLIC COMMENT CLOSED:**

**BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Commissioner Bernhardt** motioned to approve the Zoning amendments related to Wireless Service Facilities.

**Commissioner Bernhardt** seconded.

**Motion carries, 3-0.**

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**NEW BUSINESS: Regulation Amendments regarding Solar Collector Facilities, Battery Energy Storage System Facilities, and Wind Energy Facilities**

**REGULATION AMENDMENT OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

**AMENDMENTS  
MORGAN COUNTY ZONING REGULATIONS**

The Board of County Commissioners held a work session on April 8, 2025. The Planning Commission held a work session/stakeholder meeting on April 21, 2025 and a public hearing on May 12, 2025 regarding Solar, Battery Energy Storage System (BESS) and Wind Regulations. Recommendations were made by the Planning Commission and industry representatives and those revisions to the initial draft are highlighted.

Comments from industry representatives are included in the packet

**1. Solar Collector Facilities:**

4-820 Submittal Requirements.

Subsection (C) - Narrative and Impact Analysis

- a. A new subsection (5) requires a description of the defensible space proposed around the perimeter of the solar collector facility. Staff have received questions regarding whether the County requires defensible fence. The Regulations currently do not expressly require the establishment of defensible space. This amendment would require information regarding defensible space at the submittal stage but there is no current proposal that defensible space is part of the solar collector facility standards and therefore, required. Planning commission did not want to require a defensible space around the perimeter of a solar collector facility.
- b. A new subsection (6) requires photos and a description of the type of fencing that will be used on the perimeter of the facility. The issue of what might constitute an acceptable fence from an aesthetic perspective has been expressed by members of the public. No standards are proposed to be adopted, only information provided as part of the submittal.
- c. Subsection (E). Staff would like to clarify that a preliminary decommissioning plan can be submitted at the time of the land use permit application. Change to Sec. 4-835 (below) would require a final decommissioning plan prior to submission of any construction permit. Due to the fact the equipment proposed for the permit is not finalized, preliminary decommissioning plans have been submitted as a part of the

applications and final plans with the construction application. This change would conform to the County's current practice.

4-825 Solar Collector Standards.

- a. Subsection (D)(7) has additional language suggested by the industry. This could possibly clarify the measurement of the maximum height of the solar panels.
- b. A new subsection (11)(g) would move the road agreement requirement from the submittal requirements to the standards. Additional language is proposed in the road agreement to allow the Board the option to delay the required pre-construction baseline survey to prior to construction instead of prior to the road agreement. If delayed, no construction permit would be issued until the survey is submitted and approved by Planning and Public Works Departments.

4-835 Decommissioning Requirements for Solar.

- a. Subsection (A)(1) requires the final decommission plan to be submitted as a part of the submission of any construction permit application.
- b. Subsection (A)(2) and (3) amends the timeframe for the initiation and completion of decommissioning. Several industry representatives said the original 270 days was too short to complete the decommissioning process.
- c. Subsection (A)(5) adds language requiring updated decommissioning plans every 3 years. With the possibility of no changes within 3 years, Staff is recommending notification to the County Planning Department if there are no updates, however an updated plan is required every 6 years. New or additional surety is required with any updated plans.
1. Amended language in subsection (C) would eliminate the subtraction of the salvage value from the bond. The concern is that if the decommissioning bond has to be used, the County needs to be able to access sufficient monetary resources to cover the entire costs of decommissioning at the beginning of process, not recoup salvage value during and after the decommissioning process.

**2. Battery Energy Storage System (BESS) Facility:**

The word "facility" will be added to all "BESS" references as the context requires

4-850 Definitions.

- a. Addition of a BESS container definition.

4-855 Submittal Requirements.

- a. Like the proposed revisions in the solar collector facility regulations, subsection (8) allows for the submission of a preliminary decommissioning plan.
- c. As the County has reviewed and approved more BESS facilities, it has developed certain standards in the conditions of approval. Changes to subsection (9)(d) (fire mitigation) would insert this standard into the regulations as a submittal requirement. Subsection (9)(f) (incident reporting) references Section 4-860(F) as a standard requirement.

#### 4-860 BESS Standards.

- a. Specifying a 6-foot-tall chain link fence with 1 foot barbed wire is being added into subsection (B).
- b. Like the submittal requirements above, the County has consistently required a defensible space of at least 200 feet to surround a BESS facility and the addition of subsection (D) would include this in the standards. Planning Commission recommended changing the defensible space required from 200 feet to 100 feet.
- c. New subsection (E) clarifies the requirement for a road agreement for BESS facilities.
- d. New subsection 4-860(F) would add incident reporting into the BESS standards. The term BESS container is proposed to be used. Incident notifications are to be posted on the County's website and the addition of 4 minor incidents within the BESS facility within 1 year were recommended by the Planning Commission.

#### 4-870 Decommissioning Requirements for BESS.

The same amendments are proposed as summarized in the solar collector facility decommissioning requirements.

### **3. Wind Energy Facility (WEF):**

#### 4-895 Submittal Requirements.

The same amendments regarding clarification of accepting a preliminary decommissioning plan are proposed as summarized in the solar collector facility and BESS sections above.

#### 4-900 WEF Standards.

- a. In subsection (B), Planning Commission agreed with the expanded setbacks. One of the industry representatives suggested 500 feet instead of the 420 feet for a setback from public road or highway with ADT of 7,000 or more, this was also agreed upon by the Planning Commission.



- b. Similar revisions proposed for the road agreement associated with solar collector facilities is proposed for WEF – moving it from a submittal requirement and allowing for the delay in the submission of a survey.

#### 4-910 Decommissioning Requirements for WEF.

The same amendments proposed as summarized in the solar collector facility and BESS facility decommissioning requirements are proposed for the WEF.

Nicole Hay  
Morgan County Planning Director

#### **DISCUSSION:**

**Chairman Becker** believes there should be a vegetation plan that is submitted. He is more worried about a defensible space where residences are concerned.

**Attorney Kathryn Sellars** clarified that the decommissioning must be initiated within 60 days of written notice to the County.

**Chairman Becker** asked if the Fire Jurisdictions asked about the proposed fire mitigation amendments?

**Nicole Hay** stated it only went through the Planning Commission.

**Commissioner Bernhardt** asked what happens when these projects don't fall within a fire protection district?

**Nicole Hay** stated if they are not included, we will include both of the fire districts that are close to the project.

**Commissioner Bernhardt** asked if the County can mandate them to be a part of a fire district?

**Attorney Kathryn Sellars** stated that inclusion into a special district is a voluntary act by both the property owner and the special district.

**Commissioner Bernhardt** noted that if incident reports are posted to the website, updates need to also be posted to the website.

**Chairman Becker** asked if the industry had any issues with the incident reporting additions?

**Nicole Hay** said the comments that were received encompass that section.

**Chairman Becker** noted that he would be okay with having all setbacks from Public Roads for a Wind Energy Facility to be kept how our regulations currently have them.

**Commissioner Becker** asked if they can build an inhabited structure near a Wind Energy Facility within the 2000 feet?

**Attorney Kathryn Sellars** said those regulations do not mirror, so they have the freedom to build where they wish on their property while meeting the zoning setbacks.

**Commissioner Becker** noted for the record that he did have a C.E.O. of a Solar Company leave him a voicemail with his concerns. Commissioner Becker did not speak with him.

#### **PUBLIC COMMENT OPEN:**

**Jeremiah Garrick, Community Engagement & Strategy Manager with COSSA**, stated they proposed additional language that would keep the intent of the County but also address the concerns with the language. Their main concern is the public hearing portion for incidents. He also noted that 100 feet is standard in the fire code vegetation for BESS. It states there is a 3-foot defensible space with 100 feet of vegetation management.

**Hans Rodvik, Xcel Energy**, stated the County should consider how difficult their regulations could potentially be for future projects. The Solar & BESS projects will bring in 100's of jobs for the County. The more these projects come into the County, the more tax benefits the County will receive.

**Ash Moore, Nextera Energy**, stated the Board should consult with CPW in regards to the fences with the barbed wire fence. In terms of the WSF setbacks, he is in agreeance with the 500 feet setback that is proposed. He also asked the Board to reconsider the shutdown of the entire facility if there are any incidents. That would not be a financeable project.

**PUBLIC COMMENT CLOSED:**

**BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Commissioner Malone** motioned to continue the public hearing with public comment to the next Board of County Commissioners hearing on June 17, 2025.

**Commissioner Bernhardt** seconded.

**Motion carries, 3-0.**

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**NEW BUSINESS: Regulation Amendments regarding Planned Developments**

**REGULATION AMENDMENT OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

**AMENDMENTS  
MORGAN COUNTY ZONING REGULATIONS**

The Board of County Commissions held work sessions on April 8 and April 22, 2025. The Planning Commission held a work session on April 28, 2025 and a public hearing on May 12, 2025 regarding Planned Development procedures, standards and definitions and other miscellaneous changes. The recommended revisions to the initial draft are highlighted.

*Please note there are minor typographical changes in these documents that are redlined for reference.*

**Planned Development Procedural Amendments**

1. Sec. 2-287. This section clarifies that there are two types of planned developments. A Planned Development Zone District which completely supplants base zoning and a Planned Development Overlay Zone District which relies on base zoning with modifications. It appears that it is the intent of the current regulations to allow these two types of PDs but the provisions are not as clear as they could be.
2. Sec. 2-287(D). This section addresses eligibility. The County has flexibility on this provision. Currently, the regulations require ½ acre to rezone to planned development. The Planning Commission recommended to keep that threshold and there is a recommendation that for development which will be primarily residential that at least existing or planned lots are being proposed. This would prevent minor subdivisions from rezoning to PD or PDO.
3. Sec. 2-287(E) and (F). These proposed changes would move the planned development process to the current rezoning procedure in Zoning Regulations because it is a special rezoning process. Sec. 2-287(E) addresses the additional submittal requirements and

designated referral agencies are included in Sec. 2-287(F). There are no referrals on a typical rezone application, only landowner notifications. If subdivision is submitted at the same time, the referral agencies for subdivision might overlap with this list or alternatively, any additional referral agencies will be included in the subdivision referral. The Planning Commission recommended the inclusion of the maintenance plan in Sec. 2-287(E)(4)(h). Staff has suggested a language change (highlighted in blue-page 6). Please note that the PUD Act has special enforcement provisions for maintenance plans. See below, item #6 under PD Standards. The Board discussed whether the distance for referrals for municipalities and counties (2 miles) was appropriate. State law requires major subdivisions to be referred to municipalities and counties within 2 miles of the subdivision. The 2-mile distance was used for consistency, but the distance can be greater or smaller.

4. Sec. 2-287(G). The criteria have been significantly revised for consideration. Planned developments are intended to be an area the local government can exercise more discretion in what it would like to approve/require as compared to rezoning to an established base district. PDs are not subject to the traditional rezoning criteria which is intended to avoid spot zoning. The Planning Commission considered whether Sec. 2-287(G)(4) should remain in the proposed changes or be amended. The recommendation was to keep subsection (4)(a) and remove (b) thru (d). The portion highlighted in yellow on pages 10 and 11 show that change with subsection (a) language being added into subsection (4).
5. Sec. 2-287(I). The regulations currently describe two types of amendments of a planned development – amendments and modifications. Amendments are characterized as major amendments in the proposed changes. Modifications are characterized as minor amendments in the proposed changes. The distinction between the two is unchanged – see subsection 2. A minor amendment would only go to the Board. A major amendment goes through the same process as the original rezoning with different criteria. See criteria for amendments in subsection 5.

#### **Planned Development Standards Amendments**

These standards are proposed to be heavily modified. Several provisions, for example, the landscaping requirements are proposed to be deleted in part because it is not clear whether this is something that the County wants to regulate.

1. Sec. 3-530(B) identifies what can be included as open space. Staff has recommended adding in parks with improvements.
2. In Sec. 3-540 (A), Staff has suggested language regarding pedestrian circulation and its requirement. The Planning Commission did not want to requires pedestrian circulation.
3. Drainage and Utilities in Sec. 3-560 includes suggestions from the Planning Commission and Staff clarifying drainage plan requirements and to include other established ditches and canals regarding the transportation of pollution and sediments.

4. Sec. 3-570 includes Staff suggested revisions regarding failure to maintain areas that are not maintained by public entities.
5. Sec. 3-580. This section addresses requirements for improvement agreements.
6. Sec. 3-590. For clarity, enforcement provisions have been added to make it clear that Zoning Regulations established through the PD or PDO plan are regulations the County enforces, unlike private covenants. This is not a deviation from the law, just a statement to make the County's authority clear to the public.

### **Miscellaneous Changes**

Addition of new definitions for “developer” and “drainage plan”. The definition of drainage plan is currently in the Subdivision Regulations and needs to be added to the Zoning Regulations. There are also revisions to current definitions. The definition of planned development is taken from state statute. There are other minor changes to include “base” when describing zone districts.

Sec. 3-705 Drainage Requirements: The proposed changes are regarding detention storage which will be less stringent than the current regulations and essentially match the proposed language in the Subdivision Regulations for consistency. There is also additional language to clarify criteria for exemptions from on-site detention storage, technical design criteria and erosion protection. Staff have also included additional language determining who can grant the exemption.

Nicole Hay

Morgan County Planning Director

### **DISCUSSION:**

**Attorney Kathryn Sellars** described in depth what these regulation amendments entail.

**Nicole Hay** described the proposed drainage requirements.

**Chairman Becker** asked if the exemption from detention requirements would be for all buildings? Including Ag buildings?

**Nicole Hay** confirmed it is. If there is a question, I will reach out to our Consultant to help me determine whether or not these drainage requirements can be exempted or not. They would still have to complete a drainage study, but it doesn't mean there needs to be a detention pond.

### **PUBLIC COMMENT OPEN:**

**Eric Wernsman, Wernsman Engineering and Land Development**, asked that the Board be specific as to what would be required on an improvement agreement. He believes it is not appropriate for the County to require bonding and surety for that. An engineer would sign off on everything if something were to happen.

### **PUBLIC COMMENT CLOSED:**

### **BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Attorney Kathryn Sellars** noted that it is standard for local governments to require bonding for public improvements and it's intended to ensure they get done. An engineer signoff does not guarantee that they will be fully constructed.

**Commissioner Bernhardt** motioned to approve the Zoning amendments related to Planned Developments and miscellaneous changes to definitions, terminology and drainage.

**Commissioner Malone** seconded.  
**Motion carries, 3-0.**

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## **NEW BUSINESS: Regulation Amendments regarding Subdivisions**

### **REGULATION AMENDMENT OVERVIEW:**

Planning Administrator Nicole Hay read her file summary as follows:

#### **AMENDMENTS MORGAN COUNTY SUBDIVISION REGULATIONS**

The Board of County Commissions held work sessions on April 8 and April 22, 2025. The Planning Commission held a work session on April 28, 2025 and a public hearing on May 12, 2025 regarding Major Subdivision procedures and standards, Minor Subdivisions, and definitions and other miscellaneous changes. The recommended revisions to the initial draft are highlighted.

*Please note there are minor typographical changes in these documents that are redlined for reference.*

#### **Major Subdivision Procedural Amendments**

There are a few changes in the major subdivision procedures. These procedures were substantially revised in 2019.

6. Sec. 6-110. The deletion of the fees provision is being moved to another section – see the Miscellaneous Changes document - to cover all applications.
7. Sec. 6-120(B)(7)(c) – Preliminary Utility Plan. Language regarding central sewage treatment facility would be removed as recommended by the Planning Commission.
8. New subsection Sec. 6-120(B)(7)(g) is added to match the standard preferred by the Planning Commission regarding documentation from fire districts.
9. Referral agencies would be removed from the definitions and added in new subsection 6-140(B).
10. Sec. 6-160(B)(6)(b). Final Utility Plans - the addition of wastewater systems.
11. New subsection 6-170(I) to add the requirement of showing the location of existing buildings and structures subject to setback restrictions on plats.
12. New subsection 6-170(K)(9) – a note to be added on all plats regarding shared access.

#### **Major Subdivision Standards Amendments**

The major subdivision standards, like the PD standards, have been significantly rewritten. Chapters 3, 4, and 5 of the Subdivision Regulations have been combined into one new Chapter 4

1. Revised language in Sec. 4-110(D)(3) is proposed by Staff after the discussion by the Planning Commission regarding desirable settings for construction.

2. Sec. 4-110(E)(2) now references the fees section.
3. Sec. 4-120(A) – Access and Roads, pg 3. With the recent requests from CDOT and the possibility of the state highway access code overreaching, Staff has recommended the removal of the state highway code reference.
4. Sec. 4-120(C) – Access and Roads. Planning Commission agreed that shared driveways are not permitted for major subdivisions.
5. Sec. 4-120(E) – Staff thought the current language was not adequate to describe all of the factors when looking at a subdivision, therefore has a suggested revision.
6. Sec. 4-120(I) – Access and Roads, pg. 4. The Planning Commission recommended that the County should be authorized to require a maintenance plan for private roads in a major subdivision.
7. Sec. 4-130(A) and (B) - Removal of language regarding Lot specifics.
8. The revisions suggested in Sec. 4-130(D) and (E) by the Planning Commission may cause additional issues such as preventing corner lots. This issue is really an aesthetic planning issue where the frontage of lots are all from a common street.
9. Sec. 4-140(C) – Open Space, pg. 6. Planning Commission wanted to keep the required minimum of 5% open space for subdivisions with 20 or more lots. Currently open space is preferred on the subdivision boundary entrance and road right-of-ways. The Planning Commission recommended the removal of the 2.5% max for natural open space and keeping (1) thru (3) if the applicant wants landscaped open space. Staff has also suggested a revision to pull in language from the PD standards to be consistent. The dedication of open space or parks to the County has been removed in Sec. 4-240.
10. Sec. 4-160 – Storm Drainage, pg. 6-10. This section is much broader than just storm drainage. The provisions have been revised based upon recommendations from the County's drainage consultant. There is also additional language to clarify criteria for exemptions from on-site detention storage, technical design criteria and erosion protection. Staff have also included additional language determining who can grant the exemption.
11. Sec. 4-180 – Water Service, pg. 10. This is currently in Chapter 5. These provisions have been revised to address three possibilities for water service:
  - Subsection A describes the situation where water and the internal water distribution system is owned and operated by a public water utility.

- Subsection B describes the situation where the water facilities and the water source will be privately owned and operated. Plans must be approved by CDPHE prior to the submission of a final plat.
  - Subsection C describes the situation where the water facilities will be privately owned and operated but the water source is from a public water utility.
  - Subsection D incorporates a state law requirement for subdivisions which has 50 or more lots.
  - Subsection E incorporates a state law requirement when a subdivision is approved despite the State Engineer's opinion that material injury would occur. This was originally located in the definition for "Referral Agencies."
12. Sec. 4-190 – Wastewater Service, pg. 12. This is currently in Chapter 5. Like the water service, these provisions have been revised and updated to provide two possibilities for service which are in the current regulations: 1) connection to a public sanitation utility, and 2) OWTS. The planning Commission does not want a private community wastewater facility to be an option.
  13. Sec. 4-210, Fire Protection, pg. 14. Planning Commission preferred the alternative language relying on the fire district to provide any requirements.
  14. Sec. 4-230, Public Dedications, pg. 15. This section has been pared down to address only those properties which would be dedicated to the County or other entities. The dedications for various public facilities (non-school) are proposed to be removed.
  15. Sec. 4-240, Public Improvements. This section is currently in Chapter 3. It has been added here and revised. The provisions regarding improvements agreements were expanded and mirror the provisions in the PD standards.

#### **Minor Subdivisions Amendments**

1. Sec. 8-130(D)(9). The County used to have a prohibition of resubdivisions for a period of 10 years. The provision was removed in 2014. The Planning Commission recommended bringing the 10 years back to prevent the circumvention of the major subdivision process by repeatedly using the minor subdivision process.
2. Sec. 8-130(E) – Special site conditions. Removed "swampy land" since the County doesn't have any. "Geologic hazards" was also removed, there could be subsidence, or the "sinking" of ground due to moisture content changes, groundwater fluctuations, etc. and expansive soils. Those types of hazards can typically be mitigated with a properly engineered foundation, but would not necessarily make developing a site impossible.
3. Planning Commission considered the prohibition in Sec. 8-150(C) and recommended its removal.

4. Sec. 8-160. The ability to drill successful wells may become more unlikely in the future. Currently, the State Engineer's Office will not accept or review a new well permit application until after approval of a minor subdivision or exemption. The County has had at least one instance where a property owner was unable to drill a well after the exemption was approved. As such, the proposed language includes some parameters when wells are proposed as a water source. These are added for your consideration but not legally required.
5. Sec. 8-200. The procedure for minor subdivision has been revised for clarity but no proposed changes to the current process are being recommended, except for one. These changes are mostly to bring the provisions into line with the County's current practice for minor subdivisions and mirror the structure of the major subdivision process and other processes in the Zoning Regulations. The one change that is being recommended is that notice of the public hearings for the Planning Commission and the Board, if a referral is made due to a landowner objection, be posted on the website. This is currently happened but codifies it. Further, if a minor subdivision is initially referred to the Planning Commission and the Board by the Planning Administrator, the notice is posted on the website. See Sec. 8-210(D).

### **Miscellaneous Changes**

1. The addition of definitions for Applicant, Board, Developer, Major Storm Event, Minor Storm Event and On-Site Wastewater Treatment. A minor revision to the Drainage Plan definition and the removal of "Referral Agencies".
2. Sec. 1-155 – Fees provision addition

Nicole Hay  
Morgan County Planning Director

### **DISCUSSION:**

**Attorney Kathryn Sellars** described in depth what these regulation amendments entail.

**Chairman Becker** asked if covenants are different than the shared access agreement?

**Attorney Kathryn Sellars** stated the County does not currently require covenants or maintenance agreements. The shared access agreement leaves it open to the developer if they want to add covenants or not.

**Commissioner Malone** asked if they came to the County with an issue with covenants, is it a private issue?

**Attorney Kathryn Sellars** answered yes, it would be a private issue.

**Chairman Becker** believes if there is a shared access, there should be covenants required as well addressing who will be maintaining the access, how will it be paid for, etc.

**Attorney Kathryn Sellars** suggested that if the County is going to require covenants, it should be spelled out as to what the County would want to see in covenants.

**Chairman Becker** suggested changing the language regarding shared accesses being "not permitted" to "discouraged."

**Commissioner Becker** asked for an example of double frontage. Nicole Hay described what lot frontage would look like for a project that could have double frontage.



**Commissioner Becker** believes the 10-year prohibition for resubdividing. There should be a better way to have them not skirt the major subdivision process, but not infringe on the property owner's rights. The County should have a process for when this situation would happen.

**PUBLIC COMMENT OPEN:**

**Jay Greener, Buck Creek LandCO**, is in objection to the 10-year prohibition to resubdividing. One way or another, the landowner now or the landowner in the future will have a heavy cost to pay. He is wanting to do another minor subdivision and if these amendments go through, he will have to wait 10 years or pay the extra expenses to do a major subdivision.

**Chairman Becker** stated the County is looking into this so this doesn't keep happening, and his concerns are taken into account.

**Eric Wernsman, Wernsman Engineering & Land Development**, suggested limiting minor subdivisions to 2 per parcel. He agrees that the 10 year is egregious.

**PUBLIC COMMENT CLOSED:**

**BOARD OF COUNTY COMMISSIONER DISCUSSION:**

**Commissioner Malone** motioned to continue public hearing for the Subdivision amendments related to major and minor subdivisions and miscellaneous amendments to definitions and references to standards to the next Board of County Commissioners hearing on June 17, 2025.

**Commissioner Bernhardt** seconded.

**Motion carries, 3-0.**

Being no further business the meeting was then adjourned at 12:26 p.m.

Respectfully Submitted,  
Jenafer Santos  
Planning Technician

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

\_\_\_\_\_  
s/Jon J. Becker

Jon J. Becker, Chairman

\_\_\_\_\_  
s/Timothy A. Malone

Timothy A. Malone, Commissioner

\_\_\_\_\_  
s/Kelvin S. Bernhardt

Kelvin S. Bernhardt, Commissioner

(SEAL)

**ATTEST:**

\_\_\_\_\_ s/ Kevin Strauch

Kevin Strauch