

COMMISSIONERS PROCEEDINGS 1

MEETING OF THE BOARD OF COUNTY COMMISSIONERS

Minutes of Meeting
November 6th, 2024

As reflected in posted agenda:

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81060811988> 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 Tuesday November 5, 2024.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/81060811988> listen via phone, please dial: 1-312-626-6799, Meeting ID: 810 6081 1988

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/81060811988> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 810 6081 1988

The Board of Morgan County Commissioners met Tuesday, November 6, 2024 at 9:00 a.m. Chairman Mark Arndt, Commissioner Jon Becker, and Commissioner Gordon Westhoff attended. Chairman Arndt asked Chuck Miller to lead the meeting in the Pledge of Allegiance.

CITIZEN'S COMMENT

Chuck Miller spoke about how pleased he was with the election results. He noted the importance of county government and encouraged elected officials to work together for the betterment of the community.

CONSENT AGENDA

There was no consent agreed items.

UNFINISHED BUSINESS

There was no unfinished business.

GENERAL BUSINESS AND ADMINISTRATIVE ITEMS

Consideration of approval of Morgan County Offices Operational Hours on Christmas Eve, December 24, 2024.

Chairman Arndt presented to the board for approval that the county's hours on Christmas Eve, December 24th would be changed to be closed at noon. It was noted that this was for non-essential departments of the county.

Commissioner Westhoff made motion approve the closure on Christmas Eve at noon with Commissioner Becker seconding the motion. Motion carried 3-0.

COUNTY OFFICIAL AND DEPARTMENT HEAD REPORTS

Morgan County Clerk and Recorder Kevin Strauch noted that they have received approximately 13,500 ballots so far and that it is about 73% turnout. He thanked all of the election judges and staff for their incredibly hard work and noted that it couldn't be done without them.

Commissioners reviewed the calendar dated November 1, 2024 through November 12, 2024 with no changes.

The meeting was adjourned at 9:07 a.m.

Respectfully Submitted,

Kevin Strauch
Clerk to the Board

(Minutes ratified November 19, 2024)

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

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

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

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

(SEAL)

ATTEST:

s/ Kevin Strauch
Kevin Strauch

PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:07 a.m. on Wednesday, November 6th, 2024 in the Assembly Room of the Morgan County Administration Building.

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

NEW BUSINESS: Zoning and Subdivision Regulation Amendments

REGULATION AMENDMENTS OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

**AMENDMENTS
MORGAN COUNTY ZONING AND SUBDIVISION REGULATIONS**

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

Notice requirements – Zoning and Subdivision Amendments. The proposed amendments revise the requirements related methods of published and public notices for land use permits, variances, subdivisions, and text amendments to the Subdivision and Zoning Regulations. Currently, when required, notices have been published in Fort Morgan Times, as the general newspaper of circulation in the County. Recently, the Fort Morgan Times has changed their publishing schedule. The paper will be published (hard copy) once a week on Thursdays. The deadline to get notices published in the paper has also changed, moving it up a week, causing applications to be delayed. With this change, staff started looking more closely at the Zoning and Subdivision Regulations’ requirements for published notices for each type of application. Some of the notice requirements are statutory and require at least one publication in a newspaper of general circulation in the County.

Generally, the proposed amendments to the Zoning Regulations would eliminate published notices in the newspaper for special use permits and variances and only require posting to the website to match what is currently being done for conditional use permits.

The proposed amendments to the Subdivision Regulations would also make notices more consistent across the permit types. Amendments to Subdivision Regulations would now include published notice on the website which is consistent with amendments to the Zoning Regulations. Deviations from Subdivision Regulations, amended plats, major subdivisions, minor subdivisions, plat vacations and replats would require website notices only and eliminate publishing in the newspaper. Notices posted on properties would also be added for major and minor subdivisions.

On October 15, 2024, the Planning Commission voted 5 – 0, with 1 member absent, recommending approval of the amended zoning and subdivision regulations.

Nicole Hay
Morgan County Planning Director

PUBLIC COMMENT OPEN: None

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Becker moved to approve the zoning and subdivision amendments as presented.

Commissioner Westhoff seconded.

Motion carries, 3-0.

NEW BUSINESS: Amended Plat

Applicants: Chris and Becky Tate

Landowners: Brandy Living Revocable Trust

Legal Description: Lots 175 and 176 of the Jackson Lake RV Park Subdivision in the NW¼ of Section 27, Township 5 North, Range 60 West of the 6th P.M., Morgan County, Colorado, otherwise known as 176 Indian Way, Weldona, CO 80653.

Request: Amended Plat to combine Lots 175 and 176 of the Jackson Lake RV Park Subdivision.

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANTS: Chris and Becky Tate

LANDOWNER: Brandy Living Revocable Trust, Dated April 8, 2022

This application is to amend and combine Lots 175 and 176 in the Jackson Lake Recreational Vehicle Park Subdivision, a subdivision located in the W½ NW¼ of Section 27, Township 5 North, Range 60 West of the 6th P.M., Morgan County, Colorado, otherwise known as 176 Indian Way Weldona, CO 80653. The purpose of the application is to combine to two lots to allow enough room for the placement of a doublewide manufactured home.

The property is in the Jackson Lake Village zone, Wiggins fire district, and is currently vacant after the removal of a single wide mobile home.

In reviewing an application for an amended plat to vacate interior lot lines in a previously approved subdivision, the Board of County Commissioners shall apply the criteria as listed from Section 10-200(G)(1) of the Morgan County Subdivision Regulations.

- a) No additional lots will be created by the vacation.
- b) The vacation is keeping with the purpose and intent of these Subdivision Regulations.
- c) The vacation will not create a nonconforming setback for any existing buildings.
- d) The resultant lot will meet the requirements of the applicable zone district, including those requirements in Appendix B of the County's Zoning Regulations.
- e) The vacation will not adversely affect access, drainage or utility easements or rights-of-way serving the property or other properties in the area.
- f) The plat adequately renames or renumbers the combined lots to Lot 176A.
- g) The lot line vacation is consistent with the goals and policies of the County's Comprehensive Plan.

Nicole Hay
Morgan County Planning Administrator

DISCUSSION: Board of County Commissioners to applicant:

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. Chris and Becky Tate presented this application to the Board of County Commissioners.

PUBLIC COMMENT OPEN: None

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Becker asked the applicants if the old house has been moved off already?

Becky Tate answered yes, it is moved off.

Commissioner Westhoff moved to approve the amended plat to combine Lots 175 and 176 in the Jackson Lake RV Park Subdivision, with the applicants being named as Chris and Becky Tate with the following conditions as described by Planning Administrator Hay.

Commissioner Becker seconded.

Motion carries, 3-0.

NEW BUSINESS: Replat

Applicant and Landowner: Paul A. Legler

Legal Description: A parcel of land is located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, Township 4 North, Range 58 West of the 6th P.M. Morgan County, Colorado.

Request: Replat of the Legler Minor Subdivision to move the line to the east between Lots 1 and 2, move the east line of Lot 2 further east and to change the North property line of the flagpole extension to be the current length of the existing sprinkler.

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANT AND LANDOWNER:

Paul Legler

This application is to replat Lots 1 and 2 of Legler Minor Subdivision and a part of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 34, Township 4 North, Range 58 West of the 6th P.M., Morgan County, Colorado. Addressed as 15079 Co Rd S, Fort Morgan, Colorado 80701.

The property is zoned Agricultural Production Zone and is in the Fort Morgan Fire district. Currently, Lot 1 is farmed and Lot 2 has a single family residence.

The intent of this replat is to move the line between Lots 1 and 2 of Legler Minor Subdivision to the east to put the farmland on Lot 1 and the trees and improvements on Lot 2. The easterly line of Lot 2 is moving east to include all the trees and the land in the dry corner of the existing sprinkler. The north line of Lot 2 is also changing to remove the encroachment of the sprinkler and the east line of the original flagpole portion of Lot 2 is moving east to remove the pump control shed from the lot and add it to the farm.

After all of the changes, Lot 1 with 3.64 acres will become Lot 1A with 4.94 acres. Lot 2 with 4.78 acres will become Lot 2A with 3.69 acres.

In reviewing an application for a Replat to add property to a previously approved subdivision the Board of County Commissioners shall apply the following criteria as listed from Section 10-400(G) of the Morgan County Subdivision Regulations:

- (1) The replat complies with these standards and regulations and the original conditions of approval.
- (2) Nonconforming lots are not created, and in the case of nonconforming lots, the nonconformity is not increased.
- (3) The replat is in keeping with the purpose and intent of these Subdivision Regulations.
- (4) Legal and physical access is provided to all parcels by public rights-of-way or recorded easement, acceptable to the County in compliance with these Subdivision Regulations.
Access to both lots will continue to be from County Road S
- (5) The approval will not adversely affect the public health, safety, and welfare.

Nicole Hay
Morgan County Planning Administrator

DISCUSSION: Board of County Commissioners to applicant:

Chairman Arndt noted for the record there was a representation authorization letter from Mr. Legler.

Planning Administrator Nicole Hay further described the plat and reasons for the replat.

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. Chuck Miller presented this application to the Board of County Commissioners on behalf of the landowner. Chuck added that there is a leach field that is not currently on the property that will be corrected with this replat. There is also about 20 feet of open space that will be between the two properties. Chuck also described that there were Bijou district acres allocated, not by deeds, when this property was purchased which has now been corrected by both the Bijou and the assessor's office.

PUBLIC COMMENT OPEN: None

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Becker moved to approve the request for the replat of the Legler Minor Subdivision, landowner being Paul A. Legler, legal description being located in the S½SW¼ of Section 34, Township 4 North, Range 58 West of the 6th P.M. Morgan County, Colorado as described.

Commissioner Westhoff seconded.

Motion carries, 3-0.

NEW BUSINESS: Special Use

Applicants: Pivot Solar 71 LLC

Landowners: Terry L. Larsen Trust & Anna M. Larsen Trust

Legal Description: Located in the N½SW¼ of Section 33, Township 4 North, Range 56 West of the 6th PM, Morgan County, Colorado.

Request: Use by Special Review Permit to construct an approximately 1.8 MWac Solar Energy facility within approximately 14 acres of leased area

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANT: Pivot Solar 71 LLC, Bradley Thomas on behalf of Pivot Energy
LANDOWNER: Terry L. & Anna M. Larsen Trusts

This application is for a special use permit to allow for a solar collector facility with a maximum of power output of 1.8 MWac. The permitted area is located in part of the SW1/4 of Section 33, Township 4 North, Range 56 West of the 6th PM, Morgan County, Colorado. The permitted area is zoned Rural Residential and is located in the Brush Rural Fire Protection District.

The applicant, Pivot Solar 71 LLC, proposes a solar collector facility within an approximate 14 acre leased area. This project is immediately adjacent to existing solar projects developed by Pivot Energy and approved in Resolution 2021 BCC 19. The facility will consist of solar panels and inverters mounted on steel posts/beams, concrete pad mounted transformers, and other electrical equipment.

The haul route is I-76 east to County Road 24; County Road 24 south to County Road S; County Road S east to County Road 26; County Road 26 north to the project site access. Due to space constraints at the existing access to the solar facilities, a new access is proposed off of County Road 26. The site will be surrounded by the same game fence as the sites immediately adjacent, which is similar to the type of fence used by Colorado Department of Transportation.

During construction, onsite activity is expected to take place between the hours of 7 a.m. and 6 p.m., Monday through Friday and the crew will be made up of approximately 40 people. During operation, the facility will not be staffed so will have minimal traffic impacts once constructed.

In addition to the permit application, packets for the Board of County Commissioners hearing include referral responses from CDOT, Morgan Conservation District, Xcel Energy and the City of Brush. Xcel has no particular concern provided the developer/contractor continues to work with Xcel designers and Right of Way Division Agent. The City of Brush would like the same consideration for a 500 foot setback from the golf course property line as there is currently with residences to the south as well as landscaped screening.

Matt Harris with Harris Engineering Consultants, Inc., the County's consulting engineer, reviewed an updated drainage analysis and associated updated site plan. The updated information dated October 6 substantially addressed his initial review comments including identifying existing depression storage and modification with a berm to retain and infiltrate stormwater runoff, identification of onsite and offsite tributary areas for both storage ponds, and estimated infiltration rates and calculations to suggest compliance with the statutory requirement. After review of another response dated October 21, he had no further comments. To verify compliance with State criteria for stormwater infiltration and release rates, Mr. Harris does recommend that prior to construction, the applicant provide on-site percolation testing results that substantiate the estimated infiltration rate the Applicant has presented.

Planning Commission Meeting

This application was considered by the Planning Commission in a public hearing on October 15, 2024.

A neighboring landowner voiced their concerns about the increased traffic on County Road 26 and thought paving should be considered. The suggested setback increase and screening given by the City of Brush should also be considered.

The Planning Commission motioned for recommended approval including conditions 1-10 and to revisit the haul route. Suggestions of using Highway 34 or going north on County Road 24 to County Road T and then back south on County 26 were discussed.

The motion was approved on a vote of 4 in favor, 1 opposed, and 1 member was absent.

Since the Planning Commission hearing, staff spoke again with the Road & Bridge department regarding the haul route. The Road & Bridge department does not remember any issues with the proposed route when the first 3 phases were going in and does not have any apparent conflicts. Going south on County Road 24 to Highway 34 is a large safety concern because of the dangerous intersection. The other option discussed was taking County Road 24 north to County Road T; T east to County Road 26; then 26 south to the site.

In reviewing these applications, the Planning Commission and Board of County Commissioners are required to make a finding that the criteria for granting a Use by Special Review in Section 2-455 of the Morgan County Zoning Regulations have been satisfied. In addition, the County shall consider the application for a solar collector facility complies with the requirements of the Solar Collector Regulations in Zoning Regulations.

Section 2-455 Special Use Permit Criteria:

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

Chapter 2 – Plan Summary

2.II.A - Economic Development

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

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

2.E.1 Utilities

Goal: To ensure that adequate and financially secure public utilities are provided to all developments in Morgan County.

This project will not require the use of water, sewage or telecommunications onsite and the proposed connection to the utility grid will result in upgrades made to the areas existing electric distribution grid at Pivot’s sole cost.

Chapter 5 - Environment

5.IX

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

This project will not impact wetlands, floodplain or drainage patterns. This project will encourage use of renewable resources and production of electric power.

- (B) All the application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.

- (C) The Site Plan conforms to the district design standards of Section 2-470 and Section 4-820 of the Morgan County Zoning Regulations.
- (D) All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.
During construction and when necessary water trucks will be used for dust mitigation. Upon completion of the project the site will be reseeded with a native low-growth prairie grass mix. Landscaping maintenance will occur on a regular basis during the growing season.
- (E) The special use proposed has been made compatible with the surrounding uses and adequately buffered as determined by the County.
The proposed solar facility is compatible with the co-located solar facilities and has been designed to meet or exceed the 500' setback requirements to the residences to the south. To the north is Interstate 76 and to the east is Petteys Park Golf Course.
- (F) The special use poses only the minimum amount of risk to the public health, safety and welfare as set by federal, state or county regulation, whichever is the strictest.
The project will have minimal impacts on surrounding adjacent uses as the facility is unstaffed, generates no emissions, emits no light or discernible noise.
- (G) The special use proposed is not planned to be developed on a non-conforming parcel.
The parcel is conforming.
- (H) The applicant has adequately documented a public need for the project, all pertinent technical information, and adequate financial resources to implement it, and has paid all fees and review costs levied by the County for application processing and review.
*The energy generated from this project will be injected into Xcel Energy's existing electrical infrastructure and will provide cost savings to participating electrical ratepayers as part of Xcel Energy's Solar*Rewards Offsite program.*
- (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.
This project does not require a water supply.

The following conditions are recommended if the Special Use Permit is approved:

1. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, and stormwater permits.
2. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the solar collector facility and may include, but are not limited to, interconnection/crossing agreements, final drainage & erosion control plan, on-site percolation testing results that substantiate the estimated infiltration rate Pivot Solar 71 LLC presented in the letter dated October 21, 2024 to verify compliance with State criteria for stormwater infiltration and release rates, signed and sealed geotechnical report, decommissioning plan, operations and maintenance plan, Liability Insurance Certificate, final locations for any laydown yard, a copy of

the APEN issued by the Colorado Department of Public Health and Environment, Unanticipated Discovery plan, and glare analysis.

3. Pivot Solar 71 LLC will comply with proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when Pivot Solar 71 LLC commences decommissioning.
4. The solar collector facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
5. Prior the commencement of construction, Pivot Solar 71 LLC will enter into a road use agreement for the use of any public road during construction which shall include the following:
 - a. A map showing which County roads will be used during construction.
 - b. 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.
 - c. 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.
 - d. A requirement that the applicant return any County roads to their pre-construction baseline condition.
 - e. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Pivot Solar 71 LLC is not in default of any provision of the public improvements agreement. The County shall inspect the restored roads and Pivot Solar 71 LLC shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Pivot Solar 71 LLC shall be responsible for correcting or properly completing the restoration.
 - f. The residual fifteen percent (15%) retained by the County shall act as security for Pivot Solar 71 LLC's guarantee that the restoration remains free of defect during a two-year warranty period. Pivot Solar 71 LLC may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.
6. The project area shall be reclaimed and/or reseeded as soon as practicable but no later than six months after Pivot Solar 71 LLC, has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
7. Construction occurring within ¼ quarter mile of any residence shall not commence earlier than 7 a.m.

8. Pivot Solar 71 LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
9. Pivot Solar 71 LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.
10. Pivot Solar 71 LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Pivot Solar 71 LLC for costs and fees and payment will be due by Pivot Solar 71 LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.

Nicole Hay,
Morgan County Planning Administrator

DISCUSSION: Board of County Commissioners to applicant:

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. **Bradley Thomas representing Pivot Solar 71 LLC** presented this application to the Board of County Commissioners.

Commissioner Westhoff doesn't understand the safety concerns of the intersection of Hwy 34 and CR 24. He is more concerned with CR 24 to the north as it is a shorter width road. CR S isn't the greatest dirt road, so the drivers should be prompted to take the State Highway.

Planning Administrator Nicole Hay said from her understanding the haul route proposed is the same haul route that was used for the previous 3 phases and Road and Bridge didn't see an issue with using this route.

Commissioner Becker asked if they gave an estimate of how many trucks would be going though?

Planning Administrator Nicole Hay stated it would be about 10 trucks up to a 3-month period during construction. After construction they are looking at 4 vehicles with 4 quarterly visits.

Chairman Arndt asked if the applicants understand the request from the City of Brush regarding a 500-foot setback from the golf course.

Bradley Thomas said they understand the request, however if they did comply with this request it would take out 1/2 or 2/3 of the total area.

Chairman Arndt asked if the Planning Commission discussed this?

Planning Administrator Nicole Hay said they discussed it, however she left it up to the applicants to speak to the City of Brush regarding that and has not heard from either party.

PUBLIC COMMENT OPEN:

Chuck Miller, 26060 CR S, Brush CO stated he is neither in favor or opposed to this project. He has concerns about how the community is benefiting from the project. He does not believe these companies are vesting themselves within the communities as they should be. Since they will be a long term investor, he believes they should extend the pavement on CR 26 from where it ends at CR S to the interstate. If they were to go up CR S, it goes through residential areas and near school zones.

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Becker stated that the intersection at CR 24 is one of the most dangerous in Eastern Colorado. Trying to direct traffic down CR S is a nightmare. He believes the businesses coming into the county should have to pay for a portion of the roads to be paved or to help upkeep the roads. He is suggesting something similar to a cost share.

Commissioner Westhoff agrees with Commissioner Becker's statements, but believes CR T is a right corner for trucks to use. Pivot Energy should be using Hwy 34.

Commissioner Becker noted that even if we dictate haul routes, the trucks will find a path of least resistance.

Kyle Sundman with Pivot Energy stated they are more than happy to work with the County regarding the haul route. The truck traffic for a 10MW site will probably be less than 10 trucks. Pivot is committed to investing in the community. If the County would like investments to go to the roads instead, they are willing to look at options.

Commissioner Becker asked if solar energy is helping with energy costs?

Kyle Sundman stated that their previous project in the county, PS32 made substantial donations of the energy that was produced to low and moderate income residents here in Morgan County and other parts of Colorado.

Commissioner Becker stated that the residents, especially with Xcel, have experienced severe increases.

Kyle Sundman stated their product is not directly changing the monopoly utility.

Chairman Arndt asked the applicants for clarification regarding the amount of semi-trucks or other vehicles as listed in their traffic study.

Kyle Sundman stated the traffic study is intentionally conservative. Pickup trucks will be driving more frequently. The deliveries on semi-trucks is extremely limited.

Chairman Arndt mentioned that if subdivisions are going to be built in the County that are going to impact the dirt roads, there is a cost to that and they should be required to pave them. Solar isn't the only type of project where he would be in favor of that requirement.

Commissioner Westhoff asked how many panels were replaced with the hail storm in 2023?

Kyle Sundman stated he did not have a specific number.

Commissioner Becker stated that we have an obligation on this road to start mitigating the issues. It's hard to dictate a haul route. Paving a portion of that road is appropriate in his opinion.

Commissioner Westhoff is in agreement with Commissioner Becker, but doesn't believe this company should be responsible for paving the entire road. It should be a cost share to do ½ a mile.

Commissioner Becker stated that ⅓ or ½ is appropriate. Their traffic won't be substantial for this project, but it's about the amount of land that abuts the road.

Chairman Arndt stated there is a substantial cost to building roads up. Is it your intent to do 50% of the entire project?

Commissioner Becker said ⅓ of the total cost of the project seemed to be fair. It needs to be paid within a certain amount of years and the County would have to complete that project.

Chairman Arndt clarified that in 3 years the applicants would pay for ⅓ of the asphaltting of CR 26 for the ½ mile portion.

Chairman Arndt asked Road and Bridge Road Supervisor John Goodman what the cost of the pavement would be?

John Goodman estimated \$750,000 for just pavement with 6-inch overlay.

Commissioner Becker asked how much base work would have to be done?

John Goodman stated a lot. About 1 foot of material would have to be applied to the road for it to meet the height requirement to allow for drainage. In his professional opinion, you would have to do 4 inches of an SG grade and 2 inches of an SX grade material because of the agricultural traffic.

Commissioner Becker asked how much it would be for improving the road? Building the road with no pavement?

John Goodman was not able to give an estimate at this time without screening the material and the trucking with the miles from their location to the project. This would be a significant project for Morgan County.

Chairman Arndt shared that it is not fair for any applicant to have any open ended decisions. It is important for them to know what is being required of them.

Commissioner Westhoff asked if \$150,000 to cost share to build that road up and put some aggregate or Class 6 road base on it?

Commissioner Becker explained that \$170,000 is 23% of their frontage of the road. The County will then have an obligation to pave it within 5-7 years.

Kyle Sundman suggested that Pivot makes a contribution that is not tied to a specific formula. He offered a \$50,000 donation from Pivot to Morgan County to use as they see fit.

Chairman Arndt stated that if the County does not move forward with the construction and requests the \$170,000 before the expiration of the timeline, that requirement will go away.

Commissioner Westhoff moved to approve Pivot Solar 71 LLC's request for a Special Use Permit to construct an approximately 1.8 MWac Solar Energy facility with the following conditions by the Planning Commission, the addition of the percolation testing results to be submitted, and with the road improvement of \$170,000 within 5 years and if County doesn't initiate the project within 5 years, the road improvement requirement will be dropped.

Commissioner Becker seconded.

Motion carries, 3-0.

It was clarified for the record that when the County budgets and commences the road project, that is when the demand for the \$170,000 starts and can be paid over 5 years once it starts.

NEW BUSINESS: Special Use

Applicants: Roadrunner Energy Farm, LLC

Landowners: Gold Spur Genetics LLC, Bonnie Frazier, Bruce B. Bass Family LLLP, Michael L. Dixon Family LLLP, Mary Ellen Hellyer and Martha Colburn

Roadrunner Energy Farm, LLC, Solar Energy Facility;

Legal Description: A part of Sections 17, 19, 20 and 29-32, Township 3 North, Range 55 West and a part of Sections 5 and 6, Township 2 North, Range 55 West of the 6th PM, Morgan County, Colorado. A gen-tie line will also go through Section 24, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado, to a point of interconnection.

Roadrunner Energy Farm, LLC, BESS;

Legal Description: A part of Section 19, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado.

Request: Roadrunner Energy Farm, LLC has submitted a Special Use Permit Application to construct an up to 500 MWac Solar Energy Facility in conjunction with a 2,000 MWh Battery Energy Storage System (BESS).

APPLICATION OVERVIEW:

Planning Administrator Nicole Hay read her file summary as follows:

APPLICANT: Roadrunner Energy Farm, LLC

OWNERS: Gold Spur genetics, LLC, Bonnie Frazier, Bruce B. Bass Family LLLP, Michael L. Dixon Family LLLP, Mary Ellen Hellyer, and Martha Colburn

These applications are for special use permits for the activities described below. The applicant is requesting two special use permits: one for the solar collector facility and one for the battery energy storage system (BESS). The Board of County Commissioners will conduct one public hearing for two applications, but each application must be evaluated separately under the applicable criteria and will require separate action by motion.

Roadrunner Energy Farm

The applicant, Roadrunner Energy Farm, LLC, proposes a solar collector facility within a 2,886-acre project area. The facility will consist of photovoltaic (PV) panels, trackers, inverters, transformers, above ground cabling, access roads, a project substation and switchyard, an operations and maintenance building, security fencing, and an approximate half-mile generation tie (gen-tie) line connecting the solar collector facility to the point of interconnection. The applicant has also requested waivers of the setback requirements for several interior property lines and several rights-of-way along section lines.

This facility will have a maximum power output of 500 MWac. The project area is located in a part of Sections 17, 19, 20, and 29-32, Township 3 North, Range 55 West, and a part of Sections 5 and 6, Township 2 North, Range 55 West of the 6th PM, Morgan County, Colorado. A gen-tie line will also go through Section 24, Township 3 North, Range 56 West of the 6th P.M., Morgan County, Colorado to a point of interconnection. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Roadrunner Energy Farm Battery Energy Storage System (BESS)

The applicant, Roadrunner Energy Farm, LLC, proposes a BESS within an approximate 8.3-acre project area. This facility will have a capacity of up to 2,000 MWhrs (a maximum power output of 500 MW). The project area is located in a part of Section 19, Township 3 North, Range 55 West of the 6th PM, Morgan County, Colorado. The project area is zoned Agriculture Production and is located in the Brush Fire District.

Referral, Landowner and Mineral Owner Responses

In addition to the permit applications, packets include responses from CDOT, Colorado Parks and Wildlife, Morgan Conservation District, WAPA, Xcel, one landowner, and Windy Hill Water. Windy Hill Water is requesting the Applicant ratify existing access road easements and provide written assurance that the easements will not be encroached upon by the facilities.

Drainage Plans

Matt Harris with Harris Engineering Consultants, Inc., the County's consulting engineer, reviewed the preliminary Hydrologic and Hydraulic Report and associated preliminary site plan. As the applicants represent that natural depressions on the property will be used to collect stormwater runoff, he recommends that infiltration testing be conducted at these locations to demonstrate that the underlying soils have sufficient capacity to infiltrate the captured stormwater per the requirements defined by the State of Colorado. Furthermore, he recommends that excess stormwater runoff that would otherwise drain offsite should either be detained and released in a controlled manner per the provisions of the Morgan County Zoning Regulations or captured and infiltrated in accordance with the requirements referenced above. Finally, the final site plan should reflect any potential "no-build" areas where excessive stormwater inundation depths would preclude development, as determined by the hydrologic and hydraulic analysis performed by the applicant's engineer.

Haul Routes

The applicants propose access points off of State Highway 71 and off of County Road O.5 near the corner of County Road O.5 and County Road 30. County Road N is not a designated haul route. However, it will serve as a crossover for access between the north and south sites of the project.

The applicant provided a preliminary traffic impact analysis (TIA) of haul routes and anticipated traffic numbers. See Memo from Westwood Professional Services, dated July 8, 2024.

Since the initial application, the applicant met with CDOT, who requested a more detailed TIA. The detailed TIA dated October 9th was reviewed by the County's engineering contractor, HDR Engineering ("HDR"). Clarifying questions from HDR were addressed by the Applicant October 22nd.

Review by HDR

HDR reviewed the preliminary TIA supplied with the initial application, made a site visit to review the conditions of County Roads O.5, 30 and N and also reviewed the detailed TIA dated October 9th. An updated memo dated October 31st from HDR with recommendations is included in the packet. Based on the updated traffic study, HDR recommends performing the same proposed steps as originally presented in the October 4th memo.

County Road O.5: Given that the trip generation indicates a substantial increase in traffic the County should require Roadrunner Energy Farm, LLC to upgrade County Road O.5 to gravel.

County Road 30 (Between County Road O.5 and County Road N): County Road 30 is not a designated haul route. However, due to past drainage issues along this segment, special attention should be given to stormwater management. After comprehensive stormwater analysis prior to construction if stormwater is found to exceed the site's capacity and is not contained onsite, Roadrunner Energy Farm, LLC would be responsible for mitigating the drainage on County Road 30. Roadrunner Energy Farm, LLC should work with the County to implement Drainage Improvements.

County Road N (Site Crossover): Prior to construction, the exact location of the crossover should be clearly defined. Pre and post construction surveys should be completed for the segment of County Road N affected by the crossover. It would be expected that this crossover will be used during construction. Any damage must be repaired by Roadrunner Energy Farm, LLC.

Planning Commission Meeting

This application was considered by the Planning Commission in a public hearing on October 15, 2024.

Several neighboring property owners were present at the hearing concerned with the economic impact, erosion and blowing sand, soil and water contamination, and the haul route.

The Planning Commission motioned for recommended approval including all conditions and to include paving of roads and requiring an environmental barrier for visual screening on County Road N.

The motion was approved on a vote of 4 in favor, 1 opposed, and 1 member was absent.

Criteria for Evaluation

In reviewing these applications, the Planning Commission and Board of County Commissioners are required to make a finding that the criteria for granting a use by special review permit in Section 2-455 of the Morgan County Zoning Regulations have been satisfied. In addition, the County shall consider whether each application for a solar collector facility complies with the requirements of the Solar Collector Regulations and each BESS facility complies with the requirements of the BESS Regulations in Zoning Regulations.

Section 2-455 Special Use Permit Criteria:

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

Chapter 2 – Plan Summary

2.II.A - Economic Development

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

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

Chapter 4 – Economic Development

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

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

Chapter 5 - Environment

IX-Environmental Resources and Hazards Plan

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

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

- B. The application documents are complete and present a clear picture of how uses are to be arranged on the site or within Morgan County.
- C. The Site Plan conforms to the district design standards of Section 2-470 and Section 4-820 of the Morgan County Zoning Regulations.
- D. All on and off-site impacts have been satisfactorily mitigated either through agreement, public improvements, site plan requirements or other mitigation measures.

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

The off-site impacts during construction and the life of the property will need to be addressed by Roadrunner Energy Farm, LLC. The execution of Road Use Agreement, as required by the Morgan County Zoning Regulations, is a proposed condition for approval.

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

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

The closest residences to the project area will meet the required setback of 500 feet. The residences are along County Road N and west of State Highway 71. The parcels adjacent to the facility are zoned Agricultural Production District and are pastureland.

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

Granting the special use permits will not increase risk to public health, safety, or welfare.

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

The projects are located on conforming parcels.

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

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

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

The projects are expected to require a supply of water during construction for dust control measures and during operation. Water for the project will be sourced from off-site commercial suppliers.

The following conditions are recommended for the special use permits:

1. Roadrunner Energy Farm, LLC Solar Collector Facility Conditions

- a. Roadrunner Energy Farm, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Roadrunner Energy Farm, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, and stormwater permits.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the solar collector facility and may include, but are not limited to, interconnection/crossing agreements, signed and sealed geotechnical report,

- decommissioning plan, operations and maintenance plan, Liability Insurance Certificate, final locations for any laydown yard, a copy of the APEN issued by the Colorado Department of Public Health and Environment, Unanticipated Discovery plan, an adequate supply of water, and a final drainage & erosion control plan including recommended infiltration testing conducted at the natural depressions that will be used to collect stormwater runoff to demonstrate that the underlying soils have sufficient capacity to infiltrate the captured stormwater per the requirements defined by the State of Colorado. The excess stormwater runoff that would otherwise drain offsite should either be detained and released in a controlled manner per the provisions of the Morgan County Zoning Regulations or captured and infiltrated in accordance with the requirements referenced above. The final site plan should reflect any potential “no-build” areas where excessive stormwater inundation depths would preclude development, as determined by the hydrologic and hydraulic analysis performed by the applicant’s engineer.
- d. Roadrunner Energy Farm, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. Roadrunner Energy Farm, LLC must notify the County in writing thirty (30) days prior to commencing decommissioning.
 - e. Any building greater than 120 sq. ft. will require a building permit.
 - f. No poles shall exceed a height of 100 feet, including any portion of the gen-tie line. Any poles that exceed this height will require prior approval from the County, upon a showing by Roadrunner Energy Farm, LLC that such height is necessary for operations. Such additional height may be approved by the County Planning Administrator upon application by Roadrunner Energy Farm, LLC. The County Planning Administrator may request any additional information necessary to determine whether approval should be granted.
 - g. The substation and solar collector facility shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
 - h. Prior the commencement of construction, Roadrunner Energy Farm, LLC will enter into a road use agreement for the use of any public road during construction. The agreement shall include the following:
 - f. A designated haul route or routes, subject to approval by the Morgan County Road & Bridge Department. A map showing the designated haul route to be used during construction.
 - g. A pre-construction baseline inventory of County roads on the designated haul route or routes to be used during construction to document their pre-construction condition, obtained by and paid for by Roadrunner Energy Farm, LLC.
 - h. A mitigation plan to address traffic congestion, control, and potential impacts to County roads on the designated haul route. The mitigation plan shall also include any dust mitigation activities.
 - i. A requirement that Roadrunner Energy Farm, LLC is to return any County roads to their pre-construction baseline condition.

- j. A requirement to post financial security in an amount not less than one hundred fifteen percent (115%) of the estimated cost to complete all road restoration, in the form of an irrevocable letter of credit or cash escrow. Cost estimates shall be provided by a licensed Colorado engineer. Upon preliminary acceptance of the restored public road, the County shall release all but fifteen percent (15%) of total actual costs of restoration of the public roads, so long as Roadrunner Energy Farm, LLC are not in default of any provision of the road use agreement. The County shall inspect the restored roads and Roadrunner Energy Farm, LLC shall pay to the County the cost incurred by the County in conducting such inspections. These costs shall be due and payable upon demand of the County. Roadrunner Energy Farm, LLC shall be responsible for correcting or properly completing the restoration.
- k. The residual fifteen percent (15%) retained by the County shall act as security for Roadrunner Energy Farm, LLC guarantee that the restoration remains free of defect during a two-year warranty period Roadrunner Energy Farm, LLC may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the County. The County may accept substitute or supplemental forms of security in its sole discretion.
- i. Roadrunner Energy Farm, LLC shall make all necessary improvements to the access roads prior to commencement of construction. Roadrunner Energy Farm, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Roadrunner Energy Farm, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security in an amount equal to one hundred fifteen percent (115%) of the estimated costs to improve such roads to ensure the improvements are completed in conformity with the approved specifications and a two -year warranty period from preliminary acceptance for all improvements. The public improvement agreement may be combined with the required road use agreement and any required security for construction and restoration may be combined at the County's sole discretion.
- j. Prior to the commencement of construction, Roadrunner Energy Farm, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- k. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities ("Temporary Areas") utilized after final construction is completed. Roadrunner Energy Farm, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

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

2. Roadrunner Energy Farm, LLC BESS Facility Conditions

- a. Roadrunner Energy Farm, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Roadrunner Energy Farm, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, and stormwater permits.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Roadrunner Energy Farm, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The

County must be notified in writing when Roadrunner Energy Farm, LLC commences decommissioning.

- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Roadrunner Energy Farm, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Roadrunner Energy Farm, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.
- j. The project area shall be restored and/or reseeded as soon as practicable but no later than six months after Roadrunner Energy Farm, LLC has completed construction, unless the County Planning Administrator grants an extension for demonstrated good cause.
- k. Construction occurring within $\frac{1}{4}$ quarter mile of any residence shall not commence earlier than 7 a.m.
- l. Roadrunner Energy Farm, LLC shall prevent the existence of any nuisances by way of its construction activities. All trash, litter, construction waste and any potentially hazardous materials shall be disposed of properly off-site. If the County determines that a nuisance exists and the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the County, the County may, upon thirty (30) days' notice, undertake such abatement and lien the property for the costs of the abatement. Such abatement shall not be deemed to limit any other enforcement rights of the County.
- m. Roadrunner Energy Farm, LLC shall comply with all applicable law and regulations related to safety and emergency management during construction and on-going operations.

- n. Roadrunner Energy Farm, LLC shall be responsible for the payment of all costs and fees incurred by the County associated with this Permit. The County shall invoice Roadrunner Energy Farm, LLC for costs and fees and payment will be due by Roadrunner Energy Farm, LLC within thirty (30) days of the date of the invoice. Failure to pay may result in enforcement actions by the County.
- o. Prior to commencement of construction, Roadrunner Energy Farm, LLC shall supply evidence of, at a minimum, an agreement between the Brush Rural Fire Protection District, Morgan County Sheriff's Office, Morgan County Emergency Management Department and Roadrunner Energy Farm, LLC concerning the provision of emergency and fire services to the BESS. As part of the agreement, Roadrunner Energy Farm, LLC shall provide training and equipment necessary to respond to any incident or failure of the BESS facility, or any portion of the facility. The initial training must be provided to law enforcement, fire, ambulance, and the Morgan County Emergency Management Department prior to the commencement of operations at the BESS facility. The agreement shall require ongoing training on a schedule determined by the parties to the agreement. The ongoing training shall be made available to all agencies for which the initial training is required in this condition. Every three years after the commencement of operations, the Brush Rural Fire Protection District, Morgan County Sheriff's Office, Morgan County Emergency Management Department and Roadrunner Energy Farm, LLC shall review the agreement to ensure adequate response training and equipment.
- p. A minor incident, defined as failure of or fire in one battery container, shall trigger an immediate shutdown of the effected battery container by Roadrunner Energy Farm, LLC. A major incident is defined as occurrence of one or more of the following: 1) a failure of or fire in two or more battery containers, 2) when a fire expands beyond the defensible space required in condition (s), or 3) an incident at the BESS facility results in an order of evacuation or shelter in place to residents in the vicinity of the facility. A major incident shall trigger an immediate shutdown of the entire BESS facility by Roadrunner Energy Farm, LLC. Upon the occurrence of either type of incident, Roadrunner Energy Farm, LLC shall issue an incident notification within three (3) days of the incident. The incident notification will describe the time, duration or nature of incident and must be mailed to all property owners within a half mile of the BESS facility at the addresses of record through the Morgan County Assessor's Office; the County Planning and Zoning Department; the City of Brush; Brush Rural Fire Protection District; Morgan County Sheriff's Office; Morgan County Ambulance Services and Morgan County Emergency Management Department. Within thirty (30) days of the incident, Roadrunner Energy Farm, LLC shall deliver to the County Planning and Zoning Department an after-action report prepared by a qualified independent third-party with expertise in subject matter and shall identify any changes to the operations of the BESS facility necessary to maintain life and safety within the BESS facility and the neighboring residential properties. No operations may occur in the battery container or at BESS facility, as applicable based upon the type of incident, until the after-action report has been considered by the Board of County Commissioners at a noticed public hearing and the Board of County Commissioners approves restarting operations at the BESS facility, or within the battery container. Such a decision shall be made based upon the impact of the failure on neighboring residential properties, the threat and continuing threat to public safety, the response to the incident, cause of the failure and whether Roadrunner Energy Farm, LLC has implemented or is in the process of implementing changes to the operations of the BESS facility, or battery container, necessary to maintain life and safety within the BESS facility and the neighboring residential properties. Notice of the hearing shall be provided in the same manner as public notice for a permit for a use by special review as provided in the Morgan County Zoning

Regulations, as amended. If the Board of County Commissioners decides that the BESS facility or the battery container, as applicable, may not be returned to operation, the Board of County Commissioners may direct Roadrunner Energy Farm, LLC to take any necessary steps to protect the public safety and welfare or alternative, schedule a hearing to revoke this Permit.

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

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

Nicole Hay,
Morgan County Planning Administrator

DISCUSSION: Board of County Commissioners to applicant; Solar Application:

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. **Kristina Jansen, 345 Kellogg Way, Goleta CA representing RAI Energy and**

Roadrunner Energy Farm presented this application to the Board of County Commissioners. **Kelsie Singleton, 4626 CR 65, Keensburg CO with H2 Enterprises** spoke about erosion control.

Commissioner Westhoff asked if there is a possibility to graze cattle around the panels since they are 8 to 12 feet off of the ground?

Mark Juergensen, 1875 S Bascom Ave, Campbell CA with RAI Energy clarified that cows like to lean on things so grazing cattle would be difficult.

Commissioner Westhoff asked how they came up with the numbers for the carbon reduction?

Kristina Jansen answered that it is based off of a website with EPA that you can use to calculate it.

Commissioner Westhoff asked what fire suppressant is in the Tesla battery containers?

Mark Juergensen stated that in the rare case of a fire, Tesla recommends the fire to burn within the container.

Commissioner Westhoff stated that once you disturb native grass, you will get weeds. What are your preventative measures for invasive and noxious weeds?

Kelsie Singleton answered that they will monitor the site after the ground is disturbed. They then will either mechanically or chemically control the weeds.

Chairman Arndt asked Planning Administrator Nicole Hay for clarification on the road improvements. Were there any paving recommendations?

Planning Administrator Nicole Hay reiterated that HDR recommended a full upgrade to CR O.5 to gravel. CR 30, which is not a part of the haul route, has drainage issues so that will be reviewed when final drainage designs are received. If there continues to be a drainage issue, Roadrunner will have to work with the County and our engineers to mitigate any drainage issues that are occurring. HDR recommended pre and post construction inventory for CR N so any damage done to that road will be taken care of by the applicant. There were no paving recommendations at this time.

Commissioner Becker asked for clarification regarding the amount of trips that will be done for this project. Was that broken down per road?

Jeff Planck, 6200 S Syracuse Way, Greenwood Village, CO Traffic Engineer at Kimley-Horn stated that 660 trips are based on the development area. They are estimating 300 workers during peak construction, which means there are 300 trips into the site a day and 300 trips leaving the site. The remaining are the expected trucks on site. It is assumed this is the traffic for one access, but this was for a peak period.

Commissioner Becker asked what the construction timeline is? What is the dust suppression recommendation?

Kristina Jansen said the timeline is between 12 and 18 months. They are going to do whatever the County recommends for dust suppression.

PUBLIC COMMENT OPEN:

Opposed:

Heidi Hannon via ZOOM, 11652 Hwy 71, Brush CO is in opposition of this project. The view is a concern for her, but has not been contacted by the company to mitigate her concern. She also expressed concerns for soil and water contamination with any of the units leaking or breaking, the safety of the haul route, the contamination of noxious weeds, depreciation of property value, and home insurance rates increasing due to fire. Reinstating pasture land will be difficult to accomplish due to the fragility of the land. There is also a concern about the cameras and lights. How will this project benefit our community?

Shawn Tadolini, 30215 CR N, Brush CO has safety concerns about this project. He read that it should not be less than 3 kilometers to residential areas.

In Favor:

Bruce Bass, 30621 CR N, Brush CO stated this has been a painful decision for his family. Part of the land that this project will be on has been in his family since 1918. He believes this is the highest and best use for this ground.

Mike Dixon, 10826 Hwy 71, Brush CO stated there was a lot of time and decision making that went into this project. In the 25 years that he has had pasture to use or lease, there are good years and bad years.

With allowing this company to lease the ground, there is not a constant worry about what will happen with the land. It's not farming land; the use is very limited. There are unknowns of Pawnee Power Plant and their operations. The tax money for this project will come back to the County.

Cody Frazier, 30289 CR O, Brush CO is also representing his mother Bonnie Frazier, Cara Frazier, and Gold Spur Genetics. He raises bulls and will continue to raise them alongside this project. He also believes this is the highest and best use of the land.

Chuck Miller, 26060 CR S, Brush CO is not in favor or opposed of this project. Chuck is an advocate of private property rights. Eastern Colorado has been targeted because the economic value of the land is cheap. There is a lot of liability that comes with these projects that will carry on for years. He would like to see a requirement in the future that protection for adjoining landowners is there and that the liability is on the developer. He has had experience working with other counties regarding green energy. He believes that there needs to be a comparison of numbers between Pawnee Power Plant and this project, as they are not up to par with each other. The training for the fire districts is important, and is not sure if we are capable of dealing with a fire if one was to come from this project. "We often wonder if our staff is fully trained and we often wonder if we have done all of the amendments that we need to do." He has concerns about the accountability of the developer. Is there a limit on building this project within the permit?

Scott Knutsen, 10184 Quarry Hill Pl, Parker CO representing Windy Hill Water informed the Board they have a long term project on the north side of the solar project. It is a solution mining project with a potential for a gas storage. There are existing easements and have been working with RAI Energy to work through certain agreements.

PUBLIC COMMENT CLOSED:

BOARD OF COUNTY COMMISSIONER COMMENTS:

Commissioner Westhoff suggested the company pave CR O.5.

Commissioner Becker asked the applicants to respond to Heidi Hannon's comments.

Kristina Jansen stated they have addressed some of her points. The cameras and lights will be focused for the project, and are designed to not affect surrounding landowners. They will look at her view shed and figure out how to mitigate her concerns. There are multiple studies that show there are minimal to no impact on property values. They will also be training the fire departments closer to construction.

Mark Juergensen stated that there are reducing the risk of wildfires by 3000 acres so there should be a positive impact on insurance. It is prudent to hire locally when they can.

Commissioner Becker noted that the economic report doesn't break down the numbers to what is local taxes completely. He spoke about the valuation of the project and the comparison of the taxes and has questions regarding the correctness of them. There are comparable sized coal and gas facilities that pay a significant amount more. Even though green energy has been being added to the County at astounding rates, the power charges should have stabilized and not increased. He then expressed concerns for CR N. What can we do and what can't we do?

Attorney Kathryn Sellars asked if it was a County Road?

IT Specialist Karol Kopetsky said it was a County Road for 2 miles.

Chairman Arndt asked if they will be approving the road use agreement at a later date?

Attorney Kathryn Sellars stated there is a road use agreement or a public improvement agreement that they will see which is the upgrading part. Those are both listed in the conditions.

Commissioner Becker noted for the record that if they were to grant the waivers that were requested, it is only for the internal property lines and we do not vacate our rights inside of there. He also asked the applicants to clarify the bond. Do you hold one bond for the entire project, or is there one for solar and one for BESS? Does the bond cover if there is some sort of contamination in the ground?

Emily McMillan, 12701 Whitewater Drive, Minnetonka, MS, Permitting Specialist for Westwood explained the bond further. She also mentioned the fluctuation of prices in the economy, and it will be revisited once they are closer to the construction period. The bond can be combined into one bond.

Mark Juergensen stated that if there is something like contamination, that falls under the insurance, not the bond.

Attorney Kathryn Sellars clarified that the bond would not cover something like that unless it was in the decommissioning phase.

Commissioner Becker explained that his thought process stems from if the applicants walk away from the project and the County is holding the bond and now has to decommission this project, the insurance would be gone at that point.

Emily McMillan stated that some of those concerns will be mitigated through other permits that are required for this project.

Commissioner Westhoff moved to approve the Roadrunner LLC as applicant for a special use permit to construct up to a 500 MWac Solar Energy Facility with the following conditions as described by Director Nicole Hay, with the ongoing conversations with the road use agreement with Road and Bridge, the waivers of the internal setbacks, and the renewal of the application.

Commissioner Becker seconded.

Chairman Arndt noted that the County did not, and does not waive its right to those right-of-ways for the internal setbacks, and a 3-year extension is granted for a total of 6 years.

DISCUSSION: Board of County Commissioners to applicant; BESS Application:

At this time, Chairman Arndt asked the applicant if there is anything they would like to add to the application. Kristina Jansen commented that she understands the concern for soil contamination.

Commissioner Becker stated that he wants to make sure that if something happens, everyone will be taken care of. The battery is low intensity and can be contained, which he has heard. If you have a fire that has been sustained to burn for a couple of days and we get a 70 mph wind, there is a probability of a fire. Even if the probability is low.

Commissioner Westhoff asked if there was a safety device in the container to shut the oxygen off? Have you ever seen one jump from one container to the next due to the heat it gives off?

Mark Juergensen stated that each cell is designed to not run away to the next battery.

Larry Booth, 1606 Jones St, San Francisco, CA, Engineer Lead added that through the lessons and learnings of the Energy Storage Industry, there are codes and standards to prevent those types of accidents in the field. There is a constant requirement to test these systems. The Tesla Megapack that they have chosen is the most experienced in the field and has the safest design.

Commissioner Westhoff asked why they would want to put water in the containers knowing it won't put out a battery fire?

Mark Juergensen clarified it was for cooling.

Chairman Arndt asked for Larry Booth to address the toxic fumes.

Larry Booth stated that there is venting in case of a fire. The best way to address that is to follow the battery instructions.

PUBLIC COMMENT OPEN:

Opposed:

Heidi Hannon via ZOOM, 11652 Hwy 71, Brush CO stated the applicants have mentioned moving the BESS. In the case of a spill, they mentioned that there is insurance for surface water, but what about insurance for the aquifer and the neighbors? We need to make sure that the number provided for benefits is enough for the community resources that will be used and taken away from the community.

Chuck Miller, 26060 CR S, Brush CO stated he has not heard whether this company will retain ownership or if it will be up for sale. We did not hear any numbers regarding the size of the bond. Is the Morgan County Landfill prepared to be a battery disposal site? Rural volunteer fire departments will be held to a high standard and will need training, so they should be compensated very well. All adjoining wells in the area are 1-5 gal/minute, so it will take a while to fill the battery if needed.

In favor: None

PUBLIC COMMENT CLOSED:

Commissioner Westhoff asked if solid state produced batteries are safer? Can they be converted?

Mark Juergensen stated that anytime you concentrate energy, there is equal risk. He explained that their company will adopt the safest battery. They cannot be converted, but they can be swapped out.

Kristina Jansen noted that in terms of water tanks, they will be using water that is sourced off site. They will not be using the wells for that. They will not be lowering the water table on the site.

Commissioner Becker asked if they are using lithium iron phosphate? Are you heating these in the wintertime?

Kristina Jansen answered they are using LFP, and they will be kept within a temperature range, both hot and cold.

Commissioner Becker stated that if the BESS moved from what their preliminary map shows, it could not move any closer to any residences.

Commissioner Becker moved to approve the 2000MWhrs Battery Energy Storage System as presented with all conditions from Planning Commission, adding an additional condition that if it moves, it cannot move closer to any residences with the 3-year extension for a total of 6 years.

Commissioner Westhoff seconded.

Motion carries, 3-0.

Being no further business the meeting was then adjourned at 2:00 p.m.

Respectfully Submitted,
Jenafer Santos
Planning Technician

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

_____ s/ Mark A. Arndt

Mark A. Arndt, Chairman

_____ s/ Jon J. Becker

Jon J. Becker, Commissioner

_____ s/ Gordon H. Westhoff

Gordon H. Westhoff, Commissioner

(SEAL)

ATTEST:

_____ s/ Kevin Strauch

Kevin Strauch