

MORGAN COUNTY PLANNING COMMISSION
February 12th, 2024

The Morgan County Planning Commission met on Monday, February 12th, 2024, at 6:00 P.M. in the Assembly Room of the Morgan County Administration Building. The meeting was called to order by Chairman Nathan Troudt.

Chairman, Nathan Troudt, Vice Chairman, Robert Pennington, Erik Mohrlang, Rob Chilson and Dave Musgrave were present. Pete Mercer attended via zoom. Nicole Hay, Planning Director, Cheryl Brindisi, Planning and Zoning Administrative Assistant and Jenafer Santos, Planning and Zoning Technician, Kathryn Sellars, Morgan County Attorney and Karol Kopetzky, IT also Specialist attended.

APPROVAL OF AGENDA:

It was moved by Erik Mohrlang and seconded by Robert Pennington to approve the Agenda as presented. Motion passed 6-0.

APPROVAL OF MINUTES:

It was moved by Erik Mohrlang to approve the Minutes from the January 8th, 2024 Planning Commission meeting. Rob Chilson seconded. Motion passed 6-0.

PROCEDURAL: Chairman Nathan Troudt read the hearing process for tonight's meeting.

NEW BUSINESS: Fortress Solar, LLC

Planning Director, Nicole Hay, read her file summary as follows:

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

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

Fortress Solar I Energy Collector Facility

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

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

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

Fortress Solar I Battery Energy Storage System (BESS)

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

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

Fortress Solar II Energy Collector Facility

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

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

Fortress Solar II Battery Energy Storage System (BESS)

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

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

Fortress Solar III Energy Collector Facility

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

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

Fortress Solar III Battery Energy Storage System (BESS)

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

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

Referral Responses

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

Property Interests and Easements

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

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

Brush Airport

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

Drainage Plans

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

Haul Routes

The applicants propose that the primary haul route and route for construction deliveries will be provided via County Road Q and will build a new 20 foot wide gravel road beyond the eastern terminus of County Road Q. The primary access for operations and construction commuter vehicles will be provided from County Road R.5 and the applicants will build a 20 foot wide gravel road beyond the eastern terminus of County Road R.5. This access will also be designated as the primary emergency vehicle access. A third access point for operations and construction commuter vehicles will be provided via County Road R and the applicants will build a 20 foot wide gravel road beyond the eastern terminus of County Road 5. See Figure 3. A tire washout station will be installed at the entrance from County Road Q to reduce track out. See Appendix A-8.

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

Criteria for Evaluation

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

Section 2-395 Special Use Permit Criteria:

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

Chapter 2 – Plan Summary

2.II.A - Economic Development

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

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

Chapter 4 – Economic Development

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

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

Chapter 5 - Environment

IX-Environmental Resources and Hazards Plan

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

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

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

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

The off-site impacts during construction and the life of the property will need to be addressed by the Applicants. The execution of Road Use Agreement, as required by the Morgan County Zoning Regulations, is a proposed condition for approval. In addition, Morgan County Road & Bridge is recommending that all three access roads (County Roads R, R.5 and Q) be initially evaluated by the County's consultant to determine each road's current condition and the need for necessary improvements to adequately handle the type and level of proposed traffic during the construction phases for all six applications and after completion of construction for the life of the project. Any necessary improvements to the access roads shall be constructed by the applicant and shall be governed by a public improvement agreement executed by the appropriate applicant(s). This issue is addressed in the recommended conditions in this staff report.

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

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

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

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

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

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

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

All six projects are located on conforming parcels.

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

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

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

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

The following conditions are recommended for the special use permits:

1. Fortress Solar I Collector Facility Conditions

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

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

for all three access roads, or portions of such access roads. If such improvements are required, Fortress Solar I, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar I, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.

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

2. Fortress Solar I BESS Facility Conditions

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

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

3. Fortress Solar II Collector Facility Conditions

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

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

evaluation received from the County's third-party consultant, improvements may be required for all three access roads, or portions of such access roads. If such improvements are required, Fortress Solar II, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar II, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.

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

4. Fortress Solar II BESS Facility Conditions

- a. Fortress Solar II, LLC must demonstrate ownership or possession of the property prior to commencement of construction. The applicant can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Fortress Solar II, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when Fortress Solar II, LLC commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Fortress Solar II, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility in Phase 2 govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar II, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

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

5. Fortress Solar III Collector Facility Conditions

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

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

evaluation received from the County's third-party consultant, improvements may be required for all three access roads, or portions of such access roads. If such improvements are required, Fortress Solar III, LLC shall be required to submit road specifications as required by the County Road & Bridge Department detailing the improvements. Such specifications will be reviewed and approved by the County and its consultants as necessary. Once such specifications are approved by the County, Fortress Solar III, LLC shall be required to enter into a public improvement agreement, which at a minimum will require the posting of adequate security to ensure the improvements are completed in conformity with the approved specifications and a warranty period from preliminary acceptance for all improvements. Such public improvement agreement may be combined with the required road use agreement.

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

6. Fortress Solar III BESS Facility Conditions

- a. Fortress Solar III, LLC must demonstrate ownership or possession of the property prior to commencement of construction. Fortress Solar III, LLC can demonstrate satisfaction with this condition through vested title in its name, or a lease or other agreement directly with the property owner allowing the permitted use to be conducted on the property.
- b. All necessary land use, environmental, and construction permits, approvals and authorizations will be obtained prior to the start of and during construction as required and may include, but are not limited to, land use permits, right-of-way (ROW) permits, road use agreements, access permits, oversize/overweight permits, grading permits, stormwater permits, and a FAA air navigation impact determination.
- c. All necessary plans, reports, permits, and certificates will be submitted prior to issuance of any building permit associated with the BESS facility and may include, but are not limited to, Electrical Diagram, final equipment specification sheet, contact information, maintenance plan, final drainage plan, decommissioning plan, emergency operation plan, and Liability Insurance Certificate, and an adequate supply of water.
- d. Fortress Solar III, LLC will comply with the proposed decommissioning plan, any modifications/deviations from the proposed plan must be approved by the County. The County must be notified in writing when the Applicant commences decommissioning.
- e. Any building greater than 120 sq. ft. will require a building permit.
- f. The BESS shall be enclosed by a security fence and be secured at all times. Emergency services must have access at all times.
- g. Prior to the commencement of construction, Fortress Solar III, LLC must obtain all proper permissions from landowners to use private roads or develop access roads on any private property. No private access roads, new or currently in use, shall become public rights of way unless approved and accepted by the Board of County Commissioners.
- h. The County may require that the road use agreement for the associated solar collector facility in Phase 3 govern any road impacts related to the construction of the BESS or require a separate road use agreement. In addition, for any public improvements to roads required for Phase 1 of the project for the associated solar collector facility, the County may require that the public improvement agreement govern public improvements for the construction of the BESS or require a separate public improvement agreement.
- i. The County will require written notice for all staging or laydown areas, or other temporary areas for construction or repair activities (“Temporary Areas”) utilized after final construction is completed. Fortress Solar III, LLC must provide a map showing the Temporary Area by size (acreage and perimeter), a list of materials and equipment to be stored on the Temporary Areas, activities within the area (e.g., grading, storage, etc.), the length of time the temporary construction or staging or laydown areas will be in use and must notify the County at least thirty (30) days prior to the use of the temporary area. It shall be a condition that all equipment and materials must be removed from the Temporary Areas and the area returned to a condition similar to its condition prior to construction. No permanent structures may remain in the Temporary Areas unless approved by the County pursuant to the applicable Morgan County Zoning Regulations.

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

Nicole Hay,
Morgan County Planning Administrator

APPLICANT:

Charles Ndlovu, Project Manager for Fortress Solar, 10113 Meade Court, Westminster, CO presented this application to the Planning Commission.

PLANNING COMMISSION DISCUSSION:

Dave Musgrave asked about the lifespan of the project and what will replace this project once its end of life has been reached? He asked about the productivity of the panels to produce solar in heavy snow and also expressed concern about possible glare caused by the panels.

Andrew Breyer, Director of Development for AYPower, 11801 Domain Blvd, Austin, Texas explained "Useful Life" of solar technology. The life of this project is 30 years. "It would be assumed that the modules would be replaced at some point in time depending on the technology available. Not all projects contract this way. The Fortress Solar Project and the attributes of us owning the land, we have the option to re-power this project depending on the cardinal structure that we enter into with the utility company and the purchaser of power." Andrew explained that most solar panels today are coated with an antiglare coating. Depending on if a solar project's panels are nontracking fixed tilt, they may appear to cause glare. Our projects are proposing single-axis tracking that are moving and may produce minimal glare for a short amount of time. Typically glare is most concerning in regards to the FAA and aviation. As part of this application, a notification of glare has been submitted to the FAA. Andrew explained in further detail the project's setbacks and glare concerns.

Robert Pennington asked why the results of the glare study show 0% glare while others have shown some?

Andrew Breyer explained that he couldn't comment on the FAA glare study results and also explained that several viewpoint factors are taken into account.

Justin Miner, Tetrattech Representative, 2314 East Patiroot Drive, Eagle Mountain, Utah, explained the glare study industry standards software SGHAT that is authorized by the FAA in further detail. The model addresses two different heights of viewpoints. The first being 6 feet off the ground which is representative of an individual driving a passenger vehicle. The second height is at 12 feet off the ground and is representative of a tractor-trailer or heavy haul semi-truck driver. He described the various factors that can determine the results of the glare study.

Robert Pennington asked if a map was available to show where the glare potential could be.

Justin Miner explained the figures of the study results shown in the packet in further detail.

Pete Mercer asked if these results were concluded by an onsite visit or desktop analysis?

Justin Miner explained that it is an analytical model that uses reference points and the land surface topography to conclude the glare results at both the 6 foot and 12 foot heights.

Dave Musgrave asked Kathryn Sellars which owner has the right of way? Solar or oilfield if they both have the rights?

Kathryn Sellars explained that surface rights owner's are subject to mineral rights owner's rights to access minerals that they may wish to extract.

Rob Chilson expressed his concern about the grading that is proposed to take place with this project. He asked about mitigation measures that would be taken for erosion.

Justin Miner explained in further the preliminary grading plans that were submitted along with the site plan. He noted that they are not the final engineering plans for this project but more of an informational at this moment.

PUBLIC COMMENT OPEN FOR AND OPPOSED:

In favor:

Chuck Miller, 26060 MCR S, Brush is in favor of this project as long as it has a positive impact on our economic base. He had several concerns that he would like addressed such as: He would like a comparison of electricity generated from the current coal plant vs this proposed solar facility. Where will the \$3 million per year of local taxes come from? Where will electricity go? How will the school, fire, hospital, and library districts benefit? He would like to see the County and its residents benefit from projects such as these if we are going to sacrifice our land to greener energy projects. "Property rights give the applicant the opportunity to do with their property what they want."

Erik Mohrlang noted that it was stated that the \$3 million would come from property taxes. The electricity would go on to the grid like it does from Pawnee Powerplant currently.

Scott Kembel, 16750 HWY 71, Brush agreed with Chuck Miller's comment about property rights. Scott would like more information about the possible weather changes that he has heard can be caused by large projects. He also is concerned about the proposed 30-year life of the facility and noted that there have been several previous damaging hail storms that have come through this area. He expressed concern that prairie dogs are a nuisance to many local farmers and ranchers in this County and that they seem to take over locations such as these.

Opposed:

Debora Beck-Massey, 17660 CO RD 29.6, Brush, Sunny Acres, expressed concern over the sandy conditions that make it hard to grow vegetation. She also noted that the weather can get destructive in this particular area. Debora stated that an easement goes through the middle of her garage and County Road R.5 goes through the edge of her property. She states that she is directly impacted by the Emergency Access for this project. Debora is also concerned about the impacts of dust and traffic on her property and the 85 decibel hum that is proposed to come from the battery containment. She mentioned the possible impacts to wildlife and also the impacts to jets that fly directly over this location. Debora would like to see more public outreach from Fortress Solar to the surrounding neighbors.

Helen Beck, property owner of 17660 CO RD 29.6, Brush. Helen would like to see the benefits that this project would bring to Morgan County. She is skeptical about how much of this would benefit other

places versus Morgan County. She is concerned about the fire protection being inadequate for a project this size.

PUBLIC COMMENT CLOSED

PLANNING COMMISSION DISCUSSION:

Loni Reiger, 11801 Austin, TX. Senior Director for Health and Safety for AYPA addressed the concerns about hail storms and other types of storms. She explained how solar panels are manufactured and what they are built to withstand, such as a category 4 hurricane. Loni addressed the public's concerns about the decibels that the BESS units would exhibit. She explained that mitigation measures can be taken to lower any noise issues if they arise throughout construction.

Robert Pennington asked for clarity if the volume of the decibels rise when adding more than one BESS unit?

Loni Reiger explained that each unit would be like the sound of a whisper. The units are not always running but are usually on standby. They are turned on to absorb any energy in the battery system itself. Up to 130 inverters and around 1,000 batteries. Not all of the batteries will be running at the same time.

Justin Miner the 75-80 decibels are measured at 1 meter. This is the industry standard. That dissipates over time. The average ambient noise is usually in the 35-45 decibels range in open land with natural phenomena like wind, etc. Justin Miner clarified how decibels are determined. The distance from Sunny Acres to the BESS is approximately 2 ¼ miles. The substation is about the halfway point that is currently existing.

Nathan Troudt asked what kind of mitigation measures can be done to help with noise?

Loni Reiger explained that the noise during construction and operation can be monitored and addressed as needed. She gave examples of sound barriers that would be possible to use to mitigate any noises that are over OSHA standards. She then mentioned the question about prairie dogs, stating that if there is an infestation of them, they will bring out their civil team to make sure the ground is covered and the holes are filled. They can look into re-locating the prairie dogs. They will be doing a complete environmental study for all of the species that are around their project area.

Dave Musgrave asked if a hurricane has ever went through any of their sites?

Loni Reiger stated the manufacturers test the wind speeds. She has worked for companies that have experienced hail and wind. They can get damage from different variations of weather. They will have an operational team that will do preventative maintenance.

Dave Musgrave mentioned no one has spoken about the sand, the winds, or the tornadoes that the county gets.

Loni Reiger noted that she has worked in very sandy areas before. She reiterated that solar manufacturers consider this when building the panels.

Sam Littlefield 2318 NE 60th Ave, Portland, OR. Head of Development for AYPA noted that the panels are not invincible, but they carry significant insurance. They have to carry project-specific coverage, as well as natural catastrophe coverage. He clarified that the project is being marketed to Colorado, and the buyers are more than likely going to be PSCO. A single phase of this project will serve MCERA's electrical load.

Nathan Troudt asked Sam Littlefield to speak on the tax differences that were previously mentioned by Chuck Miller mentioned in the Public Comment portion of the hearing.

Sam Littlefield stated he could not find the information for that comparison at the moment.

Robert Pennington asked what their policy is for the training of our Fire Departments.

Loni Reiger answered they have an emergency response plan. When they apply for a fire permit, they will walk through the assessments with the Fire Department. Loni stated she will be coming out to provide the training in case of an emergency.

James Frater, 1604 S. Maryland Pkwy, Las Vegas NV. Consultant with TERP Consulting, who has been in the fire protection field for 30 years, explained that there are a lot of safety systems integrated into the BESS systems. These are all the latest safety systems that will be implemented.

Dave Musgrave asked if they will furnish all of the equipment for the Fire Department?

Loni Reiger stated what they propose in their plan is a 30,000 gallon container of water which is designed for the Fire Department to tie into it. The idea is not to fight the fire with water, rather than trying to contain the fire.

Robert Pennington asked if their plan to truck water in has been included into the traffic impact for the roads?

Charles Ndlovu answered that they are aware of certain businesses/projects they can get water from and hopefully would not have to cross many roads. It is an ongoing conversation. This is more of an economic discussion.

Robert Pennington asked what has come out of the discussions with Morgan County Road and Bridge.

Charles Ndlovu answered that Road and Bridge will be doing more work to survey and see the conditions of those roads, so they will wait to hear what they have to say.

Kathryn Sellars mentioned that Road and Bridge has requested the county's 3rd party consultant to come out and review those roads to see if there is a possibility that those roads need to be actually improved.

Pete Mercer asked if there was only an FAA study or a ROW study as well?

Justin Miner stated it was a right-of-way study.

Robert Pennington asked if there was a certified test that can be done for noise?

Kathryn Sellars stated that she would like to see standard consistent monitoring instead of it being complaint driven as there is no baseline.

Robert Pennington asked if the complaints would be the start of the testing?

Kathryn Sellars explained that noise is really tricky to enforce.

Pete Mercer referenced condition (f) and asked Nicole Hay what we are going to do with their poles exceeding the 100 foot height limit?

Nicole Hay answered that if the pole is over 100 feet, it will have to go through a variance process.

Pete Mercer asked if the 15% that goes to the county for the road use agreement, is that for all 6 applications or is it just a one time thing?

Nicole Hay answered that it was per phase.

Robert Pennington asked if the panels get taxed as personal property, or do they get taxed as real estate?

Justin Miner stated that it's taxed as business personal property.

Robert Pennington motioned to approve Fortress Solar I Energy Collector Facility, subject to the conditions that Nicole Hay has itemized.

Erik Mohrlang seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

Pete Mercer motioned to approve Fortress Solar II Energy Collector Facility with the conditions Nicole Hay has outlined.

Rob Chilson seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

Erik Mohrlang motioned to approve Fortress Solar III Energy Collector Facility with all conditions outlined by the Planning office.

Robert Pennington seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

Erik Mohrlang motioned to approve Fortress Solar I Battery Energy Storage System with all conditions outlined by the Planning office.

Rob Chilson seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

Robert Pennington motioned to approve Fortress Solar II Battery Energy Storage System subject to the conditions outlined by the Planning and Zoning Department

Erik Mohrlang seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

Rob Chilson motioned to approve Fortress Solar III Battery Energy Storage System with the guidelines laid out.

Dave Musgrave seconded.

Motion carries 5-1 with Nathan Troudt being the opposing vote.

This application will move forward to the Board of County Commissioners on February 6th, 2024.

Dave Musgrave motioned to adjourn the meeting. **Robert Pennington** seconded that motion.

Motion passed 6-0. Meeting adjourned at 8:35 P.M.

Respectfully Submitted,

Cheryl Brindisi

Planning and Zoning Planning Administrative Assistant