



PLANNING COMMISSION AGENDA  
Thursday, October 27, 2011  
Morgan County Council Room  
6:30 PM

**PUBLIC NOTICE** is hereby given that the Morgan County Planning Commission will meet at the above time and date at the Morgan County Courthouse, Council Chambers, 48 West Young St, Morgan, Utah. The agenda is as follows:

1. Call to order – prayer.
2. Approval of agenda.
3. Declaration of conflicts of interest.
4. Approval of minutes from October 13, 2011.
5. Discussion/Decision: Nutraceutical C.U.P.: A conditional use permit request for land excavation to construct a levee along Gordon Creek in the A-20 zone located at approximately 5500 W. Old Highway Road.
6. Discussion: Flexible Subdivision Survey
7. Adjourn.

**MORGAN COUNTY PLANNING COMMISSION MEETING  
MORGAN COUNTY COURTHOUSE - RM. 29  
THURSDAY October 27, 2011 – 6:30 P.M.**

**MEMBERS PRESENT**

Trevor Kobe, Chairman  
Roland Haslam  
Brandon Anderson  
Darrell Erickson  
Alvin Lundgren  
Chris Hales

**STAFF PRESENT**

Grant Crowell, Director

**MEMBERS ABSENT**

Adam Toone

**COUNTY COUNCIL PRESENT**

Tina Kelly

**\* \* \* M I N U T E S \* \* \***

1. **Call to order – prayer.**
  
2. **Approval of agenda.**
  
3. **Declaration of conflicts of interest.**
  
4. **Approval of minutes from October 13, 2011.**
  
5. **Discussion/Decision: Nutraceutical C.U.P.: A conditional use permit request for land excavation to construct a levee along Gordon Creek in the A-20 zone located at approximately 5500 W. Old Highway Road.**

Mr. Crowell presented his staff report (Please see attached exhibit A). He noted as per County code when someone moves a certain amount of material a landowner is required to

obtain a Conditional Use Permit. This proposal meets those requirements and that is why it is on the agenda for discussion. He noted the following:

- Gordon Creek has contributed to periodic flooding.
- Material from the bank of the creek will be used to create levies on both sides to potentially modify the flood plain designation on the property. This will be a process that they will go through Federal officials to do.
- Currently in flood zone A; 100 year flood plain designation.

Member Haslam –

- Will new fill be hauled in? Mr. Crowell noted their engineer stated that fill was to be taken from existing fill found on site and to be re-compacted at least 90% to maximum dry density as determined by STM standard D157.
- Would like the engineer to clarify exactly what they are doing on the material.

Nate Reeve, Reeve and Associates –

- A geotechnical engineer has reviewed the material that has been placed on site and that material will be used for the embankment.
- This type of excavation used to be called a berm, but since what happened in Louisiana's they are all levies now. Landowners are very heavily enforced on how someone can construct a levy. FEMA approves the plans but when construction begins it falls underneath the Army Corps of Engineer standards. The plans they have created and submitted to FEMA comply with that. The last thing they need for approval from FEMA for the CLOMR (conditional letter of map revision) is the community acknowledgement form from the County. They will be using the existing material on-site and it will be placed and compacted per Army Corp Standards.
- Two step process – the landowner gets CLOMR approval. They construct the levies on both sides; which has a great benefit not just for the landowner, but also anyone that is downstream of Gordon Creek. The improvements that are going to be constructed on Gordon Creek obviously will channelize the water and insure that it does not blow out and will protect residence downstream. Both sides of Gordon Creek will be constructed; Grade wise all the water will flow downstream.
- Before Louisiana they only would have had to account for one foot of freeboard. The 100 year storm event hit here and they would have had to add 1 foot above, now they have to do three feet.
- This will be low impact. They will not be removing trees just constructing berms to meet FEMA and Corp's standards.
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Member Anderson asked if there has been any analysis done where this goes under the freeway. Whenever work is done on a project like this, the whole purpose is to allow more water to flow down the creek without coming out; what about once it hits the freeway.

Mr. Reeve noted they had to analysis for FEMA going underneath Old Highway 200 feet and the big railroad culverts until it gets across. Trying to protect property owners and people's right.

Asked if they would be doing work north of Old Highway Road. Mr. Reeve noted they would not be. They had to analysis that and the existing levies on the upper side to convey the water. Due to the height of the roadway and the levies, probably more berms that are in place, the Old Highway acts as a natural dam through that area. If the water does blow out it will actually channelize and go down the highway.

Member Haslam asked how the construction time of 7 a.m. and 5:30 p.m. Monday – Friday was determined. He asked if this time frame was ok.

Mr. Reeve noted that Saturday would be beneficial to have available. Mr. Crowell noted the time frame is in the ordinance, Saturday and Sunday would be allowed according to the ordinance. However, in the code it states if the property is contiguous to residential construction time would be Monday – Friday. He noted because this is agricultural zoning with residential to the north, manufacturing and commercial to the west, zoning to the west and it is not 100% sure whether it is completely contiguous to residential, but it certainly is across the street from it; the interpretation would be up to the planning commission.

Mr. Reeve noted as you begin to work on a creek there is a small window of opportunity to get in, get the improvements done, get it impacted correctly, and get out. He noted with the type of thunderstorms that we receive in this area as well as run-off an additional day would be helpful.

David Mann, resident of the Highlands – Asked what the intent of changing the zoning or flood plain category was and what is going to happen after that.

Member Haslam noted that what is before the Planning Commission is a conditional use permit and it has nothing to do with a re-zone. Until the planning commission has a re-zone before them they cannot answer that question. It is something that will need to be addressed at a later date when and if the applicant applies for a re-zone.

Chairman Kobe noted if the property owners choose to share their future plans they can, but nothing has been presented to the planning commission at this time

Kim Warner, resident of Mtn. Green and has property just to the west of Gordon Creek - Believed this was a great opportunity to improve Gordon Creek. Also believed one of the reasons Dry Creek is so successful right now is because the State put a bridge underneath the Old Highway Road and it functions very well. He noted for Gordon Creek to be successful he believed the bridge that goes under Old Highway Road needs to be modified also; that is a State modification. He noted one of the reasons it backed up on the north side of Old Highway Road is because there is so much debris. If you look underneath it on the west side, there is only just a couple feet of clearance. Any type of volume through that area, it

will not handle it. The State has not lowered this on the south side of Old Highway Road because the Questar piping is very shallow. The State is very apprehensive to get any type of equipment in there. If the County wants to be pro-active and protect people's rights on both sides then something needs to be done where it goes under Old Highway Road.

Mr. Crowell noted he wanted to clarify this is not a re-zone. The zone that the applicant is talking about is the flood zone designation that they are trying to amend. The existing land use zoning on the property is agricultural and residential. There is also manufacturing and commercial zoning south of Old Highway to the west in this same area. A substantial amount being owned by this property owner and they can develop that in accordance with that zone without doing any zone changes. He noted he has not inquired as to the applicants future plans as this application is only for a conditional use regarding the flood zone.

**Member Haslam moved to recommend a positive recommendation to the County Council for Nutraceutical conditional use permit for application 11.064 with the conditions listed in the staff report dated October 27, 2011 with an amendment to #2 to include Saturday.**

1. That the project conforms to the plans stamped and dated October 14, 2011, by J, Nate Reeve, and P.E.
2. That construction activity occurs only between 7:00 am and 5:30 pm, Monday through Saturday.
3. That an engineer's estimate for revegetation is submitted to the County for approval, and that the applicant is required to post a cash performance escrow for one year to ensure revegetation occurs as specified.
4. That all requirements of the County Engineer are adhered to.
5. That the request adheres to all other County, State, and Federal regulations.
6. That approval of this conditional use permit authorizes the Flood Plain Administrator to sign the County Flood Plain Development Permit.

**And with the following findings in the staff report dated October 27, 2011:**

1. The nature of the use is in conformance with the current and future planned land uses of the area.
2. The use conforms to current zoning ordinances.
3. The listed conditions are necessary to mitigate any harmful impact that the activity may have on the surrounding area.
4. That the project will improve future harmful or dangerous conditions in the area.

**Second by Member Lundgren.**

**The Chairman called for discussion. There was none.**

**The vote was unanimous. The motion carried.**

**6. Discussion: Flexible Subdivision Survey**

Mr. Crowell noted that that the survey was sent out and they have received three back. He encouraged the members to take that survey and then take a look at the results and see what they can work on.

Discussed that because of the holidays in November, Veterans Day and Thanksgiving, the meetings have been bumped up to the 3<sup>rd</sup> and the 17<sup>th</sup>.

There is one meeting in December which is scheduled for the 15<sup>th</sup>.

**7. Adjourn.**

**Exhibit A** – Staff report - Nutraceutical C.U.P.: A conditional use permit request for land excavation to construct a levee along Gordon Creek in the A-20 zone located at approximately 5500 W. Old Highway Road.

**STAFF REPORT**  
October 20, 2011

**To:** Morgan County Planning Commission  
Business Date: October 27, 2011

**Prepared By:** Grant Crowell, Director

**Re:** **Nutraceutical Corporation Conditional Use Permit Request**  
Application No.: 11.064  
Applicant: Nutraceutical Corporation  
Project Location: Approximately 5500 West Old Hwy Rd, Mountain Green  
Zoning: A-20 Zone  
Acreage: On a portion of 7.23 acre parcel  
Request: Conditional use permit for land excavation to construct a flood control levee along Gordon Creek.

**BACKGROUND AND SUMMARY**

Gordon Creek has contributed to periodic flooding in the vicinity of the project, which has been of concern to the residents in the area for many years. The applicant is proposing this project in order to ultimately modify the flood plain in their property, and this excavation permit request is in conjunction with a FEMA process to amend the flood plain maps and designations. The application has complied with the Morgan County Code as it pertains to this activity, with the conditions proposed for approval.

**ANALYSIS**

*Ordinance Evaluation.* Pursuant to Morgan County Code section 8-8-7, Landfills and Land Excavations, a conditional use permit is required when excavation, fill, or any combination thereof exceeds 1,000 cubic yards, or exceeds the area of one acre, among other applicable requirements. The property where the levee project if proposed is within the A-20 zone, and land excavations are listed as a conditional use in that zone. Pursuant to Morgan County Code (MCC) 8-5A-1, the purposes of the A-20 zone are to

promote and preserve in appropriate areas conditions favorable to agriculture and to maintain greenbelt spaces. While this project is not a typical agricultural project, its end result should serve to preserve adjacent land from potential damages from flooding. Minimum lot size and setbacks do not apply to this land excavation application.

There is a list of evaluative criteria for land excavations in County Code 8-8-7. Planning and Engineering Staff responded to the original application with requests for clarification and the applicant's responses and plans demonstrate compliance with our codes and corresponding recommendations. MCC 8-8-3(F) states that "a conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards." This code is verbatim with the State code. In evaluating this use we primarily focused on grading and erosion impact, traffic impact, and impact to adjacent properties.

Additionally, Title 9 of the County Code is the Flood Damage Prevention ordinance. This project has been reviewed in conjunction with this and has also promoted compliance with this code. This project will potentially reduce potential property damage from flooding, if constructed as designed. A County flood plain development permit will be issued if this CUP is approved.

Property Layout. The subject property is approximately 7.23 acres, lying south of Old Highway Road and north of I-84. It has approximately 300 feet of frontage on UDOT's Old Highway Road (it is adjacent to property to the west held in the same ownership which is an additional 12.53 acres and 500 feet of frontage). On the east is Morgan County's Kent Smith Park and the Mountain Green Sewer Improvement District.

Traffic, Roads, and Access. The property gains access directly from a UDOT controlled roadway, Old Highway Road. Construction access to the levee project will happen internally via a 12' access road for equipment. The applicants have indicated that the levee material will be taken directly from the creek and bank area, minimizing local traffic. Thus, this proposal is not anticipated to significantly impact traffic on the local or regional road system. Hours of operation are from 7:00 am to 5:30 pm, Monday through Friday.

Flood Plain Hazards. According to the latest FEMA maps, the property is in Flood Zone A (100 yr flood plain). This designation is what the applicant is trying to modify with the levee project. A similar map modification and levee project was undertaken successfully on Dry Creek to the east a few years ago.

Grading and Land Disturbance. This is the main subject of the application. The drawings and associated notes indicate the entire scope of the project, and conform to County requirements.

Landscaping. Landscaping will consist of broadcast seed for revegetation. The seed mix is indicated on the plans. Staff is recommending a cost estimate for revegetation and an associated revegetation bond to be held by the County for one year.

## **STAFF RECOMMENDATION**

Staff recommends approval of the McMillan Conditional Use Permit requested by Nutraceutical Corporation, application #11.064, subject to the following conditions:

1. That the project conforms to the plans stamped and dated October 14, 2011, by J, Nate Reeve, P.E.
2. That construction activity occurs only between 7:00 am and 5:30 pm, Monday through Friday.
3. That an engineer's estimate for revegetation is submitted to the County for approval, and that the applicant is required to post a cash performance escrow for one year to ensure revegetation occurs as specified.
4. That all requirements of the County Engineer are adhered to.
5. That the request adheres to all other County, State, and Federal regulations.
6. That approval of this conditional use permit authorizes the Flood Plain Administrator to sign the County Flood Plain Development Permit.

This recommendation is based on the following findings:

5. The nature of the use is in conformance with the current and future planned land uses of the area.
6. The use conforms to current zoning ordinances.
7. The listed conditions are necessary to mitigate any harmful impact that the activity may have on the surrounding area.
8. That the project will improve future harmful or dangerous conditions in the area.

### **MODEL MOTION**

Sample Motion for a *Positive* Recommendation – “I move we forward a positive recommendation to the County Council for the Nutraceutical Conditional Use Permit request, application #11.064, subject to the conditions and findings as listed by staff in the October 20, 2011 Staff Report, with the following additional conditions and findings:”

1. List any additional findings and conditions...

Sample Motion for a *Negative* Recommendation – “I move we forward a negative recommendation to the County Council for the Nutraceutical Conditional Use Permit request, application #11.064, subject to the following findings:

1. List any additional findings...