

MERCER COUNTY PLANNING COMMISSION MINUTES

The Mercer County Planning Commission met Wednesday evening June 24th, 2026 for a public hearing at the Stanton Civic Center in Beulah, Eslinger called the meeting to order at 7:00 p.m. C.T.

Members Present: Mike Eslinger, Chris Renner, Casey Voigt, Kevin Hafner, Andy Thomas, Gerald Bieber, Shane Cole, Steve Guenthner (Commissioner Alternate)

Members Absent: Joey Neumiller, Rick Bauman

Others Present: Dan Arens, Kevin & Linette Irwin, Lori Hammer, Sheila & Darlys Roth, Wes Klein, Michael Berg, Kaylene Berg, Wes Berg, , Chase Dauenhauer, Jack Schuh, Bend Sand, Melissa Hochmuth, Laura Matheson, Melissa Brooks, Stephanie Morales, Brenda Cook, Scott Harmstead, Nancy Evanoff, Signe Snortland, Kimball Banks, Briana Scheid, Liz Lundstrom, Marcia Jurgens, Elizabeth Wanner, Nathan & Kathy Busche, Anita Faut, Joe Grannis, Renee Carlson, Christina Barbot, Jordan Stromme, Mark Hafner, Kayla Coe, Wayne Bertsch, Clay Cameron, Cole Decker, Jason Ehlert, Mary Rahn, Milo Dyke, Mike Kaut, Judy Knoell, Darlene Voegele, Randy Torgerson, Jake Dewall, Sue Cahoon, Lucinda Johnson, James Scherrer, Jeannine Bornemann, Marie Carlisle, Gaylen Sailer, Corrie Rogness, Brenda Lacher, Doug Rothe, Marsha Schneider, Mary Ann Gross, Brandon Windhorst, Todd & Jean Lindquist, Mike Morris, Jen Wolff, Betty Hunt, Deb & Jim Allmendinger, Kayla & Austin Lindemann, Raymond Laverdure, Kyle Gundmunsen, R. Dukart, B. Dukart, Keith Boehm, Arlo & Heidi Bakker, Dave & Alexis Eustice, Kelsey Swift, John Krizan

Eslinger asked for any additions or corrections to tonight's agenda. No changes. Motion by Voigt to approve agenda, seconded by Renner, members present voted "aye", motion passed

Eslinger opened the meeting that tonight is the official comment period for the ordinances. We will start with the industrial district. Anyone who wants to make comments will come up to the podium and use the microphone. State your name and where you are from.

Signe Snortland: Thank you for this opportunity to comment. I commend you for using a subcommittee process to draft ordinances in collaboration with concerned citizens and stakeholders and offer these comments as a former federal Environmental Specialist for your consideration when revising these ordinances into final versions.

Industrial District

Section F.1.b - Change in Surrounding Land Use - the unique challenge with regulating data centers is that while the structures may not change substantially after construction, computing equipment is replaced frequently; i.e., every 2-5 years according to an Applied Digital spokesperson during a tour of the Ellendale data center. Thus, noise levels or other pollutants could increase after initial permitting creating a nuisance that this section exempts from consideration. I suggest that county review of conditional use provisions be triggered whenever the hyperscale data center substantially revamps computer equipment housed within its structures and the cooling system, such as discussed in *I. Project Changes* for revisions in a building footprint.

Section F.1.d - No Limitation on Enforcement - what is the penalty for a violation of permit conditions? Is that specified elsewhere? Is the penalty adequate to deter permit violations by a billion-dollar company?

I suggest you include the penalties listed in House Bill 1427 from the 69th North Dakota Legislative Assembly.

With no further comment. Motion to approve by Voigt, seconded by Cole to approve Chapter 3 Zoning Districts, Section IV - Industrial District. Will move forward to the County Commission meeting July 1st.

Moving on to Industrial Use Standards

Signe Snortland- *Chapter 4.A.1 Residential Buffer* - How will the size of the buffer strip be determined by the Planning and Zoning Commission? Will it be based on the results of the environmental review described in Section D? Typo - insert "by" between "approved" and "the."

D. Environmental Review 1. Purpose - Add "and infrastructure" after "welfare." The environmental review should also quantify benefits, including estimated property tax revenue for the county, permanent jobs (types of jobs/salaries), number of temporary construction worker positions, local income from housing, grocery sales, dining out, fuel sales, purchase of local aggregate/fill for construction, etc. That way the county can compare quantified benefits to quantified impacts to facilitate decision-making. Is the juice worth the squeeze?

D. Environmental Review 2.c - Will replacement of computing and cooling equipment trigger another environmental review to determine if additional mitigation measures are needed to offset new impacts or if impacts are lessened, eliminate unnecessary mitigation measures?

D. Environmental Review 8. - I suggest adding "d. Identify and quantify mitigation measures to include in a Community Benefits Agreement" (see E. Development Agreement 2).

G. Noise Mitigation Requirements 6.d - Rather than annual inspections, why not require installation of noise monitoring equipment that tracks sound levels 24-7 to alert the County Engineer of any violations to be corrected before becoming a nuisance?

Kimball Banks: Questioned how long these would be in place. Approve a 3rd party review by county commission. Also look at socio economic impacts, short and long term.

Kelsey Swift: I want to start by saying I am not opposed, I have been through the oil field. I understand the value of good paying jobs. I'm trying to understand what exactly is being proposed, what the impact will be, and ensuring the people who live here are fully informed of the decisions being made. I am not here to say no to development but am here to ask that the decisions of this magnitude be made transparent. Before the ordinances are approved that effect our home, the water or property values, quality of life for generation deserve as the public for complete and honest information. At a subcommittee meeting it was stated that NextEra met with Chris Renner privately to squash rumors about this project. Why does NextEra get a private opportunity to clear up misinformation with one person but the citizens whose homes and quality of life may be directly affected or given the same opportunity. If there are rumors please address them, answer the questions publicly, private conversations create more questions. Each data center takes different things, is it artificial which requires more water, is it cryptocurrency which is noise levels. These are not minor details and have different impacts on our electrical demand, water, and surrounding communities. How can the public provide meaningful input when you don't know what type of project this ordinance is indented to accommodate? The other issue is setbacks, is it fair to the county residences to bare the impact of massive industrial facility a half a mile from their homes. If you all had a choice to have your bedroom

window a half mile from constant humming would you choose that half mile setback or would you want it further away from your home? If your answer is one mile or more than why should the people you represent be expected less and if the answer is still that one-half mile then I respectfully ask, is there engineering study or scientific evidence supporting a one-half mile is protecting the people who live there. Is there a study in place or NextEra required to do that? Voigt responded there is a study required to be done. Eslinger reminded Swift that we are currently taking comment for the Industrial District. Swift will come back at the appropriate time. Eslinger asked for other comments.

Nancy Evanhoff: Industrial use standards and residential buffer I am requesting it should be moved to 1 mile and make everything a mile. It would save a lot of arguments with people. Everyone seems to be okay with 1 mile, I'm not I'd rather have 5 miles. I may have missed about top soil preservation, will that be in the industrial use and possibly reinstated for every other industrial use, we have got to save our top soil. That is all I ask.

Sheila Roth: On original data you guys took out the ownership and put it into the industrial use standard and in the industrial use standard you put in foreign ownership. I don't believe we should have foreign ownership. When I did my research on it, once we have foreign ownership it takes away all of the county liability away from them. Data Centers are not just regular businesses, they are critical, and an open door for foreign ownership and outside entities. Having the power to monitor, and even having the power to disrupt visual guidance access. They are big hyperscale data centers that can get into our systems. It is Cyber security, I don't believe we should have anything for foreign ownership. I am being told they are wanting foreign investments, but seriously we can't have that, this is the United States, this is ND, this is Mercer County and we need to stand up to them.

Todd Lindquist: I am not opposed to development. I am opposed to perceiving the development of these ordinances prior to understanding the full impact and benefits. Specific to the industrial use I do have concerns with the setbacks of dwellings making that based on the noise requirements. I do not believe the noise requirements are not appropriate. Being measured from for the exterior of the wall of dwelling. That does not address any impacts to animals, wildlife, you sitting on your patio, that noise should be measured at a certain decibel level & inside. All of us in ND who are sitting outside, I think there is a certain impact. Voigt responded It would be the external to the wall. Lindquist replied, at the external wall of only occupied dwelling. So, at my place at my barn where we host our bonfires and outside events because that is not on the dwelling? I guess based on how I feel I am opposed to Basin's setbacks, noise and other impacts. I can give you an example, my family and I, we take friends from out of state and ride four-wheelers on section lines. There was a beautiful hill, we named it sunset hill, my daughter was proposed to on that hill. Right now, that is being impacted by our neighbors from Oliver County. Instead of sitting out there and watching the sunsets, we see flashing red lights, I have no say in that. I think we need a more confident impacts regarding setbacks. Lastly a lot of these proposed changes came from NextEra. Voigt responded very few changes were made by Next Era. Renner also responded that when it comes to public input, everyone had the chance to send Jen an email suggesting changes. This includes the public and the job creators. Whether your comments made the ordinance or not that is questionable, but everyone had the chance to comment.

Cindy Johnson: There was a lady over here that mentioned needing to know what type of AI or data centers are coming because there is a lot of talk about everything that is already here such as wind turbines, solar, power plants that we already have, and chemical plants like DGC. We are entering a new

phase and no one is discussing the real Chernobyl type things that can happen. We are talking about nuclear reactors and several small modular reactors. What if an accident happens at these types of places. And so, if there is an accident and nuclear is being sent out and, and it's now out here in the air, it doesn't matter if it is huge or small nuclear problems can kill people. There is not much in the paperwork I have seen that's talking about that and protecting the public. Not just a mile, nuclear can affect nations. Renner replied there is no nuclear in ND, the closest one I know of is in Iowa in 2020. Our proposed data center has no nuclear.

Brianna Scheid: I live in Mercer County, south of Hazen where we farm and ranch as a family. I grew up in Oliver County. I do want to see our communities grow and thrive, but not at the expense of what we already have. We should not be letting the industry set the standards and should be skeptical of any edits proposed by the companies as they are looking out for their self-interests and seeking to find the easiest path forward. The #1 question I keep coming back to is - What's going to be done for those that will be the most negatively impacted? The landowner, who sells or signs a lease, has a contract, and the ordinances are being written to lobby for a Community Benefit Agreement for all. But, what about those who live the closest that will be impacted daily and stand to gain nothing or the least? The county should be looking out for them, and I'm not talking about some light shields, trees that will take years to grow, or setting a standard for noise that is that of an acceptable URBAN noise level AT their home when living in the country. I live in the country, a rural area for a reason, to enjoy the outdoors and the land. We like to use coal as the standard in this county? Well, I ask the board what does the coal industry do in these instances to the neighbors in the areas that will deal with the greatest effects, but that are NOT actively "part of the project."

Specific ordinance comments below:

Industrial Use Standard

- A - Residential Buffer - add back the 1250' buffer that was removed and define what residential district is.
 - Does this include rural residential homes? It was stated at a subcommittee meeting that it did not. It should.
- G - Noise Mitigation Requirements - #4 (a)- this wording and change is a definite roll back of protections if allowed to remain from "proposed" noise source to closest exterior wall of any occupied dwelling unit.
 - It does NOT protect the neighboring property owners' use and enjoyment of their property. It is an industry accepted edit. 50 dba is an acceptable URBAN noise level. People don't live in the country to be in an urban setting.
- G - Noise Mitigation Requirements - #7 - Construction Noise - Times were changed for allowable construction hours to 6 AM to 10 PM - from 6 AM to 8 PM prior.
 - We visit a tourism laden area in Florida where they are rebuilding due to hurricane damage - companies are allowed to operate only weekdays 8 AM to 5 PM. Their economy revolves around tourism yet they limit/regulate them. Understandably, we have a shorter construction season, but neighboring properties should be allowed a break from the traffic, noise, dust, etc.

Chase Dauenhauer: NextEra energy appreciates Mercer Counties efforts to revise the standard for industrial uses in any way that serves the county and residence while allowing for development. It is an

important for planning for future growth. NextEra has submitted comments in memo and redline for consideration for the county. The purpose is to ensure the standards are balanced for the county's goal and to support project development. It is to provide clarity on how to comply with those ordinance revisions. I did submit to Jen and have additional comments for industrial use ordinance. See Attachment A.

Michael Berg: In regards to some things Brianna said, the residential districts regarding last week's meetings. The maps that are proposed had yellow, residential districts. Not all rural housing, farms, and ranches are rural residential districts. The draft that was changed that I am holding was 1250 from a residential district. The current draft is just a residential district there is no setback on residential buffer on the current industrial use standards. The scope of the environmental review # 5 the vibration was removed from noise. Notifications it used to be 5 miles and now it is 1 mile. Wind had a higher notification rating, saying we are trying to keep things the same is not following. On page 3, I think it is number 2C environmental review, it doesn't say who is going to write it. I believe it should be a qualified 3rd party. Section F, emergency management, I think this industrial use is trying to encompass a lot of things under one umbrella and do not know what they all could be or will be. I think we need to think about the realistic idea that something like DGC, an industrial facility, requiring them to have their own fire protection. I do not think it's right to burden a rural fire district. To encompass a large-scale facility for a rural fire district such as Stanton. I agree with Sheila Roth on ownership, foreign ownership. We know better than to allow people and entities from outside the county to own property and land and industrial facilities. It could be China owning a nuclear powerplant next to our school, towns and cities. Standards are meant to be balanced but allow project development. How are these ordinances going to protect our rural land owners, farmers ranchers, People who relies on getting from point A to point B, are these people going to be able to access their land, be compensated for the impact of the construction and life of projects, compensate those not being able to drive a mile up the road for driving a combine. A 20-minute job is now going to be a day long process to take the header off for moving it up the road these are some things we need to start thinking about. That is all I have thank you. Renner thanked Berg for his professionalism.

Wes Klein: Will the Planning and Zoning commission keep the record open through the 25th, 26th through the 28th so the people will be able to submit their comments into the record. Eslinger asked the next 3 business days. Klein state the next 3 business days, to give Jen time to get comments to the county commission and you. Eslinger stated, emails will be accepted on the 25th-28th. That way it will be before the July 1st commission meeting.

Elizabeth Lundstrom: I think we need to step back here, one of the things we are discussing is industrial use ordinance. Maybe we need to pause and think about the what if it's not that. What if it's something else, what if it another small power plant. What we are building in the industrial use standard so what could possibly fall under the industrial use and really look at that and not get frustrated with the data center; does it cover it, is it enough, broad enough, wide enough, and clear enough what is required in that standard and the process to move through the next stages of the process. Do we clearly state we need a conditional use permit, or Industrial use permit, or what type of permit? Do we clearly state what those requirements are and provide a checklist? What are we doing to make that workable if it's a small project or a big project. I want to bring in a feed lot is that an industrial use project? How do we evaluate it? I think there are a few gaps that we need to look through that are not just based on the data center. The last time this was updated was 1982. You guys have a lot of things over your head to and need to take a little bit of time to review from that perspective.

With no other further comments, motion by Thomas, seconded by Hafner to close the public comment period. All present voted "aye", motion carried. Eslinger questioned the third-party review. Harmstead replied Yes, that was added by comment and discussion by this board at the last meeting. That was on page 2 items 3 and 4. Item 3 is qualification of environmental review preparer that talks about qualification necessarily for that. Item 4 is 3rd party review of that. Voigt under environmental review part 4 it says the county shall have a person or firm that meets the qualification that meets part 3 above the review of the review of the environmental review. So, I think that is covered in the ordinance. Question from audience in the wording under ownership. It's referencing data centers, should it not be all industrial uses. Motion by Voigt to amend the ordinance Letter I, Numbers 1 & 2 replacing data center with industrial use. Seconded by Guenther. Eslinger, Bieber, Cole, Renner, Hafner, Voigt, Thomas voted "aye", Guenther voted "nay". Motion carried. Motion by Thomas, seconded by Renner to approve Chapter 4 Special Provisions, Industrial Use Standards as amended. Eslinger, Bieber, Cole, Renner, Hafner, Voigt, Thomas voted "aye", Guenther voted "nay". Motion carried. Will move forward to the County Commission meeting July 1st. Moving on to Data Center Ordinance.

Linette Irwin: Would like the board to paint a picture. Referenced the presentations at last commission meeting. This is not just a project but a system. Pipelines, transmission lines, wind, etc. This data center is going to be 1700 megawatts, one of the largest ever seen. Mercer County has been 1st in a lot of things, we do not want to be first in this. Can this ordinance handle this scale of a system. Slow down, plan for the future, look at all the puzzle pieces. Use the facts to plan for us not industry. See Attachment B for submitted written comment.

Signe Snortland: *A. Definitions. Data Center* - The definition sets two size levels for data centers - small and large. The small data center uses enough electricity to power up to 50,000 homes yet a full environmental review is not required in section D.36 - Submittal requirements. To put that in perspective, according to the 2025 census all of Mercer County has 4,689 homes so the "small" uses more than 10 times the electricity of all residences in the county. I suggest you specify three sizes of data centers with small being up to 5 megawatts. Anything larger should require a full environmental review.

D. Submittal requirements - The word "preliminary" has been inserted in many of the required submittals in this draft of the ordinance as compared to a previous draft. How will an accurate environmental review be done when information is only preliminary and could change substantially as designs progress? Environmental reviews are most accurate using feasibility-level design or final design. Government environmental reviews based on preliminary design (appraisal-level) are programmatic in nature requiring additional assessment on feasibility-level or final designs. Additional environmental review should be required when designs are amended like the PSC requires for state-regulated projects.

Add a stipulation for dust (airborne particulate matter) control during construction.

D.37 Study/Analysis Requirements: Large Data Centers - Revise this to include all data centers if size definitions are limited to small and large or include medium and large if there are three size definitions.

D.37.c Archeological Resource Survey and Consultation - the State Historic Preservation Office is consulted under the National Historic Preservation Act if a project has a federal nexus. Revise this to be consultation with the Archaeological and Historic Preservation Division, State Historical Society of North Dakota. They review state regulated projects.

F. Use Standards.1 Data Center Building Setbacks - I highly recommend a setback of at least 1 mile to minimize land use conflicts and encourage construction of data centers in industrial zones.

Darlys Roth- See Attachment C.

Kelsey Swift- You did say there will be acoustic levels done. Will that be done during normal operations equaling demand and generator testing. Or will it just be a general this is how it is? Voigt replied start with what we modeled, but then there is something running we will get an average we can monitor. Swift In section A you talk about the structure and cooling systems. This comes to the squashing of rumors and we are worried about the water usage. Some people say it's less than DGC but then we are being told we need to protect our wells. Again, with knowing what kind of data center is coming in and the type of usage and that is the preliminary permit. Why are you waiting for them to apply for a permit to know what to expect? If an ethanol plant comes to you and says they are wanting to build, you know the expectations that are going to come with an ethanol plant. Why are you not holding that same standard for a data center? I don't think what people are asking is unreasonable, what cooling technologies will be used, there is a viable and evaporation that is different than usage. If those answers exist where can the public find them. So that we are not having these rumors and private meetings. These things can be avoided with transparency they are reasonable questions. What benefit does a Mercer County resident get from allowing NextEra to build on the land? Taxes invested into the school, in our kids' future, sports, besides our jobs. What benefits. Giving up so much land. Potentially destroying generations. I think we need to slow down and get the facts, what kind of system, what kind of center, how is this going to affect long term. Do you want to live within a half mile of 50 decibels constantly humming in your ear? Why are we expecting everybody else? If NextEra wants to be a part of community then be a part of it. Come and answer our questions. At a subcommittee meeting I and a few others did ask NextEra to speak with us and we were told we are not speaking to you. That is not somebody who wants to be a part of our community, that is somebody who wants to come in and have their way. All I ask is do what a government is supposed to do, represent your people, listen to them, and slow down.

Chase Dauenhauer- Many of our comments have been providing clarity on how to comply with the proposed ordinances. Really these recommendations are intended as the recommendations we have provided as memos and redlines are intended as targeted as refinements in support implementation of the ordinance as a revision by the county. It is important to note that any proposed data center project would still be required to proceed the established conditional use process where the county can apply the appropriate site-specific conditions if the permit is approved. The data center ordinance is instead intended to provide the clear guardrails to guide implementation and allow further discussion to determine the liability upon each project. NextEra appreciates the county's consideration of these comments. See attachment D.

Todd Lundquist: The simple addition of the word preliminary in numerous aspects of the ordinance it creates a tremendous amount of wiggle room for the company proposing the development. It is very hard to make foreign decisions on preliminary documents. The comment was made on environmental assessments but it applies to many other features. Preliminary is put in there instead of numbers. It creates more buffer or wiggle room for the proposed development. It makes it harder for the company, commissioners, residence. We need facts, numbers. I also have concerns with the proposals with the impacts on the infrastructure. If we have a 1.7-gigawatt facility we must consider the impacts on the

transmission, any support infrastructure, developed can't just look at the impacts of the data center. I also noticed the requirement to look at the wells is restricted to those documented in the North Dakota Department of Water Resources inventory. We all know that inventory is not accurate. I think there needs to be further analysis of wells in a certain radius of the data center whether or not they are documented with the North Dakota Department of Water Resources. I have submitted those comments to the commissioners. Land Use Admin has not received these comments. Voigt responded he's waiting to hear from the State's Attorney on the wording of preliminary versus proposed.

Kimball Banks: Going through the ordinances for data centers I did not see anything regarding public hearings and I did not see anything under Solar or wind, maybe I didn't see it. The other thing is in environmental assessments your ordinances focus on the acts of the environmental there are a lot of blanks here. If you are going to do an environmental assessment you have to look at the impacts. Finally, on Page 2 you should include the commission on it. Page 5 reference chapter 4, Environmental study and move the environmental requirements up to chapter 4 of industrial standards.

Marcia Jurgens: "Let's back up. Let's back way up. The farmers and ranchers are the STEWARDS of OUR LAND and of natural resources / wildlife. They should be the ones making the calls. I shouldn't have to point out that these guys are extremely important to all of us. Hold off on these hyperscale centers. This is all an unknown- we must control the size, limit to only one if at all and have a guarantee that there will not be any expansion. We do not know what we're entering into our community. Of note- all the people that are weighing in on what they have experienced cannot all be making things up. Listen to them. Here is my short list of concerns and questions that I haven't heard CLEAR answers to. Why did they turn down already zoned industrial land unless it would cost them monies to bring it up to their criteria (remember they are set to make huge monies). What about deferred taxes? If they don't pay their share, it will fall on residents paying taxes. I hear about the increased heat they will put out causing climate change in the surrounding areas affecting environments and wildlife. Causing worry. Why aren't you requiring them a limit on size/scale. How much will they be required to hold in escrow or bond to cover reclamation. (This also on Wind and Solar). We by all means need a non-partial environmental and socio-economical study. I understand clearly that a one mile TO PROPERTY LINE is not sufficient to eliminate Health hazards. This goes on and on. Who reaps the benefit and who bears the cost (health, monies, environment) of hyperscale coming to our area/neighborhood. The farmers and ranchers, natural resources/wildlife are the important people in this room. Respect them. Don't cater to the millionaires who expect to make billions OFF US and at our expense. It seems their plan is to rush this through fast expecting us to make mistakes while doing it with as much secrecy as they can..non disclosures... Tell them no.

Arlo Bakker: One thing that stood out to me was the definitions on page 1. The last few sentences, can someone enlighten me on the intent or development." For the purpose of this ordinances all components and phases of a data center development are subject of data center parcel including on site infrastructure regardless of ownership shall be considered part of a single project and subject unifying the permit. "Can you clarify for me the intent? Harmstead replied, it's a lengthy way of saying that the proposed parcels with respect to the data center would be all part of the same review. Bakker, the language felt vague enough to account for, we come in we built the building its 100 megawatts you approved that we want 3 more the same. It has to be unified. That's not what you are saying? Harmstead, it would have to be the next phase. Bakker, changes need additional permitting and I think we need to be very clear. Issuing a conditional use permit based on as many data points, it's entirely

responsible towards residences and the decisions, I respect higher standard. I look back to the setbacks to ensure that the people closely impacted have a voice. Setting it to a half mile and based on the outside of the residence wall doesn't do justice if their property goes well beyond there in terms of acreage, livestock, crops. Increasing that setback should be required in the industry to go with the residence. Why as the county, as the planning and zoning commissioner, say I'll air on the side of protection for my residence. The favorable would be we are making the setbacks to small, our residences and properties will be harmed. It is not that much effort to negotiate with the industry for a few more miles.

Wes Klein: Basin Electric has been here for many years; Basin electric is involved with NextEra energy. NextEra energy is not a data center developer, they are a generation of transmission company and they are only getting larger. My question to this board, the county commission, and the public is: Why is NextEra Developing, working on, and pushing through their version of the ordinance. I have seen drafts that are red lined. Why is a generation of transmission company, NextEra they have done all kinds of options to purchase, but they are not going to develop the data center? That's absolute lack of transparency for the county because we don't know what we are going to get and sadly you don't either. Unless they have had private meetings with you people, which hyperscale weather apply digital, amazon, meta. We don't know and neither do you. Why do we have a company, a multibillion company, a global company, in Mercer County assisting in developing ordinances and there is no transparency.

Lori Hammer: I just have two simple questions for you. How did you come to the conclusion that this proposed AI campus is a good thing for our county? 2nd How has money become more important than the health and safety of the citizens you represent?

Michael Berg: What you do now will set precedence. Stutsman County has a 2-mile setback and a 3-mile setback between other data centers. The wind ordinance is stronger than the data ordinance. See Attachments E, F, G. Dust control that is mentioned in the Solar ordinance should be stated in the data center ordinance. Is there a deadline? Why rush. Do things the right way and write this for Mercer County. Voigt responded, as far as roads that's covered under part 3- access conditions all other access, the data center shall have access to a paved road to a sufficient capacity to accommodate traffic the data center will create. That will be paved through a road use agreement. It's in the Industrial use permit. Someone is audience asked about the wells. Voigt responded, The Department of Water Resources keeps record of all registered wells and water permits, whether it's a well or running water or anything other source. My recommendation would be to the land owners, to check your wells and check with the Department of water resources and see if it is registered.

Renee Carlson: The ordinance talks about owner project developer and applicant and I don't know the difference there is no definition and I think that would be helpful on who the owner and project developer it. There are a couple typos they are small, on page 2 section B It says "state" I think it should say "stated." The other thing in C2 it says "detail" should say "detailed". It worries me on a matter of financial resources. You look at these companies they have endless financial resources, we don't. If there is a problem, how are we going to resolve it, because they can fight us all the time. It is going to be very hard to change once it is built.

Jack Schuh- I want to advise on some general comments on concerns and those are real concerns they are valid. I want to express those concerns with Basin Electric. I am going to take that back and see if there is a better way to communicate. There was an issue brought up related to transmission service,

transmission is something that will have broader impact and that is absolutely right. Those impacts are going to be a sensitive study and not just by Basin Electric. Guenther asked for some clarification on Snortlands numbers on the data center. No other comments. Motion by Renner, seconded by Cole to close public comment. All voted "aye", motion carried. Eslinger would like clarification of the data center being on the grid as he was led to believe they wouldn't be. Voigt explained he was the one who brought up the question to Basin. There is no behind meter stuff, that is a conversation that was started at the public service commission and when he questioned Basin on it they corrected him and said there is no such thing as that. We have to bring that much power to the grid then take that much power off the grid. That has to deal with controlling the reliability power and that came from Roughrider Electric. Eslinger would like something added for checks and balances. Voigt referenced Page 9, 21 part 2. Eslinger thinks 3 tiers for sizes. Guenther agrees somewhere between 50-200 megawatts. Renner is addition to SPP grid there is also FERC. It's FERC's responsibility to protect. There is a public service commission. We have lots of regulations to protect us. Voigt, with this 2-tier system, once it goes over the 50 megawatts, it will all be held to the highest standard. Anything over 50 megawatts would be held to the strictest requirement. Eslinger, we also have the 1-mile notification here. Solar and Wind, I think its 5 miles. Do we have a recommendation to change that to match solar and wind? Consistency matters. Any other changes. Preliminary wording is waiting on the States Attorney. Guenther would like to Add Letter E from the Solar ordinance which states. Land Use Admin read back the changes: The permittee is responsible for damage caused by facility or components. Permittee must repair, store, or compensate for verified offsite damages within 120 days of the damages verified by the county. Must maintain insurance to cover damage claims. The county shall be identified from damage claims. Notification would be same as Wind. The applicant shall be responsible for mailing out certified notice letters to property owners within 5 miles of the proposed data center. The applicant will be responsible for the cost of certified mailing and the county will provide a copy of the property owner notice to be sent by certified mail 2 weeks prior to the public hearing the applicant shall submit proof of mailing, a list of property owners within 5 miles, and a signed statement with a notary sealed certifying all property owners within 5 miles have been noticed. Motion by Guenther to change notification letters from 1 mile to 5 miles as discussed, seconded by Voigt. Roll call vote, Eslinger, Bieber, Cole, Hafner, Voigt, Guenther, "Aye". Thomas and Renner voted "nay." Motion carried. Motion by Guenther, seconded by Voigt to add Letter E from the solar ordinance. All members present voted "aye." Motion carried. Motion by Thomas, seconded by Cole to approve Chapter 4 Special Provisions, Data Centers, as amended. Bieber, Cole, Renner, Hafner, Voigt, Thomas voted "aye", Guenther & Eslinger voted "nay". Motion carried. Will move forward to the County Commission meeting July 1st. Moving on to Sand/Gravel ordinance. Thomas recused himself and moved to the audience.

Andy Thomas: The 500ft setback on page 2 on top of the page. I did get a call on this today from another company saying this is difficult to follow. I am looking to take mining out and the 500ft and 1250ft for all the other stuff. 500ft is kind of a long ways. Most of the time it is 75 ft off the section line. 200ft off the highway, things like that. Reclamation should be up to landowner. Questions the legality of numbers 13-15. Some comments from the audience on reclamation and #16. Eslinger, State's Attorney needs to review #16. No other comments, Motion by Cole, seconded by Bieber to close public comment. Eslinger questioned that only working during daylight had been removed. Harmstead that was taken out in last year's draft with Kaffar. Eslinger would like it back in and a condition stating if they got permission from the commissioners they could run after hours. Sloping is covered by MSHA. Discussion on setbacks.

Guenthner would like to leave it. Eslinger, reclamation should be up to landowner. Motion by Voigt, seconded by Renner to remove #10. Roll call vote, all voted "aye". Motion carried. Eslinger made a motion to add driving only in daylight hours with permission from the commissioners to run after hours. Seconded by Guenthner. Roll call vote, Eslinger, Bieber, Cole, Guenthner, Hafner voted "aye", Renner and Voigt voted "nay". Motion carried. Motion by Hafner to add follow DOT regulations to #14 & #15, seconded by Cole. Roll call vote, all voted "aye" motion carried. Motion by Guenthner, seconded by Cole to approve Chapter 4 Special Provisions, Sand and Gravel Mining, all voted "aye". Motion carried. Will move forward to the County Commission meeting July 1st. Moving to Solar Ordinance. Land Use Admin read the following comments out loud. They were received through email and were unable to attend:

- I am a landowner in Mercer County and it has come to my attention that the Mercer County Planning & Zoning Board and the Mercer County Commission are working on developing an ordinance regarding solar farms. I believe it is important that we do not restrict business development or private property rights in the county. I am asking you to allow private property owners the right to maintain control of their land and not restrict it with unreasonable setbacks or regulations in this ordinance. One of the foundations of freedom is that private property rights must be controlled by landowners and not by government. Let's keep Mercer County great by continuing to support businesses, jobs, and most importantly, private property rights. Jim Fritel.
- I am writing to express my concerns regarding the proposed ordinances for solar farms in Mercer County. I request that the ordinances for solar farms be consistent with those established for similar industries in the county, such as sand mines, gravel pits, and coal mines. As property owners, we ask that our property rights and land usage not be limited by unnecessary restrictions. Jonathan & Micelle Schlender.

Linette Irwin: In regards to the generality and consistency we have determined the solar, wind, and sand & gravel, is more regulated than the data center ordinances. We did an analyst. There are substantial differences that make the other ordinances much stronger, we have been talking about being consistent. I am saying that fair is fair I think that more scrutiny can be given to the data center ordinance tonight. It seems like it's easy to change sand & gravel stuff or solar but when it comes to Data Center stuff we have to fight for every inch. I am begging you to be considerate of your work of the data center ordinance.

Michael Berg: Question on Letter E and who assesses these damages. Discussed the glare analysis and setbacks regarding airports.

No other comments, Motion by Renner to end public comment, seconded by Cole, all members present voted "aye. Guenthner questioned on page 3 under 2B the height shall not exceed 10 feet. But on page 5 which is for solar farms, under G (i) it says the last words are the maximum height is established elsewhere, the only thing stated elsewhere is the 10 feet. Eslinger, that is only for grazing. Cultivation farming should be taken out of there. You can't get any farm equipment there. There has been talk of raising it up higher but that hasn't come to pass. Harmstead, a clearance of 10 feet is meant to be a maximum. I think that is correct, that is much higher than you typically see, it is much more than you would see than just sheep to graze. Motion by Hafner to eliminate the term of cultivation and harvesting. Cole seconded. Roll call vote Eslinger, Bieber, Cole, Hafner, Guenthner, Renner voted "aye", Voigt and Thomas voted "nay." Motion by Renner, to approve Chapter 4 Special Provisions, Solar Energy as amended, seconded by Biber. All members present voted "aye", motion carried. Will move forward to the County Commission meeting July 1st. Lastly, we have the wind ordinance.

Michael Berg- Recommend adding Letter E from solar damages and again look into who assesses these damages. Wind and Solar is more restrictive than the data center ordinance. Mentioned the heat is different when you fly over solar farms. Can see concerns flying over a runway as heat can change the elevation.

No other public comment. Motion by Cole, seconded by Thomas to close public comment. All present voted "aye". Eslinger asked for clarification on damages. Harmstead replied, as far as damages who determines damage, I think if we are going to require them to have insurance, it would be the insurance company. This is getting a little bit out of my wheelhouse, but that is my best attempt at answering the question, other than that would be the compliance officer but I am not sure if they would be qualified to make that decision. States Attorney should look into this. Guentner on Page 4 Public Hearing, we have the county doing written ordinance to property owner. On Part B you have the applicant doing the same thing by certified mail. I guess I don't see why the county needs to do it if the company is by certified mail? I think under it we should eliminate the county mailing. Motion by Guentner to remove county mailing under 4-Public Hearings, seconded by Voigt. All members present voted "aye". Motion carried. Voigt made a motion to add Letter G from solar ordinance to the wind, seconded by Guentner. Further clarification and Voigt stated it is already under part B part 2. He missed seeing it in the ordinance. Roll call vote, all present voted "aye". Motion carried. Voigt made a motion to rescind his previous motion. Seconded by Renner. All present vote "aye". Motion by Cole, seconded by Thomas to approve Chapter 4 Special Provisions, Wind Energy as amended. All voted "aye" motion passed. Will move forward to the County Commission meeting July 1st. Motion by Voigt to adjourn, seconded by Guentner. All members present voted "aye". Meeting adjourned at 10:32pm.

APPROVED:

Jen Neumiller, Land Use Administrator

ATTEST:

Mike Eslinger, Chairman



MEMORANDUM

TO: Mercer County Planning & Zoning Board and Board of County Commissioners

FROM: NextEra Energy Resources, LLC

DATE: June 24, 2026

SUBJECT: Comments on Industrial Use Standards Draft 06/24/2026 and Industrial District Draft 06/24/2026 submitted for the Planning & Zoning Public Hearing on June 24, 2026

SUMMARY

NextEra Energy Resources appreciates Mercer County's efforts to revise the standards for industrial uses in a way that serves the County and its residents while also allowing for responsible development. The County's work to develop the standards for industrial uses is an important step in planning for future growth.

Throughout this process, NextEra Energy Resources has submitted comments in memo and redline format for consideration by the County. The purpose of the proposed revisions is to ensure the standards balance the County's goals with practical considerations necessary to support project development. This memo highlights several key areas where the current draft could be refined to better align with how these projects are planned and evaluated.

KEY RECOMMENDATIONS

Industrial Use Standards

1. Ownership

Current Language:

- Section J(2) requires an application to the Board of County Commissioners to transfer the conditional use permit if there is a change in upstream ownership.

Recommended Revision:

- Revise the provision to remove changes in upstream ownership as follows (see proposed redline text below):
 - "Change of Ownership. 30 days prior to any change in ownership of a data center permitted in Mercer County, or a change in the controlling interest of any entity owning a data center permitted in Mercer County, ~~an application notice~~ shall be ~~provided made~~ to the Board of Mercer County Commissioners, ~~requesting notifying the Board of the~~ transfer of the conditional use permit. ~~Approval of s~~ Such transfer shall be conditioned upon explicit agreement by the new ~~owner, if applicable, applicant~~ to comply with all provisions of this section and all conditions attached to the original conditional use permit. The ~~application~~

notification may be in letter form and shall be signed by the authorized representatives or agents of both the current ~~applicant owner~~ and the prospective ~~applicant owner, if applicable~~.

Why it Matters:

- A change in the ownership or controlling interest of a parent company, affiliate, or other upstream entity does not automatically result in a change in the owner / permit holder. Thus, there would be no transfer of the permit needed.
- Requiring permit transfer approval for changes in upstream ownership could capture routine corporate transactions, financing arrangements, internal reorganizations, mergers, or changes in investor ownership that do not affect facility operations or permit compliance.
- Limiting the requirement to changes in the actual owner / permit holder provides a clear standard while ensuring the County maintains oversight when responsibility for the permitted facility is transferred.
- Draft ordinance already has language that any new owner must comply with the ordinances and conditional use permit conditions.

2. Notification Radius

Current Language:

- Section C requires notification of the public hearing to surrounding property owners.

Recommended Revision:

- Add a definition for property owners as follows (see proposed redline text below):
 - Notification of Surrounding Property Owners. The applicant shall provide a list of all property owners within one (1) mile of the exterior boundary of the proposed project site. Written notice of the application and public hearing shall be mailed to such property owners by first class mail no less than 30 days prior to the initial public hearing. Notification shall describe the nature of the proposed development. For purposes of this subsection, property owner means the owner identified by the County Treasurer to receive the real estate tax statement.

Why it Matters:

- Adding a definition of “property owner” provides a clear and objective standard for determining who is entitled to receive notice. The proposed definition above aligns with North Dakota Public Service Commission notice requirements under the State Siting Act (N.D.C.C. 49-22).

3. Environmental Review

Current Language:

- Section D(4) requires third party review of the Environmental Review documentation.

Recommended Revision:

- Provide clarity regarding third party review requirements as follows (see proposed redline text below):
 - “Third Party Review. At the applicant’s cost, the County shall have a person or firm that meets the qualifications of Part 3 above review the Environmental Review documentation. Third party review shall not be required for industrial uses falling within the siting jurisdiction of the North Dakota Public Service Commission. If required, the third-party

review must be completed within 30 days. If the third-party reviewer determines the Environmental Review is incomplete or insufficient to support a decision, applicant shall submit a complete written response demonstrating its compliance.”

Why it Matters:

- Reduces administrative burden and cost. Third-party reviews can introduce significant additional time and expense for both applicants and the County, without improving outcomes when a comprehensive state review is already required.
- Avoids duplicative and conflicting regulatory review. Industrial facilities subject to North Dakota Public Service Commission (PSC) siting already undergo a comprehensive environmental and public interest review at the state level.
- Preserves clear jurisdictional boundaries. Clarifying that PSC-regulated projects are exempt from local third-party review aligns County ordinances with established state authority, reducing legal ambiguity and the risk of conflicting determinations.
- Provides clear requirements for third-party review process that the County and applicant can rely on when working through the conditional use permitting process.

4. Road Use Agreement

Current Language:

- Section F(5)(a) contains requirements regarding road use and restoration during construction.

Recommended Revision:

- Clarify that the road use, maintenance, and restoration agreement will be executed by the County (see proposed redline text below):
 - “Prior to construction, the applicant shall enter into a road use, maintenance, and restoration agreement with the County Highway Superintendent. The agreement’s terms shall be coordinated with the County Highway Superintendent and shall address road use, maintenance during hauling, and restoration of affected roads following completion of hauling activities. The agreement will ensure that the requirements of this section are followed.”

Why it Matters:

- The County Highway Superintendent does not have the authority to independently contractually bind the County. Any contract with the County must be entered into by the County.

Industrial District

1. Multiple Conditional Uses

Current Language:

- The conditional use list contains several uses that might be associated with one project, such as tanks and communication towers.

Recommended Revision:

- Add language at the top of the conditional use list as follows (see proposed redline text below):

- If any use in this list is an accessory to a separate conditional use in this list, the use that is accessory may be permitted under the principal conditional use permit and shall not require a separate conditional use permit.

Why it Matters:

- Multiple conditional use permits may be required for one project. This proposed language would allow multiple conditional uses that are part of one project to be evaluated under one conditional use permit, thereby reducing administrative burden and duplication. For example, this would allow communication towers and storage tanks to be included in the conditional use permit for the primary conditional use.

ADDITIONAL RECOMMENDATIONS

- Section D(6) – Recommend replacing “necessary to serve” with “necessary to construct and operate” in order to clearly define the scope of the impact assessment to impacts associated with the proposed project.
- Section E(2) – Recommend clarifying that there will be a separate emergency plan for construction and operations to align with County expectations.
- Section F(2) - Recommend clarifying that fence height can be different for construction and operations, fence heights for construction and operations will be listed in the conditional use permit application.
- Section G(3) – Recommend revising G(3) to align with G(4) by defining “Receptor Site” to be the external wall of an occupied dwelling unit.
- Section G(4)(c) – Recommend removing the word “maintenance” from G(4)(c) to align with G(4)(b).
- Section G(6)(d) – Recommend requiring a one-time post-construction compliance study, rather than annual inspections, to verify compliance with the sound levels in Table 1, followed by additional testing only in response to a documented complaint. This approach is consistent with standard practice for similar infrastructure, ensures that compliance is verified at the outset, and provides a mechanism for enforcement if issues arise, while avoiding unnecessary ongoing testing where no impacts are occurring.

BOTTOM LINE

These recommendations are intended as targeted refinements to support implementation of the standards as envisioned by the County. It is important to note that any proposed project would still be required to proceed through the established conditional use permit process where the County could apply appropriate, site-specific conditions, if the permit is approved. The standards are intended to provide clear guardrails to guide implementation and allow for further discussion to determine viability upon each project's merit. NextEra Energy Resources appreciates the County's consideration of these comments and would be happy to discuss any of the above comments in more detail.

Attachment B

June 24, 2026

Mercer County Planning & Zoning Commission
Mercer County Commission
Mercer County State's Attorney
Mercer County Planning & Zoning Board Members

RE: Public Comment Submitted for the Record – Data Center Ordinance Public Hearing

Chairman, Commissioners, Board Members, and Counsel:

My name is Linette Irwin, and I am submitting this statement on behalf of Mercer County Concerned Citizens for inclusion in the public record regarding the proposed Data Center Ordinance. This statement is not intended to advocate for or against any specific company, project, or landowner. Rather, it is intended to address the scale of development being discussed and whether Mercer County is prepared to evaluate development of that magnitude through its current planning and regulatory framework.

For more than a year, many citizens have invested hundreds of hours reviewing public documents, attending meetings, studying infrastructure systems, and attempting to understand the various proposals and infrastructure discussions occurring throughout the region. Throughout that process, discussions have consistently involved natural gas pipelines, electric generation, transmission infrastructure, water resources, agricultural land use, and data center development. Initially, these subjects appeared to be separate and unrelated topics. Over time, however, it became increasingly apparent that they are interconnected components of a much larger infrastructure system.

This realization was reinforced during presentations made to the Mercer County Commission on June 17, 2026. Those presentations addressed major natural gas infrastructure expansion, regional transmission planning, projected tax impacts, and large-scale industrial development. While each presentation focused on a different subject, collectively they described a regional infrastructure framework capable of supporting development on a scale far beyond any individual facility.

Several facts were publicly presented or confirmed during those discussions. These included a proposed data center development of approximately 1,700 megawatts, power delivery through the existing electrical grid, ongoing expansion of major natural gas infrastructure, planning and discussion regarding future transmission expansion, increasing recognition of the Missouri River as a strategic water resource for future industrial development, economic projections based upon approximately \$11.9 billion in investment, continued state-level discussions regarding future energy infrastructure expansion, and active federal regulatory efforts addressing the accommodation of extremely large electrical loads associated with artificial intelligence and hyperscale computing.

Individually, each of these subjects may appear unrelated. Collectively, however, they describe the infrastructure systems necessary to support industrial development at scale. That realization

fundamentally changed how many citizens view this discussion. The number that captured my attention was not the acreage involved, nor the size of any proposed building. It was the discussion of 1,700 megawatts of electrical demand.

Most people hear the term “data center” and envision a building. Buildings are measured in square feet. Electrical systems are measured in megawatts. A development requiring 1,700 megawatts is not simply a building project. It represents the scale of the energy, transmission, water, land, transportation, communications, and supporting infrastructure necessary to sustain that level of demand. The significance of that number lies not in the structure itself, but in the systems required to support it.

Similarly, the economic presentation provided to the Commission referenced approximately \$11.9 billion in projected development investment. Whether those projections ultimately prove accurate is not the focus of this statement. What matters is the scale assumption underlying those estimates. Investments of that magnitude are not directed solely toward buildings. They reflect the extensive systems, infrastructure, and long-term development necessary to support industrial operations on a regional scale.

For that reason, the questions before this Board extend beyond traditional zoning considerations such as setbacks, landscaping, or building design. The broader issue is whether Mercer County's ordinances and planning processes are prepared to evaluate development supported by infrastructure systems measured in gigawatts and billions of dollars.

For many months, citizens have raised questions regarding pipelines, transmission infrastructure, electric generation, water resources, agricultural land preservation, and data centers. Over time, it has become clear that these are not separate questions. They are interconnected elements of a single system. Pipelines provide fuel. Fuel supports generation. Generation connects to transmission. Transmission delivers power to large electrical loads. Those loads, in turn, require water, land, roads, communications infrastructure, and long-term planning. Remove any one of these components, and the system no longer functions as intended.

Viewed individually, these may appear to be separate projects. Viewed collectively, they illustrate how a region supports industrial development at scale. This observation does not imply that any particular outcome is inevitable, nor does it suggest that any party has acted improperly. It simply recognizes that the scale of development being publicly discussed is significant and deserves careful evaluation.

The public deserves to understand that scale. The public deserves to understand how these systems interact. Likewise, this Board deserves ordinances capable of evaluating development at that scale. The question before Mercer County is not whether growth should occur. The question is whether Mercer County is prepared for growth of this magnitude.

As this Board considers adoption of a Data Center Ordinance, I respectfully encourage careful consideration of several broader planning questions. Are our ordinances prepared to evaluate projects supported by infrastructure systems of this scale? Are our planning processes equipped to assess cumulative impacts across multiple infrastructure sectors? Have we adequately

considered long-term demands on water resources, agricultural land, transportation systems, utility infrastructure, and community planning objectives? Most importantly, is Mercer County prepared to manage development of this magnitude in a manner that protects both current residents and future generations?

I respectfully encourage the Board to ensure that any ordinance adopted is capable of evaluating not only individual projects, but also the broader infrastructure systems that make projects of this scale possible.

Thank you for your time, consideration, and service to Mercer County.

Respectfully submitted,

Linette Irwin

On behalf of Mercer County Concerned Citizens
June 24, 2026

Attachment C

Good evening. My name is Darlys Roth. My family and I live about a quarter mile south of the crossroads near the proposed data center site.

What brought us to this area was work. I have been employed at DGC for the past 17 years as a shift maintenance worker. 15 years ago, my wife Sheila and I purchased some land in the country with the goal of raising our family and building our retirement home. We invested a great deal of time, money, and effort into creating the life we have here today.

The proposed hyperscale data center would be located half of a mile from our property. My biggest concerns are the long-term impacts that my family and our neighbors will have to live with every day. Research has shown that data centers can create significant tonal noise and light pollution, and those impacts can extend well beyond the property line.

I am also concerned about the potential impact on property values. Many of us chose to live in this area because of the rural setting, peace, and quality of life. A large industrial-scale development so close to residential properties will affect those qualities and the value of our investments.

Because of these concerns, *I'm ASKING why only 1/2 mile*
~~I strongly recommend that county officials~~ *Set Back*
~~consider establishing a minimum three-mile setback for the proposed~~
~~hyperscale data center from existing residences.~~

What about property right? ask Set Back from Dwelling
Set Back from Dwelling and not property line

why

In addition, I would like to know whether a comprehensive environmental impact study will be conducted. Has Mercer County fully evaluated the potential effects on local infrastructure and services? Are we prepared for a large influx of contractors? What will be the impacts on traffic, schools, campgrounds, emergency services, and law enforcement? Have the potential effects on crime and community resources been considered?

These are important questions that deserve careful consideration before any final decisions are made. I respectfully ask county officials to put the interests of residents first and ensure that all potential impacts are thoroughly studied before moving forward.

Thank you for your time



MEMORANDUM

TO: Mercer County Planning & Zoning Board and Board of County Commissioners

FROM: NextEra Energy Resources, LLC

DATE: June 24, 2026

SUBJECT: Comments on Data Center Draft 06/24/2026 submitted for the Planning & Zoning Public Hearing on June 24, 2026

SUMMARY

NextEra Energy Resources appreciates Mercer County's efforts to establish a data center ordinance that serves the County and its residents while also allowing for responsible development. The County's work to develop an ordinance for data center development is an important step in planning for future growth.

Throughout this process, NextEra Energy Resources has submitted comments in memo and redline format for consideration by the County. The purpose of the proposed revisions is to ensure the ordinance balances the County's goals with practical considerations necessary to support project development. This memo highlights several key areas where the current draft could be refined to better align with how these projects are planned and evaluated.

KEY RECOMMENDATIONS

1. Use Standards – Data Center Building Setbacks

Current Language:

- Section F(1) requires data centers to be set back at least ½ mile (2,640') from the applicable noise source to the closest sensitive receptor building exterior wall.

Recommended Revision:

- Add waiver provisions as follows (denoted below with proposed redlined text):
 - "Required ½ mile (2,640') setback from the applicable noise source to the closest sensitive receptor building exterior wall, unless a written waiver of the setback requirement has been obtained from the affected landowner. Sensitive receptors include single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks. A greater setback is required if needed to achieve compliance with the noise mitigation requirements established in this ordinance, unless a written waiver of the noise requirement has been obtained from the affected landowner."

Why it Matters:

- Allowing for voluntary waivers recognizes the right of affected landowners to determine what is appropriate for their own property and avoids unnecessarily constraining site design where conditions are understood and voluntarily accepted by affected landowners.

2. Submittal Requirements**Current Language:**

- Sections D(13)-(17) requires detailed design information to be submitted as part of the conditional use permit application for construction phasing, location and dimensions of proposed buildings and structures, the layout of onsite power generation systems, onsite utilities and other major infrastructure, and the proposed fire break.

Recommended Revision:

- Clarify that only “preliminary” information is required as part of the conditional use permit application for each of these items.

Why it Matters:

- At the conditional use permit application stage, final design information is often not available.
- Preliminary information would be sufficient for the County to evaluate the land use, with more detailed design elements deferred to a final site plan submittal prior to construction.
- This approach aligns with standard land use practice, allows the County to assess the project at an appropriate level of detail during the land use permitting stage, and ensures that final engineering and design are submitted at the stage when plans are fully developed.

3. Development Agreement**Current Language:**

- Section E(3) requires the Development Agreement to be executed prior to “project development activities”.

Recommended Revision:

- Revise the provision to require the Development Agreement to be executed prior to “the start of construction”.

Why it Matters:

- The term “project development activities” is vague. Requiring the Development Agreement to be executed prior to the start of construction ensures the Agreement is executed at the appropriate stage of the development process.

4. Project Changes**Current Language:**

- Sections I(1)-(2) require a conditional use permit amendment for several changes that that would not typically necessitate an amendment under land use permitting.

- Sections I(3)-(4) require a conditional use permit amendment for changes that are outside the County's jurisdiction.

Recommended Revision:

- Revise sections I(1)-(4) as follows (denoted below with proposed redlined text):
 - 1. Update on the status of the phasing plan (if part of the conditional use permit), including an update on timing until the next phase of construction. Any changes to the phasing plan requires the owner to provide notice to the Land Use Administrator an amendment to the conditional use permit.
 - 2. ~~Any plans for expansion of the data center footprint, include the subject property, specific site, or structures. An amendment to the conditional use permit must be approved for any such expansion outside of the phasing plan exceeding 5% percent of the gross floor area of any approved structure or any increase in the number of structures.~~ Any expansion of the approved project boundary acreage requires an amendment to the conditional use permit.
 - 3. ~~Reported electrical power use over the past year and if any changes are anticipated over the following year. An amendment to the conditional use permit is required for changes in the data center that result in requirements above the approved maximum demand.~~
 - 4. Confirmation of no changes to the cooling technology. However, if there is a change in cooling technology, the owner is responsible for notifying the Land Use Administrator in writing of the change. Any changes to the cooling technology that increases maximum water demand or maximum electrical power demand requires an amendment to the conditional use permit.

Why it Matters:

- In sections I(1)-(2), the draft ordinance conflates the project area with the phasing plan. A phasing plan is a high-level schedule and sequencing plan showing how the project will be constructed over time within the designated project boundary. At the conditional use permit application stage, a finalized phasing plan is often not available, as construction planning is still in progress.
 - A preliminary phasing plan would be sufficient for the County to evaluate the land use, with any updates to the phasing plan provided to the Land Use Administrator. A change in the phasing plan should not require an amendment to the conditional use permit, as long as the project does not expand outside of the project boundary acreage.
- In sections I(3)-(4), a conditional use permit amendment is required for increases in electricity and water demand. The County does not have jurisdiction over electricity usage or water appropriation. Electrical demand is more appropriately addressed through utility and electrical cooperative planning and interconnection agreements. Water appropriation is governed by the North Dakota Department of Water Resources.

5. End of Use

Current Language:

- Section G does not address a requirement to provide a decommissioning plan, nor does it specify the purpose of the financial assurance.
- Section G(3) references the Natural Resource Conservation Service standards in the context of decommissioning.

Recommended Revision:

- Revise sections G(3)-(4) as follows (denoted below with proposed redlined text):

- 3. The application shall include a draft decommissioning plan with provisions for removal of all structures and foundations and restoration of soil and vegetative resources restored to previous conditions to meet Natural Resource Conservation Service standards.
- 4. Provide bond, letter of credit, parent guarantee, or other financial assurance for the cost of decommissioning prior to being fully operational in accordance with the decommissioning plan, as required by the Mercer County Board of Commissioners.

Why it Matters:

- Requiring a draft decommissioning plan will ensure decommissioning responsibilities and financial assurance are clearly outlined.
- The NRSC has a number of practices and policies that may not pertain to decommissioning.

BOTTOM LINE

These recommendations are intended as targeted refinements to support implementation of the ordinance as envisioned by the County. It is important to note that any proposed data center project would still be required to proceed through the established conditional use permit process where the County could apply appropriate, site-specific conditions, if the permit is approved. The data center ordinance is, instead, intended to provide clear guardrails to guide implementation and allow for further discussion to determine viability upon each project's merit. NextEra Energy Resources appreciates the County's consideration of these comments and would be happy to discuss any of the above comments in more detail.

Attachment E

Draft 4 Data Center Ordinance Use Standards had the following:

Data centers shall be set back at least one mile (5280 feet) from dwellings measured from the nearest property line to the data center's exterior property lines.

The 6/24/26 Data center Ordinance Use Standards has a ½ mile setback from the dwelling, subject to noise source which may be a short setback.

Setbacks are not only for noise. There is also dust, dirt, and soot from the construction equipment and many massive diesel generators, airborne chemicals, wind drift, aesthetics, view, interference with air movement, with no protection under the 6/24/26 Ordinance. Area residents and the public are giving up their protections.

Reinstate the setbacks that were in the Draft 4 Data Center Ordinance before the changes.

Mercer County concerned citizens

F. Development Agreement

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2. Mercer County may enter into a development agreement with the applicant or owner of the data center to secure necessary public improvements, community benefits, professional services needed to facilitate adequate permit review, and to clarify the assignment of project-related responsibilities for the applicant and County.
3. The Development Agreement shall be executed prior to final approval of the conditional use permit and shall be a condition of permit approval.

G. Use Standards

1. Data centers shall be set back at least 1 mile (5,280 feet) from all single-family and multi-family dwellings, schools, churches, synagogues, and other similar religious institution or structures, and public parks as measured from the nearest property line of any of these specific uses to the data center's exterior property lines.
2. If the data center uses a water source for cooling other than Lake Sakakawea or the Missouri River, the following setbacks apply:
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4-14-2026

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Attachment F

The Draft 4 Data Center Ordinance had setbacks from perennial water bodies of ¼ mile minimum (1320 feet) from the shoreline.

There was also one mile (5280 feet) from well head of non community water system and one mile (5280 feet) from private wellhead used for potable water.

These setbacks were discussed and were not objected to. See 4/14/2026 minutes.

The designated firm setbacks for water bodies and well heads are gone from the 6/24/26 ordinance.

Who made these changes and deletions and how were they made without appropriate meaningful discussion?

Who authorized the changes to weaken our ordinance?

Reinstate the setbacks that were in the Draft 4 Data Center Ordinance before the changes.

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Attachment G

Paved road for data center

Draft 3 Data Center Ordinance Use Standards was added that we must provide the data center a paved road.

It is in the 6/24/26 draft page page 7 Use Standards #3.

“The data center shall have access to a paved road of sufficient capacity to accommodate the traffic the data center will generate with continuous paved connection to a paved county or state road.”

Who added this in and made this change and who authorized it?
Review of the minutes, was no discussion on this matter.

Mercer County concerned citizens

4/245/1/26

lands, including the operation of heavy machinery, grain handling, livestock operations, aerial application, dust, odors, noise, or vibration associated with customary farming practices as defined under North Dakota Century Code. As a condition of approval, the owner and operator shall acknowledge that the facility has been designed to operate in an agricultural environment and shall not assert nuisance claims against surrounding agricultural uses.

6.4. Access Condition. All-weather access will be maintained by the owner/operator unless the access is dedicated and accepted by the local permitting jurisdiction. The data center shall have access to a paved road of sufficient capacity to accommodate the traffic the data center will generate, with continuous paved connection to a paved county or state road.

7.5. Structure Codes. All data processing and storage is contained within a permanent structure or structures constructed in compliance with the ~~locally adopted version of~~ the International Building Code and the International Fire Code.

8.6. Aesthetics. All equipment and structures associated with the project will have nonreflective finishes and be of a color that blends into the surrounding landscape, except for any solar panels.

9.7. Lighting. All light emanating from the facility must be contained on-site, within the subject property, and directed toward the ground. Lighting must be fully shielded. ~~In order to~~To qualify as a "fully shielded" fixture, a light fixture must have the top and sides made of completely opaque material such that light only escapes ~~through~~from the bottom of the fixture. Fixtures with translucent or transparent sides, or sides with perforations or slits, do not qualify as fully shielded. Any glass or diffuser on the bottom of the fixture must be flush with the fixture (no drop lenses). Merely placing a light fixture under an eave, canopy, patio cover, or other similar cover does not qualify as fully shielded.

10.8. Vegetative Cover. Applicant shall consult with Mercer County Soil Conservation District on seed mixture and shall re-seed areas of disturbed topsoil. Applicant shall maintain grass cover and control noxious weeds for the life of the project.

11.9. Radio Frequency Interference/Electromagnetic Interference (RFI/EMI).

- a. All new facilities with potential to generate RFI/EMI shall be designed, constructed, and operated to minimize interference with existing communications infrastructure, including but not limited to public safety communication systems, aviation communication, and military operations.

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