

Prairie County Board of Commissioners Meeting

December 6th, 2024

*Prairie County Court House Commissioners Room
217 West Park St Terry, MT 59349*

www.prairiecounty.org

Prairie County Board of Commissioners Todd Devlin, and Christine Keltner met in regular session at 9:00 a.m. In attendance Administrative Assistant Harry McNall. Commissioner Dennis Teske is out of town and will join the meeting this afternoon.

9:07 a.m. Pledge of allegiance, call to order. Public comment on agenda.

Lucas Forcella with Crowley Fleck Attorneys with NextEra to observe the zoning conversation.

9:25 a.m. Video by Kevon Martis played during commissioners meeting for informational purposes on Closed Captioning.

9:40 a.m. Commissioner Keltner read the minutes from the November 27th, 2024, commissioners meeting.

9:49 a.m. County Attorney Dan Rice joined the meeting. Discussion on zoning, interim zoning, and other options the county can and should consider. The commissioners talked about the letter from NextEra putting in writing they will not start construction for 12 months. (Exhibit A).

10:00 a.m. Commissioner Keltner made a motion to accept the minutes from the November 27th, 2024, commissioners meeting as corrected, seconded by commissioner Devlin, "all in favor" motion passed.

10:05 a.m. Commissioners and Attorney Dan Rice discussed outside legal advice, and contract agreements. Only the commissioners can sign a contract with outside legal advice.

10:10 a.m. Commissioner Devlin called Doug Roehm with Montana Department of Revenue in the Centrally Assessed Property to talk about revenue from the Glendive Wind Project. They were added to the December 18th, commissioners meeting.

10:27 a.m. Commissioner Keltner noted that Karla King will be put on the agenda to review our cyber security for the county, sometime in January 2025.

10:30 a.m. The county has received \$186,840.27 from the Milwaukee, CB Route, Thorn Road bridges quick fix project from Montana Department of Transportation and returned to LATCF account 2995.

10:49 a.m. It was brought to the commissioners that Administrative Assistant Harry McNall had the program up and ready but forgot to start the audio recording and is now recording.

10:50 a.m. Chip Mintz joined the meeting and discussed health issues with wind turbines. He discussed different research and information about animal interactions concerning birds etc. He also explained the movement of wind, and how turbines affect those wind movements. He stated

that animals have side effects from wind turbines as well. Wind turbines could have issues with silt in wells and water. There are also documented cases with Windmill Syndrome. The distance from the wind turbines makes a difference, over 1000ft. NextEra has proposed 1 mile from non-participating primary residents. He provided his input on the environmental impacts etc.

Dan Rice: Chip what are your health concerns that could be dealt with locally.

Chip: Livestock grazing and other cattle concerns.

Dan: Do you know what those setbacks are for those factors?

Chip: Its not well defined, if you had a dairy outfit, it would be more concerning, and breeding would be best at a further distance, maybe ½ mile away.

Dan: What are the manufacturer's suggested safety buffer distance from the Turbines.

Chips recommendation is 1 mile from residential and ½ mile from livestock, or at the landowner's discretion.

Discussion on other aspects of turbines, such as fiberglass debris, and other health impacts from turbine wear and breakage. Should the commissioners recommend ½ mile from ground wells, water wells etc? What buffers, setbacks etc could commissioners recommend?

Chip at least a ½ mile from residential wells and livestock wells.

12:00 p.m. Lunch Break

1:00 p.m. Clerk & Recorder Shari Robertson provided claims for the commissioners to review and sign.

Prairie County Voucher # 1069 \$2,731.95

Prairie County Voucher # 1068 \$14,993.43

County Attorney Dan Rice and Lucas Forcella with Crowley Fleck Attorneys with NextEra joined the meeting.

1:37 p.m. Short discussion on zoning concerning the process, timeline and other details, as well as a possible development agreement that is in line with the zoning regulation proposals. We need to identify objectives.

2:00 p.m. Terra Burman with Eastern Plains Economic Development Corp (EPEDC), to present the Community Reinvestment Organization documents (CRO).

2:08 p.m. Commissioner Devlin called Joe Sharbono with Dawson County Commissioners.

2:13 p.m. Commissioner Keltner made a motion to accept **“Resolution No. 25-14 Resolution to affirmatively Participate in the Montana Community Reinvestment Plan by Identifying approving HAB development Corporation as Prairie County’s Community Reinvestment Organization”** seconded by Commissioner Devlin, “all in favor” motion passed.

2:36 p.m. Prairie County Fair Board members Sharla Sackman, Tom Pisk, Aaron Martinson and Tamara Choat.

2:38 p.m. Commissioner Teske Joined the meeting.

Sharla described the building that is being considered. There have been approximately 35 meetings since 2022 to come up with the details of the plan for the building. The board has been in contact with the Bannack Group LLC for feasibility studies, and fundraising. Jason Jimmerson from the Bannack Group joined the meeting via zoom to discuss their services, and thoughts on the project and timeline.

3:25 p.m. Andrea Bybee with Ambulance service to speak to the commissioners about the "Crisis Grant". She went over the draft details of the grant with the commissioners. Commissioner Devlin signed the MOU with Prairie County Hospital for ambulance service for long term care residents to Miles City, and Glendive.

3:30 p.m. Public Comment:

Comment from Greg Berger via email (Exhibit B)

Shane Eaton gave statements about community preservation within Terry and the county. There are historical sites within Prairie County that would be affected by these turbines. He also gave statements on government spending that affects county residents.

Todd Tibbitts provided comments on open spaces for tourism and younger and retirement folks coming into the community.

Sheila Dixon, she heard Ross say "if we are still here" about reclamation. She was troubled by that statement.

Renee Pirtz, in favor of Interim Zoning to give the county time, and listed many concerns with effects of the wind turbine operations, to animals, health etc.

Dan the bird guy comment: The wind LLC's will be around while there is money, and they are not cost-effective. Concerned with bird population and all other wildlife. Gave his statements on concerns and thoughts on wind turbines. There should be some electricity left in Montana.

Bob Phalan provided the commissioners with a map showing state land, he is leasing in Prairie County. His request was to consider not allowing wind turbines on farm ground (cultivated) if they do zoning. He read a comment from Knutsen that said the Montana Land Board has taken the Glendive Project off the December agenda.

4:00 p.m. Dale Tribby called to speak with commissioners on BLM Sage Grouse Proposed Plan Amendments and Final EIS. He went over a paper with the commissioners (Exhibit C) There have not been a lot of changes from the 2015 version. All of Prairie County is General Habitat, and 435,000 acres (288,000 actual acres) acres have been removed in the county. Conversation about sage grouse and gravel pits and previous or existing gravel pits. He also spoke about what this EIS says about sage grouse in wind turbine areas. "Exclusion within two miles of a lek,

avoidance in the rest of General Habitat Management Area”. The Record of Decision is scheduled to be out March 2025.

4:40 p.m. Commissioners have not made a decision on zoning but have given the Land Planning Board the go ahead to look into zoning. We have reviewed the concerns and effects of wind turbines. They are considering 1-mile setbacks and ½ mile from property lines for residential and livestock wells. Look into sage grouse leks within the area, and if any are active leks, and if there are it has to be 2 mile setbacks. Commissioner Devlin explained that NextEra has given a letter stating they will not start construction for 12-months (Exhibit A).

The Prairie County Growth policy must be updated, then look at zoning.

Commissioner Teske suggested a pause for at a year to look into the industrial zoning.

Commissioner Teske made a motion that the land planning board updates the growth policy, seconded by Commissioner Keltner, “all in favor” motion passed.

Commissioner Teske made a motion to put a moratorium on industrial development, Withdrawal.

Commissioner Teske made a motion to put in place Interim Zoning, no second on this issue, motion is dead.

Commissioner Devlin said he is not going to support the motion, and Commissioner Keltner said she needs more information.

County Attorney Dan Rice said it is not on the agenda and needs time to research.

Lon Raukeuf said he suggested putting it on December 18th, 2024. The moratorium details need to be specific and detailed.

Renee Pirtz, frustrated over the process not going forward.

Commissioner Devlin, we are the most conservative county in Montana, and the commissioners are very cautious about going into zoning.

Arron Martinson is it in writing that they will not start construction. Yes, it is in writing that they will not start construction for 12-Months. The county attorney and NextEra’s attorney both agree this is a legally written and signed document.

Lon: They do not have to have the Growth Policy updated to start zoning. Both can be done at the same time. Briefed the commissioners about his conversations with two legal firms, with costs and conditions. Jerry Garbenz with Great West Engineering, will have a letter of engagement for the commissioners on updating the growth policy. He also had a conversation with the State head in BLM and talked about the NEPA process.

Todd Tibbitts the Growth Policy must be updated before the zoning is completed.

Owen Devlin: is it a project as a whole or just NextEra company or Glendive LLC?

Lucas: it is the company and project as a whole, that there will be no construction for 12-months.

Dan Rice said he heard from MACo there is no statute in law that gives authority for a moratorium on development, the option would be Interim Zoning, and it would be done through resolution.

The land planning board will find more information on the land moratorium in Montana before the next meeting.

The concern with MACo and NextEra connection was mentioned. Commissioner Devlin explained what happened, and steps taken to remove them from the website. Todd Tibbits explained his concerns over MACo and would like this to be on the agenda to talk about it in more detail. Additional conversations about legal advice over zoning.

A question was asked if the leases with NextEra, would prevent the Keystone Oil Pipeline, or even a stock water line on the same ground as a wind turbine.


Bob Phalen has a bill in the works to regulate wind turbines to 250ft.

Commissioner Devlin made a motion to start working on Scoping questions to be worked on both by the Commissioners and the Land Planning Board, second Commissioner Teske, open to discussion, "all favor" motion passed.

Discussion on zoning and scoping letters, and who those scoping letters should go to?


5:45 p.m. Commissioner Teske made a motion to adjourn, seconded Commissioner Keltner, "all in favor" motion passed.

Signed this 18th day of December 2024



Todd Devlin, Commissioner

ATTEST:



Shari Robertson, Clerk & Recorder

Glendive Wind, LLC

December 5, 2024

Prairie County Board of Commissioners
208 Logan Avenue
Terry, Montana 59349

CC: County Attorney, Prairie County
Dawson County Board of Commissioners
McCone County Board of Commissioners
Rosebud County Board of Commissioners
Garfield County Board of Commissioners
Lucas Forcella, Crowley Fleck PLLP

Re: Prairie County Zoning

Dear Commissioners Keltner, Teske, and Devlin:

We understand that the Commission has been provided a significant amount of public comment on the subject of county zoning, will likely receive additional public comment during Friday's meeting, and has received input from members of Prairie County's government, including the County Attorney, County Health Nurse, and County Land Planning Board. Additionally, we understand the Commission has sought out information from other sources. We write to provide three comments relevant to the Commission's discussion on Friday regarding zoning.

First, we wish to reinforce comments made at the November 13, 2024, Commission meeting regarding the use of interim zoning pursuant to Mont. Code Ann. § 76-2-206. At that meeting, the Commissioners were informed that the Prairie County Attorney, the zoning and land use attorney at the Montana Association of Counties, and Glendive Wind's attorney all concluded that there was no "emergency that involves the public health, safety, morals, or general welfare" in Prairie County which would warrant interim zoning to restrict wind development. This conclusion has not changed: no such emergency exists, and we believe that the County would be better served by a collaborative approach which addresses the tangle of issues related to zoning, such as private property rights, consistent land use planning, and long-term county economic development.

Second, we wish to remove one potential concern from the Commissioners' consideration. We understand that certain public comments regarding both interim and deliberate zoning have been spurred by an incorrect assumption that the Glendive Wind project may break ground at any moment. To alleviate this concern and ensure that the Prairie County Commission

Glendive Wind, LLC

700 Universe Boulevard, Juno Beach, FL 33408

has sufficient time to consider the issues before determining how to proceed, Glendive Wind commits to not break ground on construction for the project at any point in any county during the next 12 months. For clarity, we may engage in limited pre-construction activities that require access and, at times, approved land disturbance (for example, monitoring the weather using temporary meteorological instruments). For the avoidance of doubt, however, we commit to not start construction on the project for the next 12 months, even if all approvals to do so are otherwise in place. NextEra values its relationships with the communities where it operates and would like to work alongside Prairie County to develop a solution that accounts for citizen concerns while contributing to the wellbeing of the County.

Third, and in keeping with this commitment, Glendive Wind reaffirms its offer to work with Prairie County for the benefit of all county residents. Let's work together to understand and address both community and project needs. Just as importantly, we have time here to further consider how the project would benefit the County—both participating and non-participating landowners, current and future residents. Respectfully, the opportunity before us is to find a way for the County and its residents to benefit from, not eliminate, this project.

We believe that the optimal solution for both the County and the project is to negotiate a bilateral development agreement that addresses the terms under which the Glendive Wind project could be built. Doing so would allow the County to specifically address the unique aspects of this project. Alternatively, however, if the County believes that a broader zoning ordinance is necessary, NextEra would appreciate the opportunity to collaborate on how to craft an ordinance that allows the County to balance the multitude of concepts that county-wide zoning implicates.

We respectfully suggest that the relationship between Prairie County and Glendive Wind can be mutually beneficial. The County does not need to rush into zoning and can approach the Glendive Wind project one step at a time, ensuring that the best interests of the County and its residents are addressed throughout the project's lifespan. We want to work with you and with all counties involved in the Glendive Wind project.

If you have any questions or would like to discuss this matter further, please contact me at (561) 608-4030 or by email at Ross.Feehan@NextEraEnergy.com.

Sincerely,



Ross Feehan

Glendive Wind, LLC

700 Universe Boulevard, Juno Beach, FL 33408

Exhibit B

Harry Mcnall

From: Todd Devlin <mtdevlin@gmail.com>
Sent: Friday, December 6, 2024 10:06 AM
To: Harry Mcnall
Subject: Fwd: Fw: Emergency Interim Zoning

Sent from someplace on something, Todd Devlin Rancher/Farmer Prairie County Commissioner MtNRC Ex Dir NACo Public Lands Committee Chair CONFIDENTIALITY NOTICE: The information contained in this message may be privileged and/or confidential. If you are not the intended recipient, or responsible for delivering this message to the intended recipient, any review, forwarding, dissemination, distribution or copying of this communication or any attachment(s) is strictly prohibited. If you have received this message in error, please notify the sender immediately, and delete it and all attachments from your computer and network.

----- Forwarded message -----

From: Greg Berger <slidr65@yahoo.com>
Date: Fri, Dec 6, 2024 at 6:25 AM
Subject: Fw: Emergency Interim Zoning
To: Todd Devlin <mtdevlin@gmail.com>, Commissioner Dennis <d.teske@prairiecounty.org>, t.devlin@prairiecounty.org <t.devlin@prairiecounty.org>

Todd and Dennis,

Due to a medical appointment in Billings I cannot be at the meeting today for public comment. I will have someone there to read this so it can be put in the minutes. Please forward a copy to Christine. Thank you.
Greg

----- Forwarded Message -----

From: Greg Berger <slidr65@yahoo.com>
To: Shane & Tylene Eaton <shaneetn@midrivers.com>; Renee Pirtz <rpirtz7@gmail.com>
Sent: Friday, December 6, 2024 at 06:01:02 AM MST
Subject: Emergency Interim Zoning

Shane and Renee,

Unfortunately I cannot attend the commissioner's meeting today due to having a medical appointment in Billings. I would like one of you to address them on my behalf if you could with the following:

Prairie County Commissioners,

The time has come and has been overdue for your decision on making a decision on Emergency Interim Zoning for Prairie County due to the projected wind farm project on the horizon for our county.

You all have heard concerns, facts, and some of you have even visited the Clearwater site and seen/heard these obnoxious things with your own eyes and ears.

I first brought this idea of emergency interim zoning to you I believe on October 30th, 2024. We had a full house attend this meeting and a citizen vote was taken so to speak in that room and it was obvious people that were in attendance wanted this to happen. Unfortunately, there was no decision made at this time. We then all headed over to the Community Center and listened to the lies and deceitfulness of Next Era and more facts from the citizens of Prairie county along with commissioners from Custer and Wibaux counties.

Once again a couple of weeks ago, several of us attended a commissioner's meeting and on the advice of MaCo lawyers and even our own "county attorney" they advised you not to do it. We then showed you proof that maybe MaCo was in bed with Next Era as being listed as a gold member sponsor on MaCo's website, which when drawn to MaCo's attention, it was immediately removed. Either way, MaCo is wrong in their "advice" to the Prairie County commissioners.

Your constituents have waited patiently for over a month now for a decision to be made on this idea of Emergency Interim Zoning. One can no longer waste time or for President Elect Trump to Executive Order "alternative energy". We NEED to act NOW! You have all been given State Code Statutes and also the instructions on how to go about this legally. Please vote in favor of Emergency Interim Zoning.

Respectfully,
Greg Berger
Prairie County resident

**Prairie County Commissioners Briefing
BLM GRSG Proposed Plan Amendment and Final EIS
December 7, 2024**

Status: The GRSG Proposed Plan Amendment Final EIS (Final) was released on November 15, 2024.

Call on December 3 with David Wood & Dan Brunkhorst (BLM):

What changed from the Draft and the Proposed:

1. More consistence between BLM Field Offices in Montana, especially as it relates to mineral development and Rights-of-way (ROW).
2. Cleaned up the mitigation language; more emphasis on avoidance and minimization, with less emphasis on compensatory mitigation. BLM's desire is to avoid compensatory mitigation when possible. Some compensatory mitigation is subject to state law. BLM cannot dictate when the State of Montana can or cannot impose compensatory mitigation. Likewise, the State of Montana does not have the authority to impose compensatory mitigation on the BLM for actions in which they have no authority.
3. More direction on how to address "non-habitat" within the habitat polygons.
4. More requirements to coordinate with local officials.

What did not change:

1. The adjustments to the habitat layers in Prairie County (and throughout Montana) were carried forward.
2. Livestock grazing did not essentially change from the 2015 EIS.

Prairie County Commissioner Draft Comments:

The recommendation to refine the boundaries of the GRSG habitat in Prairie County have been carried through to the final.

Mitigation (including compensatory) – The first two legs of the mitigation hierarchy, avoidance first, then minimization, is warranted as long as valid existing rights are protected and applicable laws are followed. The use of BMPs and RDFs is and should continue to be SOP and should continue to be a requirement of any surface disturbing activity on BLM lands. Specific to compensatory mitigation, we ask for the following modifications/inclusion. Stating compensatory mitigation "should" be completed prior to initiating the activity causing the need for compensation and monitored for retention and efficacy could be problematic for actions initiated by our county government. For example, the need for gravel for county road maintenance, emergency road construction or even installation of an overhead powerline may be needed in a short amount of time in order to provide for public safety. Potentially having compensatory mitigation completed prior to project initiation may simply not be feasible. In some instances, Prairie County may be utilizing a gravel pit which has been in existence for many years. We ask you to add specific timeframes as to when compensatory mitigation activities would and would not be delayed, and what sideboards would be established to define when and how (*the should*) such a delay would be granted.

Response: More emphasis was placed on avoidance and minimization. A new state law (SB-284) provides financial relief for situations to which Prairie County would be involved.

Please consider waiving the requirement for compensatory mitigation for activities conducted by a non-profit governmental entity (city, county, state) occurring on BLM managed surface where the primary purpose is public safety. In the case of Prairie County, we rely on free use gravel to maintain our public road network. These roads receive a significant amount of use by the recreational public to access BLM lands, permitted users (livestock grazing permittees, ROW holders), as well as BLM employees in order to complete their field responsibilities. Required compensatory mitigation, after RDFs and BMPs are applied, for activities which serve BLM and their multiple use mandate does little to enhance GHMAs and the GRSG supported in these habitats.

Response: This recommendation was not adopted and carried forward. One reason could be passage of Montana Senate Bill 284, which provides waivers for entities such as Prairie County. Additionally, there may have been concern with the limit that would be applied to this exception (such as a grazing district, weed district).

What Does the EIS say about wind farms in GHMAs: Exclusion within two miles of a lek. Avoidance in rest of GHMA. For the associated transmission lines; avoidance within 1.2 miles of active leks.

Protest: Is there a desire to file a protest? If so, protests must be postmarked no later than December 16, 2024

Governor's Consistency Review: Time period is November 8, 2024 through January 7, 2025. Does the PC Commissioners wish to submit comments to the Governor for their consideration. Possible topics:

1. Request for BLM and State Agencies to refine their habitat layers to mimic each other. One consideration is the Plan Amendment/EIS talks about the need to periodically refine habitat layers. If the governor were to issue an Executive Order, directing the agencies to undertake this action, some type of BLM plan maintenance may be required.
2. Mitigation – Consider asking the Governor to push our two comments specific to mitigation made during the draft comment period. It does appear BLM tried to address mitigation.

Record of Decision (ROD) Issued: March 20, 2025 is the goal. However, each BLM State organization will sign their own ROD. It is probable, that all BLM states may not be on the same page, so signatures of the BLM State Directors may not occur at the same time.

My Role From Here: