Prairie County Board of Commissioners Meeting

October 22nd, 2025

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

www.prairiecounty.org

Prairie County Board of Commissioners Todd Devlin, Christine Keltner and Dennis Teske met in regular session at 9:00 a.m. In attendance Administrative Assistant Harry McNall.

9:00 a.m. Pledge of allegiance and call to order. Public Comment.

Shane Eaton provided a comment on NextEra's publication that was sent out in the mail. He would like the commissioners to read it and look at what is written in it. He pointed out some key points that they had in that publication and their actions that are in opposition of those points. Considering property tax as a reason to support wind turbines, is a bribe.

Sheriff Lewis went over how the night will be managed for the public hearing, to ensure that the public is safe and there is enough room in the courthouse, and they will follow the fire code for seating capacity.

There was a short discussion on using other spaces for the hearing tonight, and overall, the courtroom is close to the same as other options.

9:30 a.m. Road Supervisor Todd Henry joined the meeting.

Commissioners reviewed an encroachment permit submitted by Thane Reukauf.

Commissioner Teske made a motion to accept the petition for encroachment for a pipeline across county road by Thane Reukauf, seconded by Commissioner Keltner, "all in favor" motion passed.

Road Supervisor Todd Henry updated the commissioners on the road mowing, and the mowing should be completed this next week. He explained that his supply budget is over, but he had purchased chemical for next year, and the repair on the grader was about $15,000. He called Great West Engineering for an update on the bridge CB Road. It most likely will not happen till next year sometime. He also updated the commissioners on the bridge on HWY 340, which is in the process of working through the Montana Department of Transportation (MDT) to get it approved.

Supervisor Henry explained that the two graders working together complete about 10 miles of road per day, and 40 per week. It takes 10 to 12 weeks of grading to get all roads, and the weather will not hold long enough to get it all, but they will get as much as possible completed.

10:30 a.m. Clerk & Recorder Shari Robertson provided the commissioners with correspondence. They reviewed the letter from (NATE) The Communications Infrastructure Contractors

Association. The commissioners reviewed the letter from County Attorney Dan Rice, concerning hiring outside attorneys.

Commissioner Keltner made a motion to sign and send the support letter for the Bureau of Land Management: Rescission to 2024 Conservation and Landscape Health Rule, seconded by Commissioner Teske, "all in favor" motion passed.

The commissioners reviewed the DIS termination notice of service for November 21st, 2025.

There was a conversation concerning zoning lawyers in Montana.

Commissioner Teske made a motion to sign a letter asking for an extension Local Government Services until 3/31/2026 so that the county can complete the audit in lieu of taxes, seconded by Commissioner Keltner, "all in favor" motion passed.

Jason Kipson has ask why the hearing was here at the courthouse instead of some other venue. A discussion on why it's being done this way and what other options there could have been. The commissioners discussed various reasons for the location.

11:15 a.m. Commissioner Devlin read the minutes from October 8th, 2025, commissioners meeting.

11:24 a.m. Commissioner Keltner made a motion to accept the minutes from October 8th, 2025, commissioners meeting as corrected, seconded by Commissioner Teske, "all in favor" motion passed.

11:26 a.m. Commissioners reviewed the letter from County Attorney Dan Rice concerning zoning lawyer defense.

11:40 a.m. Commissioner Teske made a motion to send the letter to the BLM Miles City Office concerning road and public safety concerns over prairie dogs in Prairie County affecting ash creek road, seconded by Commissioner Keltner, "all in favor" motion passed.

11:48 a.m. A short discussion about vehicles down at the fair ground property that may be part of the County Junk Vehicle program, and what could be done with them. Commissioner Keltner will contract Dan Kirpatrick and Brant Gordon to set up a meeting.

12:00 p.m. Lunch Break

1:00 p.m. Deputy Clerk & Recorder Aria Walters provided the commissioners with claims to review and sign.

Prairie County Voucher #1045 $465.77

Prairie County Voucher #1043 $37,402.78

Prairie County Voucher #1044 $2,336.52

Prairie County Voucher #1042 $1,543.58

Journal Adjustments Voucher # 144 and 134

1:40 p.m. Sheriff Keiffer ask that we move the hearing tonight to the gym at the school. The commissioners agreed to move the hearing.

1:45 p.m. The commissioners started reviewing dates for commissioner's meetings for the year 2026 and the renewing of county board seats.

2:30 p.m. Commissioners reviewed Resolution 26-10 and Resolution 26-11. There was discussion on fees for the cemetery.

3:00 p.m. Public Comment

Arron Martinson, what are the regulations for road graders when they meet oncoming traffic? There should be something in place to have the grader move over.

3:30 p.m. County Treasurer Garrett Lapp joined the meeting to show the commissioners the ITAX property tax system. The new system allows viewing and paying property taxes online at https://itax.tylertech.com/PrairieMT/.

3:50 p.m. Commissioner Teske made a motion to adjourn the meeting, seconded by Commissioner Devlin, "all in favor".

Signed this 29th day of October 2025

Todd Devlin, Commissioner Chair

ATTEST: Shari Robertson, Clerk & Recorder

PRAIRIE COUNTY, MONTANA
OFFICE OF THE COUNTY ATTORNEY

217 W. Park St., P.O. Box 564
Terry, Montana 59349
(406)635-4529 or 232-4070

DANIEL Z. RICE
County Attorney

October 9, 2025

Prairie County Commissioners

Re: Part 1 Zoning Related Updates; Recommendation to Retain Litigation Counsel

Dear Commissioners,

I am writing to advise of a couple of updates and developments regarding the pending Part 1 Zoning Petition being considered by the Commissioners, and to recommend the retention of land use litigation attorney, Tara DePuy, to assist in obtaining a judicial determination regarding Nextera's claimed vested preexisting zoning status.

First, there was an assertion made by the local BLM office to the Commissioners (and subsequently, to myself) that Federal land could not be included within the Petitioned zoning district. I disagreed, and requested a Solicitor's Opinion from BLM to support such assertion. My request for a Solicitor's Opinion was met with apparent skepticism by some members of the public, and treated as some sort of a conspiracy, which is unfortunate. As always, my efforts are to protect the County, and its interests – and in this case, my clear intent was to challenge the BLM's assertion that the Petitioned for district could not include Federal land. If anything, my clearly stated position and request for Solicitor's Opinion was on behalf of the Petitioner's interests, and their proposed zoning map. I am surprised that my actions to challenge the BLM's position that the Petitioner's map was invalid was treated with such skepticism. The BLM has since responded to my inquiry, taking no position contrary to my previously provided opinion that Federal land may be included within the District, and as such, the Petitioner's proposed map including Federal land should proceed without any further challenge from BLM. Please note that such Federal land is exempt from local regulation, and that the BLM can develop such land contrary to any local zoning regulations, without requiring any permission from the County.

Second, as you are aware, prior to your last meeting, I was emailed (and subsequently received, in hard copy form) a letter from Nextera's attorney, Lucas Forcella, with Crowley Fleck

law firm, regarding their claim that their project has a vested pre-existing non-conforming status under applicable state law, treatises, and out-of-state case law. I promptly provided that letter to the Commission, and to the public (noting that several members of the public received this letter from me prior to my handing the same to the Commissioners). I was exceedingly transparent with how that letter was handled, which I printed off for the Commissioners, and read for the first time while in the Commissioners' office to deliver the same.

This letter was again the subject of various conspiracy theories presented by members of the public in your meeting, apparently based on the fact that Lucas Forcella used my first name in the opening of his letter. Which... is exactly how I would expect to be addressed by another attorney, representing his client while I represent mine, as professionals. Attorneys are civil to each other in our dealings, as we do not hate each other, despite representing parties which may be adverse (as is apparently the expectation of some members of the public, given the commentary noted). Which, is unfortunate. The lack of civility and decorum that I have observed and listened to in your public meetings over the past year are not typical, and that level of overall hostility will not bleed into my professional dealings with my colleagues in the legal profession.

Additionally, there was an assertion made by the public in that same meeting that Lucas should have sent the letter to the County Commissioners directly, bypassing myself as the County Attorney, which is a wildly misinformed statement. Attorneys are ethically prohibited from contacting represented parties directly – hence, the letter was appropriately routed through my office, and delivered by myself to the Commission, and to the public.

(As an aside, I am aware that there was a verbal request from a member of the public to review correspondence between Mr. Forcella's office and my own. I have not received a formal records request for the same, however, I did directly contact the individual who made that informal request, and offered two separate dates to meet and review the same. This individual indicated that he would meet with me in the near future, but has not shown to review the same on either of the dates provided, nor followed up with a more formal request. I will gladly sit down with this individual upon further request.)

Again, and hopefully for the last time, I stress that the various conspiracy theories surrounding this matter are nonproductive and unfortunate, and I would encourage the Commissioners to dispel such theories to the extent possible. My efforts remain in furtherance of ensuring that the County is following all statutory processes, and to prevent the County and its taxpayers from being subjected to preventable fiscal liability, which we cannot afford to incur.

At the first large meeting the Commissioners held regarding the Nextera project in late 2024, I advised the Commissioners (and the attending public), and noting that MACO's legal consultants had stressed the same point, that there was a significant likelihood that the proposed

wind project would be considered to be a preexisting nonconforming use under Montana's zoning laws (which are fairly uniform nationwide), and thus exempt from compliance with any subsequently adopted zoning regulations. This issue has been discussed with the Commissioners at various times since. The recent letter from Nextera's attorney is formally raising this same issue, which the County has been well aware of as a potential roadblock to implementing zoning regulations which would purport to prevent such development from proceeding.

My understanding is that the Commissioners are also aware of the bill carried by Senator Greg Hertz last legislative session, and signed into law by Governor Gianforte, which added very concrete protections against zoning regulation restricting preexisting nonconforming uses in Montana. Montana Code Annotated 76-2-105 now states the following: "Any ambiguity or uncertainty in the zoning regulations as to whether a nonconforming use is allowed or whether the use was allowed when it was commenced must be interpreted in favor of the nonconforming use." This same statute used to read as follows: "Existing nonconforming uses may be continued although not in conformity with such zoning regulations." I was not aware of this particular bill prior to it being signed into law, however, the plain language of the revised statute adds additional clarity to the previous rule which was the basis of my and MACO's previous reference to the potential that any regulations adopted would not apply to the proposed wind project.

My recommendation to the County Commissioners at this time is that the County retain litigation counsel to obtain a judicial determination regarding the County's ability to implement zoning which would regulate or restrict the proposed wind project. Nextera has presented their argument (in the letter noted above) that they are vested as a preexisting nonconforming use, by virtue of the publicly recorded notices of leases filed several years back, and the steps in furtherance they have taken toward developing the project. That said, the project itself has not yet broken ground, and Montana law is not explicitly clear on when a preexisting use becomes "vested" for purposes of zoning exemption. Under the advice of litigation counsel, this question may be able to be presented to the Court, and a determination made by a Judge through the filing of a "Declaratory Action" or similar petition for judicial review of this issue. A Dec Action is not "damages" type litigation, rather, it could provide a determination for the County to follow moving forward, to avoid potentially costly "damages" type litigation arising from the County enacting regulations which are later determined to be unlawful by the Court.

Please note that the County has looked at purchasing defense coverage for zoning enforcement actions, however, such coverage cannot be extended to zoning "enactments" – which is what the County is doing in this present process – "enacting" new zoning regulations. In the event the County were to enact legislation (in the form of zoning regulations) which results in litigation, the County would not have any defense or indemnity coverage available through insurance. Further, any damages awarded following such litigation would be paid from the County's available resources, and if insufficient resources are unavailable, by a "judgment levy"

against all properties in the County, in the form of an additional non-voter approved property tax levy. The County should avoid such an outcome at all costs.

I have spoken with land use litigation attorney Tara DePuy regarding assisting the County with obtaining a determination regarding Nextera's claimed preexisting status. Tara recently assisted Dawson County with the counting of petitions for a similar Part 1 Zoning Petition received in their county. Tara is also presently defending Cascade County in zoning litigation, regarding this very legal issue, and the same statute noted above. Tara's hourly fees are reasonable, and are frankly substantially less than what we see local private law firms billing for hourly services. I am not aware of any other attorneys practicing in the region who have as much relevant and recent experience in the issues we are presently navigating as a County.

I strongly encourage the Commissioners to consider retaining the services of "Tara Depuy, Attorney at Law, PLLC," to assist the County in obtaining a determination following receipt of what I would describe as a "demand and litigation hold letter" sent by Nextera's attorney detailing their claimed preexisting status. I strongly discourage the County from proceeding with the adoption of regulations in the absence of a judicial determination, to the extent such regulations would purport to prevent the wind project from proceeding, *without first obtaining confirmation by the Court that Nextera's claimed preexisting use is neither valid nor vested.*

Sincerely,

Daniel Z. Rice

Daniel Z. Rice
Prairie County Attorney

Outlook

Re: Bull Dog attorney for Prairie County to retain John Heenan

From RICK SUSAN ELHART <relhart@msn.com>
Date Fri 10/17/2025 2:21 PM
To Aria Walters <a.walters@prairiecounty.org>

👍

Get Outlook for iOS

From: Aria Walters <a.walters@prairiecounty.org>
Sent: Friday, October 17, 2025 2:12:02 PM
To: RICK SUSAN ELHART <relhart@msn.com>
Subject: Re: Bull Dog attorney for Prairie County to retain John Heenan

We have received the email.

Aria Walters

Prairie County Montana

Deputy Clerk & Recorder

PO Box 125 ~ 217 Park St W

Terry, MT 59349

406-635-5575

From: RICK SUSAN ELHART <relhart@msn.com>
Sent: Friday, October 17, 2025 2:08 PM
To: RICK SUSAN ELHART <relhart@msn.com>; Clerks office <Clerksoffice@prairiecounty.org>
Subject: Bull Dog attorney for Prairie County to retain John Heenan

Greetings

Here is a link to the attorney who would be a bull dog in protecting Prairie County against NextERA.

Susan Elhart

Montana's Trusted Personal Injury Attorneys | Free Consultation

John Heenan | Billings, MT Personal Injury Attorney

Sorry this is late ... it did not go through the first time

Rick and Susan Elhart PO Box 1046 Glendive Montana 59330 406-461-5145 or 406-461-5146

Prairie County
Montana

Board of County Commissioners
P.O. Box 125 • 217 Park St W • Terry, MT 59349
Phone: (406) 635-5575 • Fax: (406) 635-5576

October 22, 2025

Prairie County Board of Commissioners
217 Park Street West
Terry, Montana 59349

Subject: Support for Rescission of the 2024 *Conservation and Landscape Health Rule*

To Whom It May Concern:
The Prairie County Board of Commissioners submits this comment in **strong support** of the Bureau of Land Management's proposal to rescind the 2024 *Conservation and Landscape Health Rule* (89 FR 40308). The 2024 Rule conflicts with the Bureau's statutory responsibility under the *Federal Land Policy and Management Act (FLPMA)* to manage public lands for **multiple use and sustained yield**.

By redefining "conservation" as a leasable use, the 2024 Rule exceeded BLM's statutory authority and risked excluding productive uses such as grazing, mineral development and recreation. It also allowed BLM officials to restrict lawful land uses without the normal public process required for land withdrawals and ACEC designations. Such provisions threatened the livelihoods of ranchers, landowners, and small businesses that depend on responsible access to public lands.

Rescinding the rule is a necessary and justified action that will:

- Restore BLM's flexibility to balance conservation with productive land use.
- Reestablish proper legal procedures and transparent public participation.
- Reduce regulatory burdens and litigation risk that slow effective land management.
- Protect the economic well-being of rural counties like Prairie County.
- Realign public-land management with statutory intent and recent executive directives that support American energy and prosperity.

We commend the Department of the Interior and the Bureau of Land Management for addressing these issues and reaffirming that America's public lands should be managed **for the benefit of all people through balanced, lawful, and productive use**.
Respectfully submitted,

Todd Devlin, Commission Chair Todd Devlin

Dennis Teske, Commissioner DT

Christine Keltner, Commissioner Christine W. Keltner

Prairie County
Montana

Board of County Commissioners
P.O. Box 125 • 217 Park St W • Terry, MT 59349
Phone: (406) 635-5575 • Fax: (406) 635-5576

October 22, 2025

TO: Bureau of Land Management
Miles City Field Office

FROM: Prairie County Commissioners

SUBJECT: Road and Public Safety Concern

To whom it concerns.

Because of a safety & liability issue we are notifying the Bureau of Land Management (BLM) Miles City Field Office of a concern the Prairie County Commission has because of a invasion of prairie dogs dwellings on Ash Creek Rd. The location is North of Flattop Rd (legal description: T11N R 51E Sec 13 & T11N R52E Sec 18). The prairie dogs are invading the road surface.

It is the opinion of the Prairie County Commissioners that the protection of Prairie dogs has allowed the expansion of prairie dog Dwellings to the point of serious safety issues.

Since it is the policy of The BLM to protect Prairie Dogs from any kind of population control, we believe it is your liability to our concern of public safety.

We would like to hear from you on how your going to solve the issue that we have addressed.

Sincerely,

Prairie County Commissioners

Todd Devlin Commissioner Chair Todd Devlin

Christine Keltner Commissioner Christine W Keltner

Dennis Teske Commissioner

NATE

THE COMMUNICATIONS INFRASTRUCTURE CONTRACTORS ASSOCIATION

October 13, 2025

Prairie County Commission
217 W Park Street
PO Box 125
Terry, MT 59349

Re: Opposition to Proposed Zoning Ordinances

Dear Commissioners,

On behalf of NATE: The Communications Infrastructure Contractors Association (www.natehome.com), I am writing to respectfully express strong concerns regarding the proposed zoning ordinance drafts under consideration in Prairie County.

NATE represents approximately 900 member companies across the United States that build, deploy, and maintain our nation's wireless, broadband, and communications infrastructure. Our membership includes six contractor firms based in Montana whose skilled technicians work every day to bring essential connectivity to rural communities like those in Prairie County.

The proposed height restrictions and setback requirements, particularly the structure cap at 199 feet and extensive multi-mile setbacks, would significantly hinder the ability to deploy the infrastructure necessary for reliable high-speed internet and wireless service. Simply put: these rules do not reflect the geographic and technological realities of serving a region as vast and sparsely populated as Eastern Montana.

The Impact is Broad and Deep:

- **Public Safety** – Law enforcement, EMS, and firefighters require uninterrupted coverage to respond quickly and save lives.
- **Healthcare** – Telehealth access depends on high-speed broadband. Without it, rural patients are isolated from essential care.
- **Education** – Students fall behind when they lack access to online learning resources and assignments.
- **Agriculture and Business** – Modern agriculture operations and local businesses rely on connectivity for everything from logistics to market access.

- **Fairness** – Residents of Prairie County deserve equal digital opportunity—not policies that deepen the rural-urban divide.
- **Investment** – Restrictive ordinances increase deployment costs and will deter both public and private investment in critical infrastructure.

A Better Path Forward:

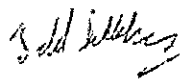
Other rural counties have adopted zoning approaches that balance community values with connectivity needs. We urge Prairie County to:

- Allow taller towers where necessary for effective service.
- Replace rigid setback distances with case-by-case reviews based on actual proximity and impact.
- Align local approval processes with federal standards to reduce delay and uncertainty.

We appreciate the County's efforts to thoughtfully manage land use. However, adopting these zoning ordinances as written would leave Prairie County at a severe disadvantage, cut off from the digital infrastructure that powers public safety, healthcare, education, and economic growth in the 21st century.

Thank you for your consideration of these comments.

Respectfully,



Todd Schlekeway
President & CEO
NATE: The Communications Infrastructure Contractors Association