

From: Lance Onstott <Lance.Onstott@pec1.com>

Sent: Tuesday, July 21, 2026 4:17 PM

To: Will Johnson <wjohnson@bucoks.com>; Toby Stewart <tstewart@bucoks.com>

Subject: 7/21 Data Center Regulations Recommendations

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Gentlemen — Sorry for the late submission, but I was attempting to get this analysis completed prior to your Joint Commission meeting this evening. My goal was to provide a redline to offer specific recommendations, which I will more than happily agree to do, but based on my review, the draft isn't quite ready for that level of detail. I still believe the draft is fundamentally misunderstanding what land use control (zoning) is designed to do. This is largely the argument I have made in multiple Kansas counties over the past 6 months.

One additional item that may warrant staff review is the redlined revision to Section 3(a). As currently shown, the Industrial (I) District, as well as several other zoning districts, appear to have been removed, leaving AG-40 and AG-80 as the only districts where a Data Center CUP may be considered. I may be misreading the redline, but if that interpretation is correct, it raises a question regarding the intended relationship between data centers and the Industrial District, particularly within areas planned for employment and industrial growth. I did not address that issue directly in the attached, but I wanted to flag it as something that may merit additional discussion before the regulations move forward. I can't imagine that the Industrial District would permit "product design, fabrication, and assembly enterprises" by right but not data centers (either by right or CUP). Many communities place data centers in industrial districts alongside uses such as research and development facilities, electronics manufacturing, telecommunications facilities, and other technology-oriented enterprises rather than treating them as exclusively agricultural conditional uses.

As always, happy to discuss further.

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JULY 2026

RE: RECOMMENDED REVISIONS TO DRAFT DATA CENTER CONDITIONAL USE PERMIT REGULATIONS

EXECUTIVE SUMMARY

After reviewing the 7/21 draft regulations and comparing them with established zoning practice, Butler County's existing development review processes, and previous recommendations provided to the County, several revisions are recommended to improve administration of the regulations while maintaining the County's authority to evaluate impacts and enforce compliance. These recommendations are intended to better align regulatory requirements with the phase of development in which information can reasonably be produced and evaluated.

The primary recommendations can be summarized as follows:

1. Adopt a clear three-stage review process that separates land use entitlement, platting, and permitting requirements.
2. Revise the timing of utility, emergency response, security, and other engineering-related submittals to occur when final design information is available.
3. Modify mechanical equipment, generator, transformer, substation, and fuel storage setbacks to rely primarily on enforceable performance standards rather than excessive separation distances.
4. Refine the proposed noise standards to rely on objective and enforceable performance measures.
5. Increase the maximum building height from 60 feet to 85 feet.
6. Extend CUP vesting periods to reflect the realities of utility coordination and infrastructure development.
7. Eliminate duplication with state and federal permitting programs.
8. Reevaluate the maximum Development Area limitation to better reflect the design and operational characteristics of large-scale industrial campuses.
9. Clarify water source terminology and encourage the use of reclaimed and recycled water supplies where feasible.

Taken together, these revisions would provide a more predictable and administratively efficient process while preserving Butler County's ability to ensure that data center projects are appropriately designed, constructed, and operated.

BACKGROUND

Data centers differ from many traditional industrial uses because they can be infrastructure-intensive facilities with relatively limited day-to-day external impacts. Unlike manufacturing facilities, their principal land use considerations generally involve measurable impacts such as noise, lighting, traffic, utility demand, site design, screening, and emergency access. These impacts are often best addressed through objective performance standards rather than subjective review of preliminary engineering information.

For this reason, many jurisdictions evaluate data centers similarly to other large industrial developments by focusing zoning review on land use compatibility and general site planning while reserving detailed engineering analysis for subsequent development stages. The current draft regulations establish a strong foundation but would benefit from revisions that better distinguish land use decisions from technical design review.

RECOMMENDATION 1: ADOPT A CLEAR THREE-STAGE REVIEW PROCESS

The most significant recommendation is to better distinguish between:

- Conditional Use Permit (Land Use Entitlement)
- Platting/Subdivision Review



— Building Permit and Construction Review

The current draft requires numerous technical studies and engineering analyses as part of the CUP application, including utility documentation, construction management plans, fire protection analyses, stormwater calculations, water studies, environmental reviews, noise studies, decommissioning plans, security plans, and emergency response coordination documents.

Many of these requirements depend upon information that is not available when a zoning application is submitted. Utility interconnection studies may not be complete, equipment selections often have not been finalized, cooling technologies may still be under evaluation, and operational details are frequently subject to change as engineering advances. Requiring final technical documentation at the entitlement stage often results in significant expenditures for studies that must later be revised. As previously outlined in the PEC memorandum, the CUP stage should focus on:

- Property identification and ownership;
- General project description;
- Campus layout and development concept;
- Access and circulation concepts;
- General infrastructure feasibility;
- Demonstration that adopted performance standards can reasonably be achieved.

Detailed engineering analyses should be deferred to platting and permitting, when final design information becomes available, and compliance can be accurately verified. This approach does not eliminate substantive requirements; it simply ensures that compliance is demonstrated at the stage where the information is reliable and meaningful.

RECOMMENDATION 2: REVISE THE TIMING OF UTILITY, FIRE, SECURITY, AND EMERGENCY REVIEW REQUIREMENTS

Several portions of the draft regulations require documentation and approvals that are often unavailable at the zoning stage.

UTILITY COORDINATION

The draft regulations currently require extensive utility documentation, including feasibility information and documentation associated with interconnection and transmission planning. Utility providers frequently require land use certainty before advancing detailed interconnection studies and service agreements. This creates a circular dependency in which zoning approval depends upon utility documentation that cannot be finalized until zoning approval has been obtained. The County should consider requiring evidence of active utility coordination at the CUP stage while reserving final utility commitments, interconnection documentation, and service agreements for the permitting phase.

FIRE, EMS, AND EMERGENCY COORDINATION

The current regulations require significant fire and emergency management review during the entitlement process. A more practical approach would involve conceptual coordination with emergency service providers during the CUP stage, followed by submission of final fire protection plans, hydrant analysis, fire flow calculations, water supply certifications, and emergency response procedures during permitting when engineering design has been completed and utility infrastructure has been finalized. These items are inherently dependent upon final site layout, utility design, and equipment selection and therefore can be more accurately evaluated during permitting than at the entitlement stage.

SECURITY AND KIFC REVIEW

Similarly, final security plans and Kansas Intelligence Fusion Center review are more appropriately addressed after a project has received land use approval and detailed operational information is available. The County may wish to



acknowledge these requirements during entitlement while requiring final compliance prior to issuance of permits or certificates of occupancy.

RECOMMENDATION 3: REVISE MECHANICAL EQUIPMENT, SUBSTATION, AND GENERATOR SETBACKS

The draft regulations establish a 250-foot setback from property boundaries and a 1,000-foot setback from residences, noise-sensitive receptors, public rights-of-way, and zoning district boundaries for substations, generators, transformers, mechanical yards, and fuel storage facilities. While intended to address operational impacts, particularly noise, these separation distances create significant practical challenges. Modern data center design often integrates generators, transformers, cooling systems, fuel storage, and mechanical infrastructure directly into the configuration of each data hall. As a result, a 1,000-foot setback for these components effectively functions as a 1,000-foot setback for the primary buildings themselves. This requirement may unnecessarily restrict site planning and reduce the viability of otherwise suitable industrial sites. A more balanced approach would be:

- Retain the County's enhanced setback from residences and noise-sensitive receptors;
- Remove the 1,000-foot setback requirement from public rights-of-way and zoning district boundaries;
- Rely primarily upon adopted noise standards and mitigation requirements;
- Allow acoustical enclosures, barriers, landscaping, berms, and other mitigation techniques to achieve compliance; and
- Consider a reduced enhanced setback of approximately 300 feet where additional separation is deemed necessary.

This approach would continue to protect neighboring property owners while providing greater site design flexibility.

RECOMMENDATION 4: REVISE NOISE PERFORMANCE STANDARDS

The draft regulations already contain extensive provisions related to noise analysis, mitigation, monitoring, and post-construction verification. These provisions provide the County with a meaningful and enforceable framework for addressing noise impacts. However, several refinements are recommended:

First, the ordinance currently contains multiple references to both the "Property Boundary" and "Project Boundary" as measurement locations. A single measurement point should be consistently applied throughout the regulations to avoid future interpretation disputes. Measuring compliance at the neighboring property boundary would provide clarity while directly protecting adjacent landowners.

Second, the provision stating that any increase above an existing ambient baseline may constitute a violation should be reconsidered. Because ambient sound conditions fluctuate naturally over time, strict reliance on baseline measurements may be difficult to administer and enforce. Objective numerical standards generally provide greater predictability and are easier for both applicants and the County to evaluate and monitor.

The County's adopted sound limits, coupled with required noise studies and mitigation measures, already provide a framework for adequately addressing operational impacts.

RECOMMENDATION 5: INCREASE MAXIMUM BUILDING HEIGHT

The current draft establishes a maximum building height of 60 feet and contains language that appears internally inconsistent regarding variances over 35 feet. Modern hyperscale and large-scale data centers increasingly utilize taller structures to accommodate:

- Mechanical systems;
- Cooling infrastructure;



- Electrical equipment;
- Screening elements;
- Increased operational efficiency; and
- Future expansion flexibility.

Increasing the allowable height from 60 feet to 85 feet would better reflect contemporary facility design while still allowing the County to evaluate visual impacts through the CUP process. Such an approach would also reduce the need for separate variance proceedings while maintaining appropriate County oversight.

RECOMMENDATION 6: EXTEND CUP VESTING PERIODS

The draft regulations provide that a CUP expires if building permits have not been issued within 12 months of project approval. For large-scale industrial developments such as data centers, completion of utility coordination, environmental permitting, platting, infrastructure design, and final construction documents frequently requires considerably more time than one year. Utility infrastructure planning alone can require multiple years depending upon the scope of necessary upgrades and regional transmission requirements. The County should consider extending the vesting period to:

- Five years (60 months); or
- A phased development schedule tied to measurable project milestones.

Such an approach would better reflect real-world development timelines while preserving the County's ability to monitor project progress and ensure continued compliance with approved conditions.

RECOMMENDATION 7: ELIMINATE DUPLICATION WITH STATE AND FEDERAL REGULATORY PROGRAMS

Several provisions of the draft regulations require studies and reviews addressing matters already regulated under state and federal programs, including:

- Air quality permitting;
- Wetlands review;
- Threatened and endangered species review;
- Cultural and historic resource review; and
- FAA aviation determinations.

These programs are administered by specialized regulatory agencies that possess technical expertise and statutory authority over these subjects. Requiring duplicate review as part of a discretionary zoning process adds complexity without necessarily improving the County's ability to assess land use compatibility.

Rather than requiring these materials during zoning review, the County could require evidence of compliance with applicable state and federal approvals during permitting. This approach would maintain accountability while minimizing duplication and potential conflicts between regulatory frameworks.

RECOMMENDATION 8: REEVALUATE THE MAXIMUM DEVELOPMENT AREA LIMITATION

The draft regulations currently establish a maximum Development Area of 640 acres unless amended through a future regulatory action. While this limitation appears intended to establish an upper threshold for development intensity, the basis for selecting 640 acres is not readily apparent from a planning or land use perspective. The limitation coincides with the size of a standard survey section and may not necessarily reflect the spatial needs of modern data center campuses.

Large-scale data center developments often incorporate extensive setbacks, landscape buffers, stormwater facilities, utility corridors, access improvements, and areas intended to remain in agricultural production or open space. As a result,



the total acreage associated with a project frequently exceeds the acreage actually occupied by data center buildings and supporting infrastructure.

The County should consider either increasing the maximum Development Area or refining the definition of Development Area to more accurately reflect the portion of a site devoted to operational improvements. One approach would be to exclude landscape buffers, required setbacks, utility corridors, off-site infrastructure, and agricultural preservation areas from the Development Area calculation. Such a revision would better align the regulation with how large-scale industrial campuses are planned and developed while maintaining meaningful oversight of the portions of a site that generate operational impacts

RECOMMENDATION 9: CLARIFY WATER SOURCE TERMINOLOGY

The draft regulations appropriately emphasize water conservation, protection of groundwater resources, and the use of efficient cooling technologies. However, portions of the regulations reference "non-public" water sources in a manner that could create confusion regarding the use of alternative water supplies.

As currently drafted, it is unclear whether treated wastewater, reclaimed water, recycled water, or other non-potable water sources would be treated similarly to private groundwater withdrawals or direct surface water withdrawals. These are fundamentally different water sources with substantially different resource and environmental considerations.

The County should consider clarifying that reclaimed, recycled, treated effluent, or other approved reuse-water sources may be utilized where authorized by applicable regulatory agencies and utility providers. Such clarification would support the County's water conservation objectives while providing flexibility for future cooling technologies that reduce demand on potable water supplies. At the same time, the County may continue to restrict private groundwater wells and direct surface water withdrawals where deemed necessary to protect local water resources

CONCLUSION

The County's draft regulations establish a strong framework for evaluating data center development and demonstrate a commitment to proactively addressing the unique characteristics of this type of development. The recommendations outlined above are intended to refine that framework by more clearly aligning requirements with the appropriate stage of development and emphasizing objective, enforceable performance standards.

In summary, it is recommended the County:

- Implement a three-stage review process that distinguishes entitlement, platting, and permitting responsibilities;
- Defer detailed technical studies and final engineering documentation until later phases of development when design information can be reliably evaluated;
- Revise utility, emergency management, security, KIFC review, water supply certification, and fire-flow analysis requirements to better align with project development timelines;
- Modify mechanical equipment, generator, transformer, fuel storage, and substation setbacks to better reflect modern data center design while preserving protections for nearby residents and other sensitive land uses;
- Refine noise standards to provide objective, measurable, and enforceable compliance criteria while avoiding ambiguity regarding measurement locations and baseline sound levels;
- Increase the allowable building height to 85 feet to better accommodate modern facility design and operational requirements;
- Extend CUP vesting periods to accommodate utility coordination, infrastructure planning, permitting, and phased project development;



- Reevaluate the maximum Development Area limitation and consider revisions that better reflect the design characteristics of large-scale industrial and technology campuses;
- Clarify water source terminology and encourage the use of reclaimed, recycled, and other approved non-potable water sources where feasible to support long-term water conservation objectives;
- Eliminate duplicative reviews already governed through state and federal permitting programs.

Collectively, these revisions would create a more practical, predictable, and administratively efficient regulatory framework while preserving Butler County's ability to ensure that data center projects are compatible with surrounding land uses, adequately mitigate potential impacts, and remain consistent with the County's broader planning and economic development objectives. The result would be a regulatory structure that preserves local oversight while ensuring that compliance obligations are evaluated at the stage of development where they can be most accurately assessed and effectively enforced.

Respectfully Submitted,

PROFESSIONAL ENGINEERING CONSULTANTS, PA

A handwritten signature in blue ink, appearing to read "Lance Onstott", written in a cursive style.

Lance Onstott, AICP, CNU-A

Practice Lead – Community Planning & Development

From: Lance Onstott <Lance.Onstott@pec1.com>
Sent: Friday, July 31, 2026 12:44 PM
To: Will Johnson <wjohnson@bucoks.com>; Toby Stewart <tstewart@bucoks.com>
Subject: Re: Marked Regulations

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Sorry, gentlemen. It appears that I uploaded the same document twice on my original email. Attached is the full draft with the markups.

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From: Lance Onstott <Lance.Onstott@pec1.com>
Sent: Friday, July 31, 2026 12:36 PM
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Subject: Marked Regulations

Will and Toby — Attached is a draft with my recommended markups in addition to a summary document as opposed to the high-level feedback provided previously.

I did complete markups on the application as well, although I would recommend a complete redraft of the application following the adoption of the regulations. The application as is doesn't really correspond with the regulations. To my knowledge, I don't believe the BOCC needs to approve application forms, as the development and maintenance of such is generally administrative.

As always, let me know how I can help.

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Butler County, Kansas Zoning Regulations

Conditional Use Permit for Data Centers

This regulation is adopted as an amendment and addition to the Butler County Zoning Regulations by the Board of County Commissioners of Butler County, Kansas (“Board”), upon recommendation of approval by the Butler County Planning Commission (“Planning Commission”), to establish application requirements, review procedures, approval criteria, development standards, and operating standards for consideration of an Application for a Conditional Use Permit for a Data Center (“CUP”) proposed within the unincorporated areas of Butler County, Kansas.

Unless otherwise specified, the following data center classifications are provided for reference purposes only and are further defined in the “Definitions” Section 20 ¶ 21:

Data Center Classification	Brief Description	Annual Power Usage <u>Demand/C</u> apacity	Cumulative Buildings Size in Sq. Ft.	Project Site Acreage
Hyperscale	Extremely large-scale operations with high efficiency	50-200+MW	100,000 +	40 +
Colocation	Large, shared multi-tenant facilities businesses to house their own IT infrastructure or rent space from a provider	5-50 MW	20,000 - 100,000	10-40
Enterprise	Medium-to-large facilities with customized infrastructure for large organizations	1-10 MW	10,000 – 20,000	2-10
Edge/Micro	Small, modular units at decentralized sites close to users and data sources to reduce latency (telecommunications delay)	<1MW	5,000 - 10 <u>20</u> ,000	< 5 <u>10</u>
Modular/Container	Portable and scalable with rapid setup in remote or emergency scenarios	0.1-2MW	<5,000	<5

SECTION 20. DATA CENTER REGULATIONS

1. Purpose and Intent

(a) The purpose of this Section 20 Data Center Regulations (“Regulation”) is to establish application requirements, review procedures, approval criteria, and ~~enforceable~~ development and operating standards for data centers, to consider and address the main issues identified in Section 20 ¶ 1.(b)(6).

(b) This Regulation is intended to:

- (1) Protect public health, safety, and welfare;
- (2) ensure compatibility with surrounding land uses and the Butler County comprehensive plan;
- (3) address infrastructure capacity and coordinated utility service;
- (4) limit and mitigate off-site impacts such as emissions, hazardous materials risks, lighting, noise, stormwater, traffic, vibration, and water usage;
- (5) provide predictable standards for applicants while preserving case-by-case review through the conditional use process; and
- (6) consider and address the main issues related to data center projects during the application process, to include, but not be limited to the following:

- (A) Agricultural Impact;
- (B) Air Quality Emission;
- (C) Applicants Experience, Reputation, and Financial Ability;
- (D) Backup Power;
- (E) Buffering;
- (F) Construction Management;
- (G) Cost–Benefit Analysis and Community Impact Statement;
- ~~(G)(H)~~ Decommissioning, Removal, and Reclamation;
- ~~(H)(I)~~ Electronic Waste;
- ~~(I)(J)~~ Emergency Response;
- ~~(J)(K)~~ Energy Use;
- ~~(K)(L)~~ Fire and Safety;
- ~~(L)(M)~~ Fuel Storage;
- ~~(M)(N)~~ Hazardous Materials;
- ~~(N)(O)~~ Infrastructure Costs;
- ~~(O)(P)~~ Land Use;
- ~~(P)(Q)~~ Lighting;
- ~~(Q)(R)~~ Noise;
- ~~(R)(S)~~ Preservation of Flint Hills Ecoregion a/k/a Tallgrass Heartland;
- ~~(S)(T)~~ Public Health and Safety;
- ~~(T)(U)~~ Stormwater;
- ~~(U)(V)~~ Thermal Conditions;
- ~~(V)(W)~~ Traffic;
- ~~(W)(X)~~ Vibration;

~~(X)(Y)~~ Visual Impact; and
~~(Y)(Z)~~ Water Usage.

(c) Adoption of this Regulation does not approve any data center, reserve utility capacity, approve incentives, authorize public financing, or approve any development agreement.

2. Authority; Coordination with Kansas Law

(a) This Regulation is adopted pursuant to Butler County's zoning and police powers and the authority granted to counties under applicable Kansas statutes, including K.S.A. 12-741 *et seq.*, as applicable, and other applicable federal, state, and local laws and regulations.

(b) Where a conflict exists between this Regulation and any other provision of the Butler County Zoning Regulations, the more restrictive provision controls unless otherwise required by law.

(c) This Regulation is intended to operate in coordination with the Butler County:

(1) Comprehensive Plan;

(2) Zoning Regulations;

(3) Subdivision Regulations, (if applicable);

(4) Floodplain Management Regulations. (if applicable);

(5) building, fire, and Industrial (I) zoning districts.

(6) filing fees and Development

A CUP is required to construct, expand, or operate a data center in the AG-40, AG-80, and Industrial (I) zoning districts.
***Maybe there is a reason you guys have intentionally excluded the I District. Generally, I think it appropriate for data centers to be permitted by right in most industrial districts as long as they must follow similar prescriptive requirements.*

3. Applicability

(a) **CUP Required.** A CUP is required to construct, expand, or operate a data center in ~~the Rural Residential (RR), Residential Estates (RE), AG-40 and, AG-80, Commercial, and Industrial (I) zoning districts. A data center is not allowed as a permitted use or as a conditional use in all other zoning districts.~~

(b) **Expansions and Material Changes.** An amended CUP is required for:

(1) Any increase in building floor area, IT load, generator count or capacity, cooling plant capacity, fuel storage volume, or site area beyond thresholds in Section 20 ¶ 13 (Modification);

(2) any change in primary access points or circulation that materially affects traffic or emergency access; or

(3) any new or expanded substation or major utility interconnection not previously approved.

(c) **Exemptions.** Routine maintenance, equipment replacement-in-kind, and interior upgrades that do not increase approved external impacts, capacities, or site disturbance, may be approved administratively under Section 20 ¶ 13, subject to the submittal of documentation related to the proposed action to be taken by the applicant to the Butler County Zoning Administrator (“Zoning Administrator”).

(d) **Relationship to Other Approvals.**

(1) Approval of an application for a data center CUP does not waive requirements for any other permits, approvals, or licenses, including but not limited to building permits, stormwater permits, access permits, sanitary permits, fire code approvals, environmental permits, FAA determinations, and any required approvals from utility providers.

(2) The applicant is responsible for securing and maintaining all required permits and approvals throughout construction and operation.

4. Definitions (Data Center CUP)

Terms have the meanings as set forth in the Butler County Zoning Regulations unless they are defined in Section 20 ¶ 21 Definitions or are defined as follows:

~~(a)A.~~ **Data Center Project.** “Data Center Project” or “Project” means the total development proposed, approved, constructed, operated, maintained, expanded, modified, or decommissioned under a Data Center CUP, including all data center buildings, accessory facilities, phases, site improvements, utility infrastructure, access roads, driveways, stormwater facilities, grading, landscaping, screening, security improvements, and any off-site infrastructure proposed, required, or reasonably necessary to serve the data center use.

~~(b)B.~~ **Project Site.** “Project Site” means all real property, parcels, tracts, lots, lease areas, easements, options, rights-of-way, or other land interests within Butler County that are owned, leased, optioned, contracted for purchase, under easement, or otherwise controlled by the applicant, project owner, operator, or affiliate for purposes of developing, constructing,

Development Area. “Development” Area means the portion of the Project Site occupied by principal and accessory improvements associated with the operation of the Data Center Project, including data center buildings, administration buildings, parking areas, loading areas, internal circulation roads, generator yards, cooling equipment areas, private water and wastewater facilities, and similar operational improvements. “Development Area” shall not include land devoted to required setbacks, buffering, landscaping, screening, open space, agricultural uses, environmental preservation or conservation areas, stormwater management facilities, utility easements or corridors, electrical transmission facilities, substations, switchyards, or other utility infrastructure, whether owned by the applicant, an affiliate, or a utility provider, nor any other areas not occupied by operational data center improvements.

in the approved CUP.

~~(d)D.~~ **Development Area.** “Development Area” means the portion of the Project Site proposed or approved to be graded, cleared, excavated, filled, paved, fenced, landscaped, used for stormwater management, or otherwise physically altered for construction, operation, maintenance, expansion, or decommissioning of the Data Center Project. The Development

Area includes buildings, accessory facilities, internal roads, parking, loading areas, laydown areas, utility yards, substations, generator yards, cooling equipment, water or wastewater facilities, stormwater facilities, and similar improvements.

(e)E. Buffer. “Buffer” means an area of land, landscaping, berming, fencing, wall, open space, distance separation, or combination thereof, located within the Project Site and designed to mitigate visual, noise, lighting, stormwater, compatibility, or other off-site impacts of the Data Center Project.

(f)F. ~~Project Area Exclusion~~Project Exclusion Area. A Data Center Project is prohibited from development of a Data Center:

(1) in the area, ~~within the unincorporated area of Butler County, Kansas which is outside the jurisdiction of any city within the county,~~ commonly known as the Flint Hills Ecoregion, to include the Tallgrass Heartland, the boundaries of which are set forth in the map attached as “Exhibit A” and generally described as: an area East of a line starting at the south Butler County line going north on US Hwy 77 into Augusta, and jogging east at US HWY 54/400/77 to Ohio Street and then north on Ohio Street to K-254, then west on K-254 to River Valley Road, then north on River Valley Road to Parallel Road, and then west on Parallel Road to Diamond Road, then north on Diamond Road to K-196, then west by northwest on K-196 to Meadowlark Road and then north on Meadowlark Road to the Butler County line; and

(2) outside the Urban Growth Area (“UGA”) of Butler County, Kansas including the area of the UGA within the Flint Hills Ecoregion, as set forth in the map attached as “Exhibit B-”;

provided however,

(3) Edge/Micro and Modular/Container Data Centers are not excluded from development in the Project Exclusion Area if the Project: (1) is an addition to an existing permitted use; (2) is below 1 MW power demand and less than 10,000 square-foot building size; (3) there is no water cooling; (4) there is no BESS over 10-50 MW, with a storage duration of 2-6 hours, resulting in a maximum capacity of up to 200 MWh; and (5) no expansion is allowed without Board approval.

5. Pre-Application Meeting

(a) Required Meeting

(1) Prior to submitting an application for a data center CUP, the applicant shall participate in a pre-application meeting with Butler County staff, including Community Development/Planning and Zoning, Butler County Public Works, Butler County Emergency Management, and any other departments the Zoning Administrator deems appropriate.

- (2) The purpose of the meeting is to identify applicable standards, required plans, studies, technical reports, potential impacts, department coordination needs, and confirmation of core submittal items, ~~required plan and studies, and technical reports~~.

(b) Concept Plan

At least sixty (60) days prior to the pre-application meeting, the applicant shall provide to the Zoning Administrator a concept plan and written description sufficient to evaluate:

- (1) Site location and acreage;
- (2) preliminary layout, access points, and phases;
- (3) proposed IT load and utility needs (*e.g.*, power, water, wastewater, telecom);
- (4) anticipated generators, fuel storage, cooling technology; and
- (5) proposed schedule and construction phasing.

(c) Kansas Intelligence Fusion Center

- (1) At the pre-application meeting, the applicant shall disclose whether the applicant has initiated, intends to initiate, or has completed the screening process with the Kansas Intelligence Fusion Center (“KIFC”).
- (2) If available, the applicant may provide a copy of the completed KIFC report to the Zoning Administrator at the time of the pre-application meeting.

(d) Required Community Meeting

- (1) ~~After submission of the Application Package to the Community Development department, a~~ community meeting coordinated and paid for by the applicant shall, unless expressly waived by the ~~Zoning Administrator with the County Administrators approval~~ Board, be held prior to the public hearing with the Planning Commission to give the community an opportunity to have the applicant present information regarding the proposed Project and for the community to submit comments and concerns for response. The applicant shall provide a written response to the comments and concerns which will be submitted to the Zoning Administrator and placed on the Butler County website.
- (2) The applicant shall provide individual written notice, by certified mail, of the date, time, and location of the meeting, at least twenty-one (21) but no more than thirty (30) days, in advance of the meeting date to:
 - (A) All owners of record of real estate located within a one thousand (1,000) feet radius of the Project Boundary and for noncontiguous Project Sites, notice should be measured from each component boundary as indicated

on the certified list of such property owners provided with the application;

(B) all cities and townships within a three (3) mile radius of the Project Boundary;

(C) the Zoning Administrator; and

- (3) such notice shall include a brief description of the proposed Project, the name, address and telephone number of the applicant and the applicant's contact person, the anticipated construction dates, the anticipated day in which the application will be submitted to the Planning Commission and the following statement:

“This letter is being sent to the owners of nearby properties for the purpose of informing the property owners and other interested parties about the proposed data center facility project described further in this letter. ~~This letter does not grant the recipient or the property owner any additional legal rights to challenge the proposed development.~~ This notice letter is provided to inform nearby property owners and interested parties of the proposed project and upcoming review process. Recipients may participate in the public process as provided by applicable law. This letter is being provided solely to advise property owners of the pending ~~development~~application. For further information, contact the applicant's designated representative or the Butler County Community Development Office at 316-322-4325 or 121 S. Gordy, Suite 202, El Dorado, KS 67042”;

- (4) the date, time, and location of the meeting shall be published at least once in the official county newspaper and any other county newspaper of general circulation in the area, by the applicant, at least twenty-one (21) but no more than thirty (30) days, in advance of the meeting date;

- (5) the meeting shall be held within the township in which the majority of the Project Site is located at a place open to the community with adequate parking and seating facilities to accommodate persons with disabilities, however, if an adequate facility is not available to comply with these requirements, the nearest suitable facility which meets the requirements shall be utilized;

- (6) the meeting shall give members of the community the opportunity to review applicants’ documentation related to the Project, ask questions of the applicant, and provide comment; and

- (7) prior to the public hearing held by the Planning Commission, the applicant shall provide the Zoning Administrator with community meeting documentation to include: notice letters, proof of publication notice, a list of individuals given written notice of the meeting, meeting materials, attendance/sign-in, written comments, a summary of any input received from members of the community at the meeting, and applicants' response summary.

(e) No Vesting

The pre-application and community meetings do not vest rights or guarantee approval.

6. Application for a CUP - Submittal Requirements (Data Center)

(a) General

- (1) An application for a data center CUP is complete only when all items required by ~~this~~^{these} Regulations, the CUP core submittal checklist, and the plans, studies, and technical reports are provided. The information in an application for a CUP and the Development Plan shall be current at the time of submission of the Project to the Planning and Zoning Department. Where required information is not available at the time of submission of the application, estimates, or alternative information shall be provided and noted as estimates or alternatives. Only requirements relevant to the Project shall be submitted with the application. The Zoning Administrator or the Planning Commission may request additional information from the applicant.

- (2) Applicant should consult with the Zoning Administrator regarding any section of these Regulations or the Application for a Conditional Use Permit - Data Center Project ("Application Package"), which requires a plan, ~~or~~ study, or technical report to ascertain whether specific information is to be included ~~in the plan or study~~.

- ~~(3) The Zoning Administrator, with the written approval of the County Administrator/Board, may grant a written waiver to include specific findings, for a core submittal or other specific plans, studies, technical reports, letters, reviews, or items, upon submittal by the applicant for a waiver request. An automatic waiver of core submittal or other specific plans, studies, technical reports, letters, reviews, or items, is granted for certain data center classifications as set forth in the application.~~

- (3) An application shall provide non-confidential status information or documentation reasonably available to the applicant related to include information identifying whether the applicant has initiated or completed the screening process with the Kansas Intelligence Fusion Center ("KIFC"). Any KIFC report shall not be

(4) Applicant will be responsible for the actual review cost incurred by the County when plans, studies, technical reports, letters, reviews, or other items are reviewed by third parties contracted by Butler County. The Board shall adopt a deposit schedule by resolution.

(A) Under no circumstances shall the applicant be required to pay more than Ten Thousand Dollars (\$10,000) in aggregate third-party review costs for a CUP application unless the applicant voluntarily agrees in writing to additional review costs.

(B) Any cost incurred by Butler County in excess of Ten Thousand Dollars (\$10,000) that is not authorized in writing by the applicant shall be the sole responsibility of Butler County.

(C) Any amount remaining after payment of all consultants shall be refunded to the applicant within thirty (30) days following completion of the review. The applicant may object to any charge it believes is unreasonable, duplicative, or outside the scope of the review without stopping the processing of the application.

~~(6)(4)~~ Applicant will be responsible for the actual review cost incurred by the County when plans, studies, technical reports, letters, reviews, or other items are reviewed by third-party contracted by Butler County. The Board shall adopt a deposit schedule by resolution. The cost incurred by the County in excess of the amount deposited with the County pursuant to section 6.(b)(1)(C) shall be paid by applicant within thirty (30) days of invoicing. Any amount remaining after payment to all of the consultants shall be reimbursed back to the applicant within thirty (30) days after the completion of the review. The applicant is allowed to object to what it believes to be an unreasonable or duplicative charge without stopping the processing timelines.

(b) Application Contents

The applicant shall submit the following in a form acceptable to the Zoning Administrator:

(1) Application Form and Fees

(A) Completed Application for a Conditional Use Permit - Data Center Project (Application Package) provided by the Zoning Administrator;

(B) payment of the permit fee(s) pursuant to the Planning and Zoning Fee Schedule; ~~and~~

~~(B)(C)~~ payment of the deposit funds for the cost associated with county-selected third-party review of water, energy, noise, vibration, traffic, environmental, fiscal, thermal, emergency response, and decommissioning studies; and

(C) Payment of a third-party review deposit in an amount established by the Board, not to exceed Ten Thousand Dollars (\$10,000), for the review of plans, studies, technical reports, and other application materials by county-selected consultants pursuant to Section 6(a)(4).

(A) Description of the proposed data center use(s), campus configuration, phases, hours of construction, and operational staffing;

- (B) proposed IT load, total electrical demand, PUE target/range, and energy efficiency measures;
- (C) cooling technology description (e.g., air-cooled, open-loop water cooled, closed loop water-cooled, water-cooled chillers, evaporative, adiabatic, cooling towers, direct liquid cooling and immersion, free cooling, underwater cooled, hybrid) and water demand profile; and
- (D) summary of Backup Power systems (e.g., quantity, manufacturer/model if known, ratings, fuel type, emissions controls).

(3) **Development Plan**

- (A) A certified topographic survey at no more than two (2) foot contour intervals, drawn to a scale of 1" = 100' or greater, indicating the legal description, property boundary, existing contours, existing utilities and easements, and natural and manmade features of the property.
- (B) A Development Plan, drawn to the same scale as the topographic survey, indicating:

- (a) Existing contours (shown as dashed lines);
- (b) proposed contours (shown as solid lines);
- (c) location and orientation of all existing and proposed buildings;
- (d) areas to be used for parking, including the number and arrangement of

(h) General location of known existing utilities and the conceptual location of proposed utility infrastructure, including sanitary sewer, water, storm drainage, gas, telecommunications, and electrical facilities, to the extent such information is publicly available or reasonably known to the applicant at the time of submission.

streets, alleys and public right-of-way;

- (g) points of ingress and egress;

(h) location of all existing and proposed utilities (sanitary sewage systems, water systems, storm drainage systems, gas lines, telephone lines and electrical power lines);

- (i) drainage controls (retention or detention ponds);

- (j) location, size and characteristics of identification and business signs;

- (k) lighting layout, appurtenances, and intensity of illumination; and

- (l) proposed finished floor elevation of all buildings and structures.

Concept

Information won't be available at this stage.

Information won't be available at this stage.

(4) **Site Plan**

- (A) A site plan consisting of the Development Plan without the topographic survey.

(A)(B) A site plan consisting of the Development Plan, without the topographic survey, with the addition of the proposed Project Site, Project Boundary, Development Area, and Buffers including measured distances from all existing and proposed buildings, roads and Noise-Sensitive Receptors.

The plans, studies, and technical reports required for a Data Center Project shall be submitted at the review stage specified in the Data Center CUP Application Package. Butler County shall not require a plan, study, technical report, or analysis earlier than the review stage identified in the Application Package.

~~(B)~~(C) Any further requirements unique to the Project as determined by the Zoning Administrator.

(c) Plans, Studies, and Technical Report

The applicant for any data center development, expansion, or material modification must submit the plans, studies, technical reports, and supporting materials identified in this section, as applicable to the proposed Project, as reasonably required by the Planning and Zoning Department. Such materials will be required, unless waived by the Board, at the application stage, conditional use permit stage, platting stage, permitting stage, or any combination of those stages, as determined by the Planning and Zoning Department. The submission of any required plan, study, or technical report is a condition to completeness review, staff evaluation, and approval of the applicable application, plat, or building permit.

~~(5)~~(1) Landscape and Screening Plan

- (A) Planting schedule, berms, fences and walls, and screening methods for equipment and service areas;
- (B) a buffer zone to adjacent uses and rights-of-way; and
- (C) tree preservation areas and mitigation plan.

~~(6)~~(2) Lighting Plan

- (A) Photometric plan showing footcandle levels at Property Boundary;
- (B) fixture cut sheets and shielding details; and
- (C) dark-sky compliance measures and controls.

~~(7)~~(3) Traffic Impact Study (“TIS”)

- (A) A TIS ~~is required if the Zoning Administrator to~~ determines potential material impacts to the roads serving the Project;
- (B) which must address construction and operational traffic, access design, sight distance, turning movements, lane needs, haul routes, road improvements; and
- (C) include coordination letter(s) or permit(s) from Butler County Public Works, the township having jurisdiction, the Kansas Department of Transportation (“KDOT”), or any other road authority with jurisdiction.

~~(8)~~(4) Noise and Vibration Study

- (A) Existing ambient noise conditions and predicted noise levels for operational sources, including cooling equipment and backup power testing;
- (B) modeling and mitigation measures; and

(C) vibration analysis if significant vibration sources are proposed.

~~(9)(5)~~ Utilities and Infrastructure Letters

(A) Letter(s) from electric utility provider(s) confirming service feasibility, interconnection approach, and any needed substation/corridor locations (to the extent available);

(B) letter(s) from water provider, wastewater provider, and on-site system feasibility (if proposed); and

(C) telecom/fiber service plan (*i.e.*, general description) and anticipated easements.

~~(10)(6)~~ Stormwater Drainage and Erosion, and Floodplain

(A) Applicants statement of compliance with KDHE and NPDES requirements;

~~(A)(B)~~ Stormwater management concept Drainage plans and calculations, including detention/ retention, ~~water quality treatment, ,~~ and discharge points; and

~~(B) erosion and sediment control plan and details to comply with NPDES permitting;~~

~~(C) floodplain development documentation, if applicable, including no-rise certification where required; and~~

~~(D)(C)~~ approval required by the Butler County Engineer or a third-party contracted by Butler County to review the Project design and plans.

~~(11)(7)~~ Fire and Life Safety Plan

(A) Preliminary fire protection approach, hydrant and water supply analysis, fire flow calculations (if applicable), and fire lane access plan;

(B) coordination letter from the Fire Chief or fire authority having jurisdiction; and

(C) special hazards (*e.g.*, battery rooms, fuel systems) and suppression approach.

~~(12)(8)~~ Hazardous Materials Management Plan

(A) Inventory of hazardous materials reasonably anticipated, including fuels, coolants, refrigerants, battery chemistries, and cleaning agents;

(B) storage methods, secondary containment, spill prevention, and emergency procedures; and

(C) compliance statement for applicable federal and state reporting and permitting requirements.

392 **~~(13)~~(9) Air Quality/Emissions Information**

393 ~~(A) Generator emissions profile (e.g., fuel type, tier level, controls, operating~~
394 ~~hours), and expected permitting pathway; and~~

395 ~~(B)~~(D) Applicants statement of compliance with KDHE and EPA federal air
396 quality requirements.

397 **~~(14)~~(10) Water Use Feasibility Study and Conservation Plan**

398 (A) Estimated annual and peak water use by operational mode and season;

399 (B) conservation measures and drought contingency measures; and

400 (C) discharge characteristics and pretreatment needs, if any.

401 **~~(15)~~(11) Construction Management Plan**

402 (A) Construction schedule and phasing;

403 (B) proposed haul routes, staging, worker parking, material storage;

404 (C) dust control, mud tracking control, noise controls;

405 (D) work hours and any proposed deviations;

406 (E) road and bridge maintenance and reconstruction agreements with Butler
407 County and/or the township during all phases of the construction, and a post
408 construction agreement upon completion of all phases of the Project; and

409 (F) utility relocations and road impacts.

410 **~~(16)~~(12) Security Plan (Redaction of Confidential Portions Allowed)**

411 (A) Access control, perimeter fencing, gates, lighting controls, and surveillance
412 description;

413 (B) on-site security staffing (if any) and coordination with law enforcement; and

414 (C) the applicant may submit sensitive security details as a separate confidential
415 attachment to the extent permitted by Kansas law, with a redacted public
416 version.

417 **~~(17)~~(13) Emergency Response and Business Continuity Summary Plan**

418 (A) Coordination of point-of-contact list;

419 (B) utility outage and generator operation protocols;

420 (C) incident notification procedures to Butler County Emergency Management
421 and fire authorities; and

422 (D) mutual aid coordination expectations (as applicable).

423 **~~(18)~~(14) Energy Usage Plan**

424 (A) Projects shall be designed and constructed to meet design standards, as
425 approved by a third-party contracted by Butler County to review the Project
426 design and construction.

427
428 (B) ~~The applicant for a data center shall provide an Energy Usage Plan with the~~
429 ~~application.~~ ~~An~~The Energy Usage Plan shall provide or identify, at a
430 minimum:

- 431 (a) Annual electricity demand;
432 (b) energy supply sources that will be utilized;
433 (c) energy storage capacity (if applicable);
434 (d) proposed sources of back-up power;
435 (e) if interconnecting to the energy grid, documentation of the energy utility
436 interconnection approval process with answers to the following:
437 i. Documentation that an application for the Project has been filed
438 with the electric utility provider, and the required fee has been
439 paid;
440 ii. documentation that a transmission security agreement has been
441 received by the applicant;
442 iii. documentation that the transmission security agreement has
443 been signed by all necessary parties;
444 iv. the date that the electric utility provider provided for the
445 proposed energization of the data center; and
446 (f) the Energy Usage Plan will be prepared and certified by a professional
447 engineer. The plan shall be subject to review and comment by Butler
448 County. Butler County shall have the right to require supplemental or
449 amended plans based upon comments by Butler County prior to any
450 zoning approval.

451 **~~(19)~~(15) Electronic Waste Plan**

452 (A) Identify the lifecycle management for disposal of equipment utilized at the
453 facility; and

454 (B) identify the intended incremental replacement of components that occur
455 during the normal operation of the data center.

456 **~~(20)~~(16) Decommissioning and Site Restoration Plan**

457 (A) Trigger events and decommissioning timeline;

458 (B) removal and disposal or recycling methods for equipment, batteries, fuels, e-
459 waste, coolants, fuel tanks, utility equipment, and hazardous materials;

- (C) demolition approach for structures and foundations as required or an alternative disposition to the County's reasonable satisfaction that the alternative disposition will adequately protect the public health, safety, and welfare, will not create a nuisance or environmental hazard, and is consistent with applicable land use approvals and law;
- (D) final grading, revegetation, and stormwater facility disposition; and
- (E) cost estimate prepared by a Qualified Professional Engineer or qualified cost estimator acceptable to the Board.

~~(21)~~(17) **Environmental/Cultural Report Review (When Applicable)**

- (A) Documentation addressing threatened or endangered species, wetlands, cultural and archaeological resources, and historic properties where required by state and federal permits or funding, or when reasonably indicated by site conditions; and
- (B) copies of agency correspondence, if any.

~~(22)~~(18) **Aviation/FAA (When Applicable)**

Applicant will provide FAA determinations, notice filings, or documentation if the Project includes tall structures, cranes, lighting, or proximity to airports or heliports.

(19) Cost-Benefit Analysis and Fiscal Community Impact Statement

Applicant shall provide a Cost-Benefit Analysis and Fiscal Community Impact Statement stating the net fiscal impact, direct economic returns against long-term impacts on local infrastructure, projected capital investment, permanent jobs, construction jobs, expected tax treatment, requested abatements/exemptions, public infrastructure obligations, ratepayer impacts if known, and who pays for upgrades.

~~(23)~~(20) **Other Information**

Applicant will provide any additional plans, studies or ~~technical reports~~plans reasonably required by the Zoning Administrator to evaluate impacts based on site-specific conditions.

7. Notice, Hearing, and Decision Process

(a) Review Bodies and Sequence

- (1) The Planning Commission shall hold a public hearing and make a recommendation to the Board.
- (2) The Board shall consider the Planning Commission recommendation and adopt such recommendations, override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the County Board, or return such recommendation to the Planning Commission with a statement specifying the basis

for the County Board's failure to approve or disapprove by resolution as required by Butler County Article 22 Amendment Procedures 22-104 and applicable Kansas law.

(b) Completeness and Staff Report

(1) Within thirty (30) business days of the application submittal, the Zoning Administrator shall determine whether the application is complete.

(2) Butler County staff shall prepare a staff report addressing compliance with this Regulation and recommended conditions.

(c) Public Notice

(1) Public notice of the Planning Commission hearing shall be provided as required by Kansas law and Butler County Zoning procedures, including:

(A) Publication in the official newspaper of Butler County;

(B) written notice to property owners within one thousand (1,000) feet of the Project Site (or other radius required by law);

(C) written notice to all owners of records of the county's action shall extend two hundred (200) feet in those areas where the notification area extends within the corporate limits of a city; and

(D) posting of the Project on the Property Boundary with a hearing notice sign.

(2) Notice shall include a summary of the request, location, hearing date and time, and instructions for public comment.

(d) Public Hearing Procedure

(1) The Planning Commission shall conduct a public hearing consistent with its rules of procedure, allowing testimony and submission of written comments.

(2) The Chairman may impose reasonable time limits and conduct the hearing to ensure an orderly record.

(e) Recommendation and Board Action

(1) The Planning Commission shall make written findings and a recommendation (*i.e.*, approval, approval with conditions, or disapproval) to the Board.

(2) The Board shall consider the record, staff report, Planning Commission recommendation, and any additional evidence it deems appropriate and make a final decision.

(f) Tax Incentives

The approval of a CUP shall not constitute an approval, commitment, or entitlement to any public financial incentives. Any tax incentive, abatement, sales-tax exemption support, infrastructure reimbursement, development agreement, or public financing must be applied for separately and shall require independent public notice, staff cost-benefit analysis, and formal Board action in accordance with applicable Kansas statutes.

~~(f)~~(g) Conflict Disclosure

Applicant shall provide the Chairman of the Board or the Chairman of the Planning Commission, written notice of any actual knowledge or reasonably ascertainable information known by the applicant, or its agents, which provides a direct personal or financial interest, or an apparent or potential disqualifying conflict of interest associated with the Project, of any Board member or Planning Commission member.

8. Review Criteria and Required Findings (CUP for Data Centers)

An application for a data center CUP will be considered by the Board (after receiving the Planning Commission recommendation or its failure to make a recommendation) using the following factors as guidelines:

- (a) Whether approval of the conditional use would be consistent with the intent and purpose of these Regulations;
- (b) Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood;
- (c) Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided;
- (d) Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected;
- (e) The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped);
- (f) Whether the applicant's property is suitable for the proposed use;
- (g) The recommendations of professional staff;
- (h) Whether the proposed conditional use would be in conformance to and further enhance the implementation of the Butler County Comprehensive Plan;
- (i) Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed conditional use;

(j) Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected; and

(k) Such other land-use, infrastructure, environmental, public-safety, or Comprehensive Plan factors as may be relevant and supported from the facts and evidence supported by substantial evidence in presented in the application and record. ~~which may include but not be limited to:~~

~~(1) The project provides safe access, internal circulation, and emergency vehicle access, and will not create unsafe traffic conditions;~~

~~(2) the project will avoid or adequately mitigate adverse impacts to natural resources, drainage patterns, floodplains, and water quality;~~

~~(3) noise, vibration, lighting, and other operational impacts will be within standards of this section and will not unreasonably interfere with surrounding uses;~~

~~(4) storage and use of fuels, batteries, and other hazardous materials will comply with applicable laws and will be designed to minimize risk, including secondary containment and emergency response coordination;~~

~~(5) the project phasing, decommissioning plan, and financial assurance provide reasonable protection against abandoned or partially completed facilities; and~~

~~(6) proposed conditions are clear, measurable, and enforceable, and the applicant has the capability and intent to comply.~~

9. Standard Conditions of Approval (Baseline)

(b) Approved Plans. Development and operation shall be generally consistent with the approved CUP plans and documents. The CUP shall authorize development up to the approved maximum Development Area, building height, electrical demand, generator capacity, fuel storage capacity, water demand, and other approved project characteristics. Modifications within those approved limits shall not require amendment of the CUP unless otherwise required under Section 13.

~~except for Edge/Micro and Modular/Container Data Centers which are not excluded from development in the Project Area Exclusion.~~

(b) Approved Plans. Development and operation shall substantially conform to the approved CUP plans and documents, as may be amended pursuant to Section 20.13 (Modification).

(c) Permits and Compliance. The applicant shall obtain and maintain all required permits and approvals and comply with all applicable federal, state, and local laws, including KDHE, fire code, building code, and stormwater requirements.

(d) Access and Road Improvements. The applicant shall complete required access permits and any off-site road improvements identified in the Traffic Impact Study or required by Butler County Public Works, KDOT, or other road authority with jurisdiction.

These won't be identified until the platting stage.

(e) **Construction Limits.** Construction shall comply with the approved Construction Management Plan, including haul routes, hours, dust control, and restoration of damaged roadways.

(f) **Noise, Lighting, and Screening.** The applicant shall implement noise controls, dark-sky measures, and screening as approved.

(g) **(i) Mineral Rights.** Approval of a CUP does not adjudicate private mineral rights or private property disputes. Applicants shall not be required to disclose severed mineral interests or provide evidence regarding mineral ownership as a condition of CUP approval. Prior to issuance of any site development permit, grading permit, building permit, or other construction permit, the applicant shall demonstrate legal authority to undertake the proposed improvements on the surface estate to the extent required by applicable law.

(h) **(i) Mineral Rights.** Approval of a CUP does not adjudicate private mineral rights or private property disputes. Applicants shall not be required to disclose severed mineral interests or provide evidence regarding mineral ownership as a condition of CUP approval. Prior to issuance of any site development permit, grading permit, building permit, or other construction permit, the applicant shall demonstrate legal authority to undertake the proposed improvements on the surface estate to the extent required by applicable law.

(i) **Mineral Rights.** ~~Applicant shall be the owner or leasee of the mineral rights or obtain a surface use agreement/surface waiver from the mineral rights owner. The applicant shall disclose known severed mineral interests and demonstrate legal authority to use the surface for the proposed development, recognizing that CUP approval does not adjudicate private property or mineral disputes.~~

10. Development and Operating Performance

(a) Minimum Site Area; Setbacks; Height

Maximum Development Area. The cumulative Development Area for all phases of a Data Center Project shall not exceed six hundred and forty (640) acres. For purposes of this calculation, areas excluded from the definition of Development Area shall not count toward the maximum acreage limitation.

(1) Minimum Site Area. A Project

forth on the data center classification table at the beginning of this Regulation, unless the Board finds a smaller site is adequate due to location, buffering, and infrastructure.

(2) **Maximum Site Area.** A Development Area shall not exceed six hundred and forty (640) acres, excluding Off-Site Infrastructure, unless approved by amendment to this Section.

(3) Setbacks.

(A) Principal buildings, accessory uses, and truck idling: a minimum buffer zone of two hundred (200) feet from any Property Boundary, with the exception of utility lines, fiber optic lines, and security structures.

(B) Mechanical yards, substations, transformers, generators, and fuel storage: minimum two hundred fifty (250) feet from any Property Boundary, except that setbacks of one thousand (1,000) feet from residences and any Noise-Sensitive Receptor, Noise-Sensitive Receptors, public rights-of-way, and zoning district boundaries which shall be measured from the specific receptor

(B) Stand-alone mechanical yards, substations, switchyards, generator yards, and stand-alone fuel storage facilities shall be set back a minimum of two hundred fifty (250) feet from any Property Boundary.

For purposes of this subsection, generators, transformers, fuel systems, cooling equipment, switchgear, UPS systems, and similar mechanical or electrical equipment located within, attached to, screened by, enclosed by, or serving a principal data center building shall be considered part of the principal building and shall not be subject to a separate setback requirement. The presence of such equipment within or adjacent to a principal data center building shall not increase the setback otherwise applicable to the principal building.

(D) Parking: minimum twenty-five (25) feet.

(4) **Height.** The maximum building height: sixty (60) feet. A variance is granted to the thirty-five (35) feet height limit; however, a variance will be required on any height over thirty-five (35) feet. Mechanical equipment screening may extend to twelve (12) feet above the roof deck if fully screened and FAA requirements are satisfied.

(4) **Height.**

(A) Principal data center buildings, including data halls, office areas, and associated occupied structures, shall not exceed seventy-two (72) feet in height, measured from finished grade to the highest point of the roof surface.

(B) Rooftop mechanical equipment, cooling equipment, generators, electrical equipment, mechanical penthouses, screening walls, and other appurtenances customarily associated with a data center facility may extend above the maximum building height, provided such equipment is screened from public view to the greatest extent practicable. The maximum height of any such screened rooftop equipment or screening structure shall not exceed eighty-five (85) feet above finished grade.

(C) FAA regulations and notice requirements shall apply where applicable.

units) shall be screened from public rights-of-way and adjacent residential uses using a combination of walls, fencing, berms, and landscaping designed year-round.

(3) **Fencing.** A high-security, durable fence shall be required around the Project Site. Barbed/razor wire is prohibited.

(c) Noise Study, Standards, and Measurement

(1) **Pre-construction Noise Study.** The applicant shall submit a pre-construction noise study prepared by an acoustical engineer establishing baseline ambient noise and vibration levels and shall include different times of day. The noise study shall include a narrative describing anticipated operational impacts to sound levels and it shall include an octave band analysis. The noise study shall account for any proposed electrical substations, on-site power generation facilities, and other data center accessory uses that may generate noise.

(2) **Construction Noise Standards.** During the construction phase, all contractors will perform all work on the Development Area in a manner that minimizes noise impacts on adjacent properties, occupants, and the surrounding area, consistent with prudent industry practice, applicable law, the approved construction management plan.

(3) **Post-construction Noise Study.** The applicant shall submit a noise study

(4) **Measurement.** Sound shall be measured at the nearest residence or Noise-Sensitive Receptor, unless otherwise required as a condition of approval. Butler County may also require measurements at the Property Boundary where warranted by site conditions.

Certificate of Occupancy.

(4) **Measurement.** Sound shall be measured at the Property Boundary and at any

nearby Noise-Sensitive Receptor ~~if required by the CUP or Zoning Administrator.~~
The studies shall use full spectrum modeling to address low-frequency noise.

(7) Maximum permitted sound level.

(A) Operational sound levels measured at the nearest residence or Noise-Sensitive Receptor shall not exceed:

(i) 55 db(A) and 65 db(C) from 7:00 p.m. to 7:00 a.m. (nighttime).; and

(ii) 60 db(A) and 70 db(C) from 7:00 a.m. to 7:00 p.m. (daytime).

(B) Where baseline ambient noise measured for the pre-construction noise study exceeds the maximum sound levels above, sound levels at the nearest residence or Noise-Sensitive Receptor shall not exceed the baseline ambient noise level for the applicable db(A) and db(C) measurements.

operational changes) and re-test within sixty (60) days.

(7) Maximum permitted sSound level.

(A) Operational sound levels at the Project Boundary shall not exceed ~~60~~55 dB(A) and ~~65~~60 dB(C) from 7:00 p.m. to 7:00 a.m. (nighttime), nor shall they exceed ~~65~~60 dB(A) and ~~70~~65 dB(C) from 7:00 a.m. to 7:00 p.m. (daytime).

(B) Where baseline ambient noise measured for the pre-construction noise study exceeds that of the maximum sound level above, sound levels at the ~~Property~~Project Boundary shall not exceed the baseline ambient noise level (for dB(A) and dB(C)).

(d) Vibration Study, Standards, and Measurement

- (1) The data center shall not produce earth vibrations or concussions exceeding the standards set forth in the table below. Vibration shall be expressed as displacement in inches and shall be measured with a standard three component measuring system which is a device for recording the intensity of any vibration in three mutually perpendicular directions.

<u>Frequency of Ground Motion in Cycles per Second</u>	<u>Maximum Amplitude of Ground Motion in Inches, no more than</u>
Up to 10	0.0305
20	0.0153
30	0.0102
40	0.0076
50	0.0061
60	0.0051

- (2) ~~The Zoning Administrator may require a~~ vibration study and mitigation shall be required where ~~Noise-S~~sensitive ~~Receptors~~uses are nearby.

(e) Lighting and Dark-Sky

- (1) **Shielding and Direction.** Exterior lighting shall be fully shielded and directed downward to minimize glare and spillover.
- (2) **Property Boundary Spillover.** Light levels at the Property Boundary shall not exceed 0.1 foot-candle (*FC*) (excluding public rights-of-way) unless otherwise approved due to security needs with additional mitigation.
- (3) **Controls.** Lighting shall use timers, motion sensors, dimming, or other controls to reduce lighting when not needed.
- (4) **Prohibited Lighting.** Searchlights, laser lights, and other skyward-directed lighting are prohibited except for temporary emergency response.
- (f) Backup Power Generators and Testing**
- (1) **Permitting and Compliance.** Generators shall comply with applicable federal and state emissions and permitting requirements, including KDHE and EPA standards, and shall be installed and maintained per manufacturer specifications.
- (2) **Testing Hours.**
- (A) Routine generator testing is limited to eight (8) hours per generator per month.
- (B) Testing shall occur only between 9:00 a.m. through 3:00 p.m., Monday through Friday, excluding federal holidays, unless the Board approves alternative hours due to operational necessity and demonstrated minimal impacts.
- (3) **Load Bank Testing.** Load bank testing shall use permanent or temporary mitigations to meet noise limits and shall be scheduled and noticed to the Zoning Administrator at least thirty (30) days in advance when expected to exceed two (2) continuous hours.
- (4) **Outage Operations.** Operation during utility outage or emergency is allowed at any time, but the owner or operator shall:
- (A) Notify the Zoning Administrator upon extended operation exceeding eight (8) hours, if feasible; and
- (B) document run time and cause for Butler County review upon request.
- (g) Air Emissions; Dust Control**
- (1) Construction dust shall be controlled using best management practices, including watering, stabilized entrances, and covering loads.
- (2) Operational emissions sources (*i.e.*, generators, thermal systems) shall comply with applicable air permits. The owner or operator shall provide copies of final permits or permit determinations to the Zoning Administrator upon issuance.

(2) The County Engineer may require corrective action under this subsection only upon a determination, supported by real, direct, and substantial evidence, including field measurements, engineering analysis, operational data, or other objective technical information, demonstrating that the data center is causing a material adverse thermal impact beyond that approved as part of the CUP.

Upon such determination, the owner or operator shall, within a reasonable time specified by the County Engineer, implement mitigation measures reasonably necessary to address the demonstrated impact.

nature or magnitude of thermal impacts.

(2) If the Zoning Administrator determines that the data center is causing or is likely to cause adverse thermal impacts, the owner or operator must, within the time specified by the Zoning Administrator, implement additional mitigation measures, modify operations, repair or replace equipment, or take any other action reasonably necessary to achieve compliance.

(i) Fuel Storage and Handling

(1) **Secondary Containment.** All aboveground fuel storage tanks shall have secondary containment sized to at least one hundred ten percent (110%) of the largest tank plus freeboard for storm events, unless a more stringent standard applies.

(2) **Setbacks.** Fuel tanks shall meet required setbacks and shall not be located in floodways. In floodplains, fuel tanks shall be anchored and flood-protected consistent with applicable regulations.

(3) **Spill Prevention.** A spill prevention and response plan shall be maintained on-site and coordinated with local responders. Spill kits shall be available at fueling and storage areas.

(j) Hazardous Materials; Batteries; Fire Safety

(1) Hazardous materials shall be stored and handled in compliance with applicable laws and fire codes.

(2) Battery energy storage systems (“BESS”) or UPS battery rooms shall meet applicable codes and standards (including separation, ventilation, detection, and suppression requirements).

(3) The owner or operator shall maintain an up-to-date hazardous materials inventory and provide it to the fire authority having jurisdiction upon request, consistent with applicable disclosure laws.

(k) Water Use; Wastewater

(1) **Feasibility Study.** A water use feasibility study shall be submitted with an application to determine if treatment, supply, or reuse is technically achievable, environmentally sound, and economically justified before significant investment. The study shall evaluate water demand, identify potential solutions, and analyzes risks, sustainability, and legal compliance to ensure the Project viability. ~~The~~

~~minimum information required by the study will be provided as part of the application.~~

(2) **Water Use Reporting.** The CUP may impose maximum water use limits or reporting obligations based on local supply capacity.

(3) **Private Groundwater and Surface Watercourses.** No principal use, including irrigation, on a data center site shall use private groundwater wells or direct withdrawals from surface watercourses.

(4) **Closed-loop Water Circulation System.** Data centers should be designed to include a closed-loop water circulation system to cool data center processing equipment. An applicant may propose an alternative cooling system that can be demonstrated to use less water and energy than closed-loop systems to the satisfaction of the Butler County engineer.

(5) **Public System.** If the proposed source is from a public system, the applicant shall submit certified documentation that the public authority has the capacity to supply the water needed.

(6) **Non~~potable~~public Water Sources.** If the data center will utilize ~~nonpublic~~ nonpotable water sources, the applicant shall provide a water feasibility study, prepared by a qualified professional. The purpose of the water feasibility study is to determine if an adequate supply of water is present to support the proposed data center's water use and to evaluate the potential adverse effects on the quantity and quality of existing wells or nearby surface waters.

(7) **On-site Wastewater.** If on-site wastewater is proposed, the applicant shall demonstrate feasibility and obtain all approvals from KDHE.

(l) Stormwater Management; Erosion and Sediment Control

(1) The Project shall be designed to prevent adverse off-site flooding and erosion, maintain or improve water quality, and comply with KDHE stormwater requirements.

(2) Stormwater facilities shall be maintained in perpetuity by the owner or a legally established entity. Maintenance responsibilities shall be documented by:

(A) Recorded maintenance agreement and access easements; and

(B) an operations and maintenance plan.

(m) Tree Preservation; Buffering; Landscaping

(1) Existing healthy trees, except cedar and callery pear trees, and vegetation shall be preserved to the maximum extent practicable, particularly along property boundaries and waterways.

- (2) Buffers shall be installed along Property Boundaries adjacent to residential zoning or existing residences with a minimum buffer width of twenty-five (25) feet unless the Board approves an alternative design providing equal or better mitigation.
- (3) Dead or dying plant materials shall be replaced within sixty (60) days of the next planting season.
- (n) Access; Emergency Vehicle Requirements; Parking and Loading**
- (1) **Access.** The site shall provide all-weather access designed to accommodate construction traffic and emergency vehicles.
- (2) **Turning Radii and Fire Lanes.** Internal roads and fire lanes shall meet the turning templates and width requirements of the fire authority having jurisdiction.
- (3) **Gates.** Any gates across fire apparatus access roads shall provide emergency access (*e.g.*, Knox key switch, opticom, or other approved method).
- (4) **Parking/Loading.** Provide parking and loading adequate to support employees, visitors, and deliveries without spillover onto public roads. Minimums may be established in the CUP based on operational characteristics.
- (o) Signage**
- (1) Signage shall comply with Butler County Zoning Regulations, Article 25 - Sign Regulations.
- (2) Sign allowance is based upon property zoning classification.
- (3) Signs which are located upon or over public right-of-way, including streets, alleys, and parkways are prohibited (Article 25-308). Additional approvals are needed from KDOT on property located along state-governed highways.
- (p) Utilities; Easements; Substations**
- (1) Utility corridors and easements shall be shown on plans and recorded as necessary.
- (2) Substations and major electrical equipment yards shall be screened and designed to minimize noise and visual impacts consistent with this Section.
- (3) The CUP may require off-site utility upgrades or cost participation where legally permissible and where needed due to the Project's demand, subject to separate utility agreements.
- (q) FAA/Aviation and Communications Interference**
- (1) The owner shall comply with FAA notice and determination requirements for structures and cranes, where applicable.

- (2) The Project shall be designed to avoid harmful interference with public safety communications and aviation operations, and shall implement mitigation if interference occurs.

(r) Environmental and Cultural Resources ~~(When Applicable)~~

- (1) If permits or site conditions require review of wetlands, threatened or endangered species, or cultural resources, the applicant shall obtain required clearances and implement mitigation.

- (2) Discovery of potential archaeological or human remains during construction shall trigger work stoppage in the affected area and notification to appropriate authorities as required by law.

11. Financial For phased developments, financial assurance may be provided on a phase-by-phase basis and shall be based upon the decommissioning cost of the improvements authorized for construction under the applicable phase.

(a) Requirement

- (1) Prior to issuance of building permits for the first building or phase (or other milestone established in the CUP), the owner shall provide financial assurance guaranteeing performance of decommissioning and site restoration. ↓

- (2) Financial assurance shall be in a form acceptable to the Board, such as:

- (A) Irrevocable letter of credit from a financial institution acceptable to Butler County;
- (B) performance bond;
- (C) cash escrow; or
- (D) other equivalent security approved by the Board.

(b) Amount

- (1) The amount for the financial assurance shall be based on the decommissioning cost estimate, as determined by an independent third-party consultant selected in the sole discretion of Butler County, Kansas, acting through the Board, included in the approved Decommissioning and Site Restoration Plan, plus a contingency of fifteen percent (15%).

- (2) Butler County will require periodic updates every three (3) to five (5) years and after each phase is completed to reflect inflation, changes in scope, or regulatory requirements which may increase the amount of financial assurance required.

(c) Release and Use

- (1) Financial assurance shall remain in effect until Butler County issues written confirmation that decommissioning and restoration have been satisfactorily completed.

- (2) If the owner fails to timely decommission and restore the site after a triggering event, Butler County may draw upon the financial assurance after providing notice and an opportunity to cure pursuant to Section 15 (Revocation and Enforcement), and may enter the property as permitted by law to complete the work.

(d) Triggering Events

Decommissioning obligations are triggered upon a finding by the Board of any of the following (unless extended by the Board for good cause):

- (1) Cessation of primary Data Center operations for a continuous period of twelve (12) months;
- (2) abandonment of the site;
- (3) revocation of the CUP with an order to cease operations; or
- (4) voluntary permanent shutdown by the owner or operator.

twenty four (24)

(e) Liability on Termination, Expiration, or Abandonment

In the event of termination of a CUP for any reason, the conditional use holder:

- (1) Shall remain liable to Butler County for any expense incurred by Butler County that is above and beyond what is covered by the bond, escrow account, or insurance policy;
- (2) for any unspent funds, the expenditure or use of the funds in a manner or for a purpose not authorized by this Regulation or any subsequent agreement, or damages as a result of any breach of these regulations or the CUP by the conditional use holder; and
- (3) Butler County shall have the right, at any time prior or subsequent to any remedies, including seeking injunctive or other equitable relief, to enforce the provisions of these regulation or recover funds, which are unspent, expended or used in an unauthorized manner, or for an unauthorized purpose, or damages sustained by the Butler County as a result of any breach of this Regulation by the conditional use holder.

12. Operational Reporting; Inspections

(a) Annual Compliance Report

The owner or operator shall submit an annual report by December 31st of each year to the Zoning Administrator, who shall submit to the Board, by December 31 of each year, including:

- (1) Generator testing hours (aggregate and per unit, if requested);

(2) any violations of air permits, spill events, or reportable incidents and corrective actions in addition to timely notification at the time of the violation, event, incident or action;

(3) material changes to site infrastructure (e.g., generators, cooling plant, tanks, substations) in addition to timely notification of the material change;

(4) water use summary (annual total and peak month);

(5) confirmation of stormwater facility inspection and maintenance pursuant to the operations and maintenance plan; and

(6) updated emergency contact information.

(b) Inspection Authority

as applicable by local, state, and federal law.

(1) Butler County ~~may~~shall conduct reasonable inspections to verify compliance of the CUP, upon reasonable notice, during normal business hours, or at other times as necessary to address credible complaints or emergencies, consistent with constitutional and statutory requirements; and

(2) the owner or operator shall cooperate with inspections and provide access to non-sensitive areas necessary for compliance verification. Sensitive security areas may be subject to escorted access and reasonable security protocols.

(c) Complaint Response

Butler County may require targeted noise testing, lighting verification, or other compliance evaluation upon receipt of documented complaints, and ~~may~~will require corrective actions if noncompliance is confirmed.

bona fide

13. Modification, Expansion, and Transfer

(1) Modifications to site layout, building locations, internal circulation, utility infrastructure, drainage facilities, landscaping, screening, and other site improvements that do not increase the approved Development Area or otherwise constitute a Material Modification.

impacts or change the approved conditions, including:

(1) Minor site layout adjustments within approved disturbance limits; and

(2) landscaping substitutions of equal or better screening value.

Administrative approvals shall be in writing and maintained in the CUP file.

(b) Board Approval Required (Amendment)

A CUP amendment with a Planning Commission hearing and Board approval is required for any material modification, including:

(b) Board Approval Required (Amendment). A CUP amendment with Planning Commission review and Board approval shall be required only when a proposed modification:

- (1) increases the approved Development Area;
- (2) increases the maximum building height;
- (3) expands the approved Project Site;
- (4) adds a principal use not previously approved under the CUP

(1) A CUP runs with the land unless otherwise stated in the CUP.

(2) The sale, conveyance, assignment, lease, transfer of ownership, transfer of operational control, merger, reorganization, financing transaction, or other transfer of any interest in the Project Site or Data Center Project shall not require approval by the Board and shall not affect the validity of the CUP.

(3) All successors, assigns, owners, operators, tenants, and occupants of the Project Site shall be subject to and bound by the terms conditions, and requirements of the CUP.

(4) A transfer of ownership or operational control shall not constitute a Modification or Material Modification of the CUP.

(6) any change that, in the Zoning Administrator's judgment, creates new or increased off-site impacts (e.g., noise, traffic, stormwater, lighting, hazards).

(c) Transfer

(1) A CUP runs with the land unless otherwise specified.

(2) The CUP shall not be transferred without the express written approval of the Board, such approval shall not be unreasonably withheld. Applicant shall advise the Board and the Director of Planning and Development, in writing, of the requested transfer. Proposed transferees shall be required to meet the same requirements and performance standards as the original applicant and provide the surety bond/escrow account requirements to insure the Project is decommissioned and reclaimed to comply with CUP specifications at the end of the Projects useful lifespan or in case of abandonment. A transfer fee ~~of \$500 per project~~ as adopted by the Board shall be paid to Butler County prior to the consideration of the proposed transfer.

(3) If approved, the transferee shall assume all CUP obligations and conditions. The Board may require updated contact information and proof of continued financial assurance.

(1) A Data Center CUP shall remain valid for sixty (60) months following the date of approval.

(2) Submission of an application for a Site Development Permit, including grading, drainage, stormwater, utility, roadway, or other civil site construction improvements, shall constitute commencement of the Project and shall preserve the validity of the CUP.

(3) Upon commencement, the CUP and all development rights authorized thereunder shall best and remain valid in perpetuity unless abandoned or revoked pursuant to Section 15.

(4) No separate building permit issuance shall be required to maintain the validity of the CUP.

(b) Commencement and Phasing

(1) The CUP shall expire if necessary building permits have not been issued within twelve (12) months of approval, unless extended by the Board for good cause.

(2) Phased development is allowed if the application includes a phasing plan. The Board may require periodic progress reporting.

(c) Renewal (If Imposed)

If the Board imposes a fixed term, the CUP may be renewed upon application filed at least sixty (60) days prior to expiration, with a showing of continued compliance and any updated plans, studies, or technical reports reasonably required.

15. Suspension; Revocation; Enforcement; Penalties

(a) Suspension and Revocation

(1) In addition to other remedies provided by this Regulation, any CUP for the operation of the above-referenced uses may be suspended or revoked at any time by the Planning Commission if upon finding that:

- (A) The applicant or owner made a material misrepresentation or false statement of fact in the application;
- (B) the CUP was obtained through material misrepresentation;
- (C) the applicant, owner, or operator materially violated CUP conditions or this

(a) Suspension and Revocation

(1) In addition to other remedies provided by this Regulation, a CUP may be suspended or revoked by the Board only upon a finding supported by substantial competent evidence in the record that:

(A) the applicant knowingly made a material false statement of fact or knowingly omitted material information in the CUP application, and such misrepresentation or omission substantially affected the approval of the CUP;

(B) the CUP was obtained through a material misrepresentation demonstrated by substantial competent evidence;

(C) the owner or operator has materially violated a condition of the CUP or this Regulation and has failed to cure such violation within the applicable cure period;

(D) the use is causing an imminent threat to public health or safety that cannot reasonably be addressed through lesser enforcement measures; or

(E) the owner or operator has materially failed to comply with the standards, performance requirements, or conditions of the CUP and has failed to cure such noncompliance within the applicable cure period.

(2) Prior to suspension or revocation, Butler County shall provide:

(A) written notice specifying the alleged violation in reasonable detail;

(B) a cure period of not less than one hundred eighty (180) days, unless a different cure period is mutually agreed upon by the County and the owner or operator;

(C) an opportunity for a hearing before the Board consistent with applicable law and due process requirements; and

(D) a written determination identifying the factual basis and evidence supporting suspension or revocation.

(3) The cure period may be shortened or eliminated only where the Board determines, based upon substantial competent evidence, that an imminent threat to public health or safety exists and that immediate action is necessary to prevent injury to persons, property, or the environment.

(4) Suspension or revocation shall be a remedy of last resort and shall not be imposed where the violation can be reasonably corrected through mitigation, permit modification, administrative enforcement, or other lesser remedy.

- 1005 **(c) Penalties**
- 1006 Violations shall be subject to penalties as provided in the Butler County zoning enforcement
1007 provisions, Article 28, Section 28-4, and applicable Kansas law, including daily offenses where
1008 permitted.
- 1009 **16. Appeals**
- 1010 (a) Administrative decisions by the Butler County Zoning Administrator under this section
1011 may be appealed as provided in Butler County’s zoning appeals procedures and applicable
1012 Kansas law, Article 27 of the Zoning Regulations of Butler County, Kansas.
- 1013 (b) Appeals of Board CUP decisions shall be as provided by applicable Kansas law and Butler
1014 County procedures, Article 27 of the Zoning Regulations of Butler County, Kansas.
- 1015 **17. Severability**
- 1016 If any provision of this Regulation is determined to be invalid or unenforceable by a court of
1017 competent jurisdiction, the remaining provisions shall remain in full force and effect, and shall be
1018 construed to best effectuate the intent of the Board.
- 1019 **18. Effective Date**
- 1020 This Regulation shall take effect and be in force from and after its adoption and publication
1021 and recording as required by Kansas law and Butler County procedure, and shall apply to all
1022 applications for a data center CUP filed on or after _____, 20 __, unless otherwise
1023 stated.
- 1024 **19. Administrative Forms; Fee Schedule; Deadlines (Incorporation by Reference)**
- 1025 (a) The Zoning Administrator is authorized to develop and update administrative forms,
1026 checklists, and guidance consistent with this section.
- 1027 (b) Fees for CUP applications, re-inspections, and amendments shall be as set forth in Butler
1028 County Community Development Office – Planning and Zoning Fee Schedule.
- 1029 (c) Deadlines for completeness review, staff reports, and hearing scheduling shall be as set
1030 forth in Article 22 of the Zoning Regulations, provided that statutory minimum notice and
1031 hearing requirements are met.
- 1032 **20. General Provisions**
- 1033 (a) **Headings.** The headings herein are included for convenience only and shall neither affect
1034 the construction or interpretation of any provision.
1035
- 1036 (b) **References.** The applicant shall provide details of authorities cited or consulted, references
1037 and pertinent documents required herein.

(c) **Appendices.** All detailed technical information that supports the Plan shall be included as appendices. The primary features of the appendices shall be included in the main body of the Plan.

(d) **Modification of Requirements and Performance Standards.** The requirements and performance standard specify that maps, informational surveys, and studies must be submitted as part of the application. Butler County may modify the requirement or performance standards for future projects based on the changing data center technology.

"Buffer" means an area of land located within the Project Site that is intended to provide visual separation, noise attenuation, lighting mitigation, screening, landscaping, open space, or other protection for adjacent properties and uses. A Buffer may consist of distance separation, landscaping, berms, fencing, walls, natural vegetation, open space, agricultural land, environmental preservation areas, or a combination thereof.

A Buffer shall not be considered part of the Development Area unless occupied by a principal or accessory operational improvement associated with the Data Center Project.

<u>Term</u>	<u>Definition</u>
1. Backup Power	On-site equipment and systems designed to provide electrical power during utility interruptions or for testing and maintenance, including generators, transfer switches, UPS (uninterruptible power supply), batteries, flywheels, and associated fuel storage and handling systems.
2. Buffer	"Buffer" means an area of land, landscaping, berming, fencing, wall, open space, distance separation, or combination thereof, located within the Project Site and designed to mitigate visual, noise, lighting, stormwater, compatibility, or other off-site impacts of the Data Center Project.
3. Colocation Data Center	A colocation data center is less than 100,000 square feet and between 5-50 MW. Typically, a third-party facility where businesses rent space to house their own servers, storage, and networking hardware, rather than hosting them on-premise. The provider supplies the building, power, cooling, security, and bandwidth or a facility privately owned and managed by a single organization for its own IT needs.

<u>Term</u>	<u>Definition</u>
4. Data Center	A facility, campus, or group of buildings and associated infrastructure used primarily for housing computer systems, servers, network equipment, data storage, and related digital processing or transmission equipment. A data center includes associated mechanical, electrical, and plumbing systems; cooling systems; backup power systems (generators and fuel storage); energy storage systems; substations; switchgear; transformers; security features; and accessory administrative space. “Data Center” includes colocation, enterprise, cloud, hyperscale, and micro/edge data centers.
5. Decommissioning	The permanent shutdown of a data center facility and the removal, recycling, or disposal of its equipment and infrastructure, including information technology hardware, accessory uses, power systems, and associated materials, with restoration of the site in compliance with applicable environmental regulations, land use regulations, and the approved decommissioning plan.
6. Edge/Micro Data Center	An Edge/Micro data center is less than 10 <u>20</u> ,000 square feet and less than 1 MW. Typically serves a single business or campus and has standard commercial power with limited generators and equipment is enclosed.
7. Expansion	“Expansion” means any increase beyond what was approved in the CUP or approved site plan, including any increase in Project Site acreage, Development Area, building square footage, IT load, total electrical demand, generator count or capacity, fuel storage volume, cooling capacity, water demand, wastewater discharge, number of data center buildings, or off-site infrastructure.

	<u>Term</u>	<u>Definition</u>
8.	Hazardous Materials	Any material defined as hazardous or regulated under applicable federal or state law, including but not limited to the Kansas Department of Health and Environment (KDHE) regulations, the federal Clean Air Act, Clean Water Act, and applicable fire codes.
9.	Enterprise Data Center	An enterprise data center is less than 20,000 square feet and less than 10 MW with a dedicated physical facility owned and operated by a single organization to house, store, and process its critical IT infrastructure. It provides the centralized computing power, storage, and networking required to run everyday business applications and securely manage company data.
10.	Hyperscale Data Center	A facility with one hundred thousand square feet or greater than 200 megawatts annually with some near 1GW. Typically considered a regional or cloud-scale with substation construction; large generator banks; high power demand; and an extensive security perimeter.
11.	Kansas Intelligence Fusion Center (“KIFC”)	A collaboration among federal, state, local and tribal agencies, as well as private sector entities, including, but not limited to, those with the primary purposes of homeland security, counter-terrorism, public safety, public protection and critical infrastructure. The KIFC is designed to create a "unified front" against security threats by facilitating communication between different agencies and private sector entities.
12.	Knox key switch	A secure, high-security lockbox and override switch designed for fire departments and emergency personnel to quickly access gated communities, private homes, and commercial properties without forcing entry. It allows firefighters to open automated gates using a specialized Knox Master Key, preventing emergency delays.

<u>Term</u>	<u>Definition</u>
13. Material Modification	“Material Modification” means any change to an approved Data Center Project that may increase off-site impacts, increase infrastructure demand, alter approved conditions, alter approved mitigation, or exceed the thresholds for administrative modification established in this Section. Material Modifications require approval as provided in Section 20 ¶ 13.
14. Modular/Container	A modular or containerized data center is a portable, self-contained system that packs all essential IT infrastructure—servers, storage, networking, power distribution, and cooling—into a standardized steel enclosure or prefabricated building module. Modular data centers are engineered off-site, allowing for rapid "plug-and-play" deployment. They offer a highly scalable and flexible alternative to traditional construction
15. Noise-Sensitive Receptor	A residence, school, pre-schools, daycare centers, hospital, nursing facility, place of worship, community centers, or other similar institutional uses where quiet enjoyment is expected, as determined by the Butler County Zoning Administrator.
16. Phase	“Phase” means a discrete portion of a Data Center Project authorized for sequential construction, occupancy, operation, or expansion under an approved phasing plan, including the buildings, accessory facilities, infrastructure, utility demand, water demand, traffic generation, and operational impacts associated with that portion of the project.
17. PUE (Power Usage Effectiveness)	A metric of energy efficiency defined as total facility energy divided by IT equipment energy, reported as a ratio.
18. Qualified Acoustical Professional	An individual or firm with demonstrated experience in environmental acoustics and noise measurement, with credentials acceptable to Butler County.
19. Qualified Professional Engineer	A professional engineer licensed in Kansas.

<u>Term</u>	<u>Definition</u>
20. Setback	“Setback” means the minimum required horizontal distance between a specified project component and a Project Boundary, right-of-way, residence, Noise-Sensitive Receptor, zoning district, or other reference point identified in this Section or imposed as a condition of CUP approval.

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1052

Recommended definition additions:

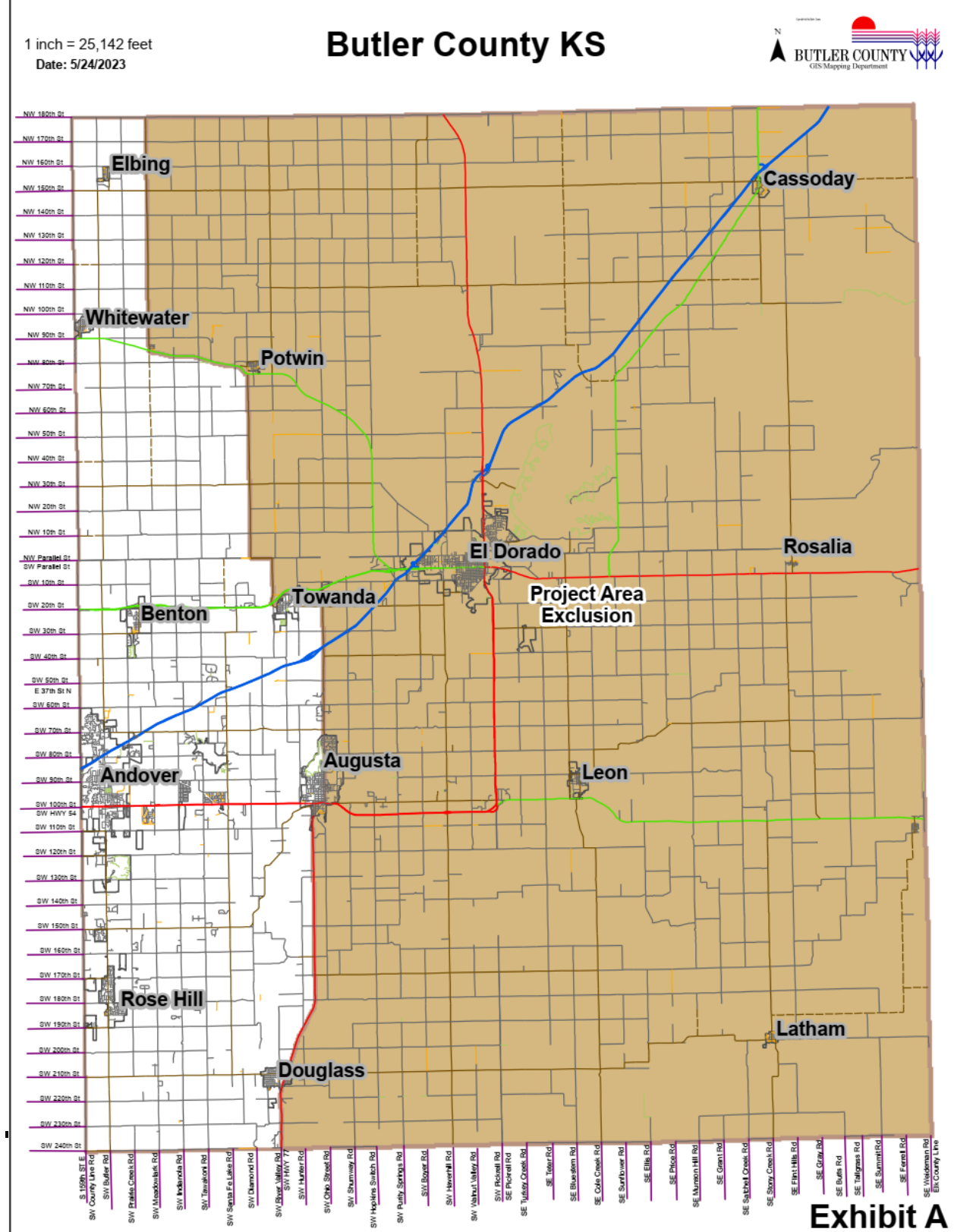
Utility Infrastructure: Utility Infrastructure means substations, switchyards, transmission facilities, distribution facilities, utility corridors, metering equipment, and related improvements used for the transmission or distribution of utility services to or from the Project Site.

Building Height: Building Height means the vertical distance measured from finished grade at the base of the structure to the highest point of the building roof. Screened rooftop mechanical equipment shall not be included in the measurement of building height unless expressly stated otherwise.

“Exhibit A”

Project Area Exclusion**Project Exclusion Area**

The **Project Area Exclusion****Project Exclusion Area** is only applicable to the unincorporated areas of Butler County, Kansas and does not apply to the jurisdiction of any city within the county, except for Edge/Micro and Modular/Container Data Centers which are not excluded from development in the **Project Area Exclusion****Project Exclusion Area** subject to the provisions in



PEC Markup Summary

Callout (4)

172. Subsequent to the review of the site plan, the applicant shall obtain required clearances and implement mitigation.

(2) Discovery of potential archaeological or human remains during construction shall trigger work stoppage in the affected area and notification to appropriate authorities as required by law.

2. Financial Assurance

(a) Request

For phased developments, financial assurance may be provided in a form by phase basis and shall be based upon the decommissioning plan of the improvements authorized for construction under the applicable phase.

(1) Prior to issuance of building permits for the first building or phase (or other increments established in the CUP), the owner shall provide financial assurance guaranteeing performance of decommissioning and site restoration.

(2) Financial assurance shall be in a form acceptable to the Board, such as:

(A) irrevocable letter of credit from a financial institution acceptable to Butler County;

(B) performance bond;

(C) cash escrow; or

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For phased developments, financial assurance may be provided on a phase-by-phase basis and shall be based upon the decommissioning cost of the improvements authorized for construction under the applicable phase.

street
(g) point
(h) local
water
elect
(i) drain
(j) local
(k) light
(l) property

Concept

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Author: Lance.Onstott
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Concept

as applicable by local, state, and federal law.

inspections to verify compliance of normal business hours, or at other times or emergencies, consistent with

inspections and provide access to non-secure areas. Sensitive security areas may require protocols.

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as applicable by local, state, and federal law.

and access and reasonable security protocols.

targeted noise testing, lighting verification, or targeted complaints, and may will require

and Transfer

tions

v approve minor modifications that do not

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bona fide

Cloud+ (27)

171. Cloud+ Zoning Application: The applicant shall submit a site plan, site plan, and other information required by law.

(1) The application is intended to operate in coordination with the Butler County:

(i) Comprehensive Plan;

(ii) Zoning Ordinance;

(iii) Subdivision Regulations (if applicable);

(iv) Engineering and Surveying Regulations (if applicable);

(v) Building Code (if applicable);

(vi) Fire Department (if applicable);

(vii) Health Department (if applicable);

(viii) Other applicable laws and regulations.

2. Applicability

(a) Application and Review Process: An applicant may apply for a Cloud+ Zoning Application in the following manner:

(i) Any person or entity owning, leasing, or otherwise controlling a property in the Cloud+ Zoning District may apply for a Cloud+ Zoning Application.

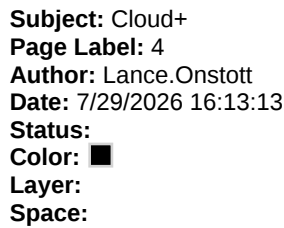
(ii) Any person or entity owning, leasing, or otherwise controlling a property in the Cloud+ Zoning District may apply for a Cloud+ Zoning Application.

(iii) Any person or entity owning, leasing, or otherwise controlling a property in the Cloud+ Zoning District may apply for a Cloud+ Zoning Application.

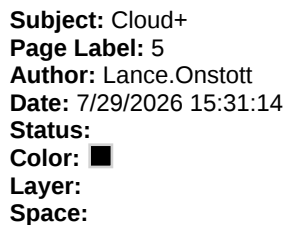
Subject: Cloud+
Page Label: 3
Author: Lance.Onstott
Date: 7/31/2026 11:18:41
Status:
Color: ☒
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A CUP is required to construct, expand, or operate a data center in the AG-40, AG-80, and Industrial (I) zoning districts.

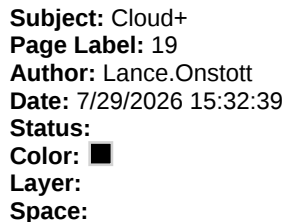
**Maybe there is a reason you guys have intentionally excluded the I District. Generally, I think it appropriate for data centers to be permitted by right in most industrial districts as long as they must follow similar prescriptive requirements.



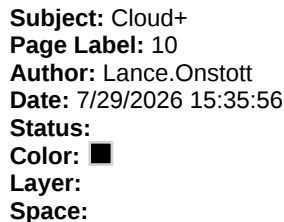
Development Area. "Development" Area means the portion of the Project Site occupied by principal and accessory improvements associated with the operation of the Data Center Project, including data center buildings, administration buildings, parking areas, loading areas, internal circulation roads, generator yards, cooling equipment areas, private water and wastewater facilities, and similar operational improvements. "Development Area" shall not include land devoted to required setbacks, buffering, landscaping, screening, open space, agricultural uses, environmental preservation or conservation areas, stormwater management facilities, utility easements or corridors, electrical transmission facilities, substations, switchyards, or other utility infrastructure, whether owned by the applicant, an affiliate, or a utility provider, nor any other areas not occupied by operational data center improvements.



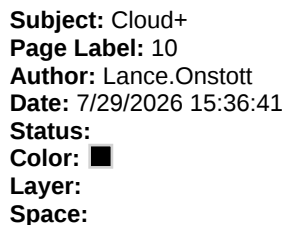
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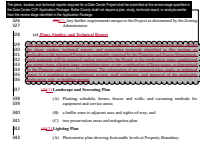
Maximum Development Area. The cumulative Development Area for all phases of a Data Center Project shall not exceed six hundred and forty (640) acres. For purposes of this calculation, areas excluded from the definition of Development Area shall not count toward the maximum acreage limitation.



Information won't be available at this stage.

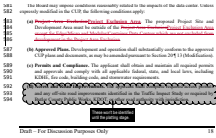


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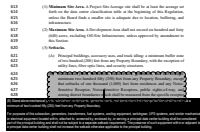
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The plans, studies, and technical reports required for a Data Center Project shall be submitted at the review stage specified in the Data Center CUP Application Package. Butler County shall not require a plan, study, technical report, or analysis earlier than the review stage identified in the Application Package.



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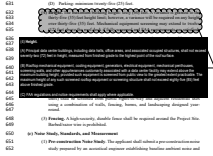
These won't be identified until the platting stage.



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(B) Stand-alone mechanical yards, substations, switchyards, generator yards, and stand-alone fuel storage facilities shall be set back a minimum of two hundred fifty (250) feet from any Property Boundary.

For purposes of this subsection, generators, transformers, fuel systems, cooling equipment, switchgear, UPS systems, and similar mechanical or electrical equipment located within, attached to, screened by, enclosed by, or serving a principal data center building shall be considered part of the principal building and shall not be subject to a separate setback requirement. The presence of such equipment within or adjacent to a principal data center building shall not increase the setback otherwise applicable to the principal building.



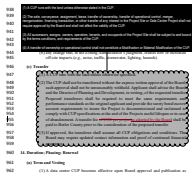
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(4) Height.

(A) Principal data center buildings, including data halls, office areas, and associated occupied structures, shall not exceed seventy-two (72) feet in height, measured from finished grade to the highest point of the roof surface.

(B) Rooftop mechanical equipment, cooling equipment, generators, electrical equipment, mechanical penthouses, screening walls, and other appurtenances customarily associated with a data center facility may extend above the maximum building height, provided such equipment is screened from public view to the greatest extent practicable. The maximum height of any such screened rooftop equipment or screening structure shall not exceed eighty-five (85) feet above finished grade.

(C) FAA regulations and notice requirements shall apply where applicable.



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(1) A CUP runs with the land unless otherwise stated in the CUP.

(2) The sale, conveyance, assignment, lease, transfer of ownership, transfer of operational control, merger, reorganization, financing transaction, or other transfer of any interest in the Project Site or Data Center Project shall not require approval by the Board and shall not affect the validity of the CUP.

(3) All successors, assigns, owners, operators, tenants, and occupants of the Project Site shall be subject to and bound by the terms conditions, and requirements of the CUP.

(4) A transfer of ownership or operational control shall not constitute a Modification or Material Modification of the CUP.

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(1) A Data Center CUP shall remain valid for sixty (60) months following the date of approval.

(2) Submission of an application for a Site Development Permit, including grading, drainage, stormwater, utility, roadway, or other civil site construction improvements, shall constitute commencement of the Project and shall preserve the validity of the CUP.

(3) Upon commencement, the CUP and all development rights authorized thereunder shall best and remain valid in perpetuity unless abandoned or revoked pursuant to Section 15.

(4) No separate building permit issuance shall be required to maintain the validity of the CUP.

(4) **Measurement.** Sound shall be measured at the nearest residence or Noise-Sensitive Receptor, unless otherwise required as a condition of approval. Butler County may also require measurements at the Property Boundary where warranted by site conditions.

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(4) Closed-loop Water Circulation System. Data centers may utilize closed-loop cooling systems or any alternative cooling technology that demonstrates equal or lower water consumption and equal or greater energy efficiency.

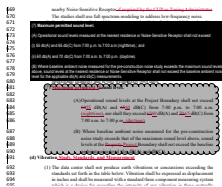
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prepared by a qualified professional. The purpose of the water feasibility study is to determine if an adequate supply of water is present to support the proposed development.

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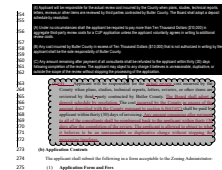
(7) Maximum permitted sound level.

(A) Operational sound levels measured at the nearest residence or Noise-Sensitive Receptor shall not exceed:

(i) 55 db(A) and 65 db(C) from 7:00 p.m. to 7:00 a.m (nighttime).; and

(ii) 60 db(A) and 70 db(C) from 7:00 a.m. to 7:00 p.m. (daytime).

(B) Where baseline ambient noise measured for the pre-construction noise study exceeds the maximum sound levels above, sound levels at the nearest residence or Noise-Sensitive Receptor shall not exceed the baseline ambient noise level for the applicable db(A) and db(C) measurements.



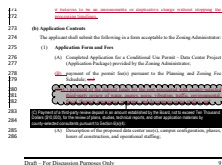
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(4) Applicant will be responsible for the actual review cost incurred by the County when plans, studies, technical reports, letters, reviews, or other items are reviewed by third parties contracted by Butler County. The Board shall adopt a deposit schedule by resolution.

(A) Under no circumstances shall the applicant be required to pay more than Ten Thousand Dollars (\$10,000) in aggregate third-party review costs for a CUP application unless the applicant voluntarily agrees in writing to additional review costs.

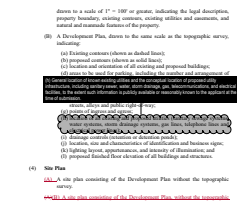
(B) Any cost incurred by Butler County in excess of Ten Thousand Dollars (\$10,000) that is not authorized in writing by the applicant shall be the sole responsibility of Butler County.

(C) Any amount remaining after payment of all consultants shall be refunded to the applicant within thirty (30) days following completion of the review. The applicant may object to any charge it believes is unreasonable, duplicative, or outside the scope of the review without stopping the processing of the application.



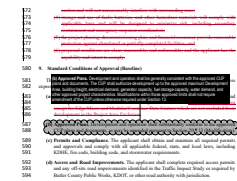
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(C) Payment of a third-party review deposit in an amount established by the Board, not to exceed Ten Thousand Dollars (\$10,000), for the review of plans, studies, technical reports, and other application materials by county-selected consultants pursuant to Section 6(a)(4).



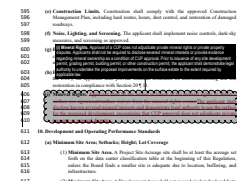
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Author: Lance.Onstott
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(h) General location of known existing utilities and the conceptual location of proposed utility infrastructure, including sanitary sewer, water, storm drainage, gas, telecommunications, and electrical facilities, to the extent such information is publicly available or reasonably known to the applicant at the time of submission.



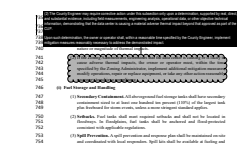
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Author: Lance.Onstott
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(b) Approved Plans. Development and operation shall be generally consistent with the approved CUP plans and documents. The CUP shall authorize development up to the approved maximum Development Area, building height, electrical demand, generator capacity, fuel storage capacity, water demand, and other approved project characteristics. Modifications within those approved limits shall not require amendment of the CUP unless otherwise required under Section 13.



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(i) Mineral Rights. Approval of a CUP does not adjudicate private mineral rights or private property disputes. Applicants shall not be required to disclose severed mineral interests or provide evidence regarding mineral ownership as a condition of CUP approval. Prior to issuance of any site development permit, grading permit, building permit, or other construction permit, the applicant shall demonstrate legal authority to undertake the proposed improvements on the surface estate to the extent required by applicable law.



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(2) The County Engineer may require corrective action under this subsection only upon a determination, supported by real, direct, and substantial evidence, including field measurements, engineering analysis, operational data, or other objective technical information, demonstrating that the data center is causing a material adverse thermal impact beyond that approved as part of the CUP.

Upon such determination, the owner or operator shall, within a reasonable time specified by the County Engineer, implement mitigation measures reasonably necessary to address the demonstrated impact.

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Author: Lance.Onstott
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(1) Modifications to site layout, building locations, internal circulation, utility infrastructure, drainage facilities, landscaping, screening, and other site improvements that do not increase the approved Development Area or otherwise constitute a Material Modification.

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(b) Board Approval Required (Amendment). A CUP amendment with Planning Commission review and Board approval shall be required only when a proposed modification:

- (1) increases the approved Development Area;
- (2) increases the maximum building height;
- (3) expands the approved Project Site;
- (4) adds a principal use not previously approved under the CUP



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(a) Suspension and Revocation

(1) In addition to other remedies provided by this Regulation, a CUP may be suspended or revoked by the Board only upon a finding supported by substantial competent evidence in the record that:

(A) the applicant knowingly made a material false statement of fact or knowingly omitted material information in the CUP application, and such misrepresentation or omission substantially affected the approval of the CUP;

(B) the CUP was obtained through a material misrepresentation demonstrated by substantial competent evidence;

(C) the owner or operator has materially violated a condition of the CUP or this Regulation and has failed to cure such violation within the applicable cure period;

(D) the use is causing an imminent threat to public health or safety that cannot reasonably be addressed through lesser enforcement measures; or

(E) the owner or operator has materially failed to comply with the standards, performance requirements, or conditions of the CUP and has failed to cure such noncompliance within the applicable cure period.

(2) Prior to suspension or revocation, Butler County shall provide:

(A) written notice specifying the alleged violation in reasonable detail;

(B) a cure period of not less than one hundred eighty (180) days, unless a different cure period is mutually agreed upon by the County and the owner or operator;

(C) an opportunity for a hearing before the Board consistent with applicable law and due process requirements; and

(D) a written determination identifying the factual basis and evidence supporting suspension or revocation.

(3) The cure period may be shortened or eliminated only where the Board determines, based upon substantial competent evidence, that an imminent threat to public health or safety exists and that immediate action is necessary to prevent injury to persons, property, or the environment.

(4) Suspension or revocation shall be a remedy of last resort and shall not be imposed where the violation can be reasonably corrected through mitigation, permit modification, administrative

[illegible]

"Buffer" means an area of land located within the Project Site that is intended to provide visual separation, noise attenuation, lighting mitigation, screening, landscaping, open space, or other protection for adjacent properties and uses. A Buffer may consist of distance separation, landscaping, berms, fencing, walls, natural vegetation, open space, agricultural land, environmental preservation areas, or a combination thereof.

Text Box (1)

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Recommended definition additions:

Utility Infrastructure: Utility Infrastructure means substations, switchyards, transmission facilities, distribution facilities, utility corridors, metering equipment, and related improvements used for the transmission or distribution of utility services to or from the Project Site.

Building Height: Building Height means the vertical distance measured from finished grade at the base of the structure to the highest point of the building roof. Screened rooftop mechanical equipment shall not be included in the measurement of building height unless expressly stated otherwise.

(7) Maximum Permitted Sound Levels.

(A) A Data Center Project shall not exceed the following operational sound levels measured at the Project Boundary:

(Nighttime) 7:00 p.m.–7:00 a.m.: 55 dB(A), 60 dB(C)

(Daytime) 7:00 a.m.–7:00 p.m.: 60 dB(A), 65 dB(C)

(B) Where baseline ambient sound levels exceed the applicable maximum permitted sound level, the Data Center Project shall not exceed the baseline ambient sound level.

(C) Compliance shall be determined based on measurements and assessments performed consistent with the acoustical standards contained herein.

(8) Acoustical Standards.

(A) A Data Center Project shall be designed, constructed, and operated consistent with nationally recognized acoustical standards, including ANSI, IEC, and ISO standards, as amended from time to time, which are incorporated herein.

(B) Evaluation by the County of targeted noise testing of sound levels and acoustical standards shall include:

- (i) dB(A);
- (ii) dB(C);
- (iii) one-third octave bands;
- (iv) tonal noise;
- (v) amplitude modulation; and
- (vi) low-frequency sound.

(C) The analysis shall assume full build-out and simultaneous operation of all significant stationary sound sources.

(D) Compliance with this section shall not relieve the Data Center Project from compliance with the maximum permitted sound levels established above.

From: Lance Onstott <Lance.Onstott@pec1.com>

Sent: Tuesday, August 4, 2026 3:12 PM

To: Will Johnson <wjohnson@bucoks.com>; Toby Stewart <tstewart@bucoks.com>

Subject: Low Frequency Noise & Setback Modifications Recommendations

CAUTION: This email came from someone outside of the organization. ***DO NOT click the links or open any attachments unless you recognize the sender and know the content is safe.***

Will and Toby — For your consideration, attached are recommendations related to the proposed low frequency noise regulations in addition to a recommended addition related to modification of setbacks upon mutual agreement.

Good luck tonight, and as always, happy to discuss in more detail if needed!

Lance Onstott, AICP, CNU-A

Practice Lead | Community Planning & Development

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800.754.2691 | C 316.253.8227

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Low Frequency Noise

While the intent of the proposed low-frequency noise standards is understandable and generally supported, several aspects of the provisions may create practical implementation and enforcement challenges for both Butler County and applicants. The standards rely on highly technical acoustical metrics, including one-third octave band analysis, infrasound measurements below 20 Hz, and interior residential linear sound level testing, all of which require specialized equipment and expertise that are not typically used in local zoning.

In addition, several provisions establish subjective compliance criteria rather than objective performance standards. Terms such as "persistent low-frequency rumble," "pressure effect likely to disturb occupants," and "perceptible" low-frequency characteristics are difficult to measure consistently and may lead to differing interpretations among consultants, staff, residents, and decision-makers. This could create uncertainty regarding what constitutes compliance even when a facility meets the County's established noise limits.

The proposed standards also require evaluation of interior sound levels within private residences, which may be difficult to administer because access to private property is outside the control of both the County and the facility operator. Similarly, the infrasound provisions establish requirements that can be challenging to measure accurately and are not commonly employed as enforceable zoning standards.

Finally, the provision allowing additional operational restrictions or attenuation measures based on complaints, notwithstanding compliance with the established noise limits, may reduce regulatory certainty. Objective and measurable standards are generally preferable because they provide clear expectations for residents, staff, and developers/operators while still ensuring that noise impacts are appropriately addressed.

For these reasons, it is recommended the regulations be simplified to focus on the underlying policy objective: preventing material low-frequency noise, tonal noise, vibration, or rumble from unreasonably affecting nearby residences and other noise-sensitive receptors, while relying on objective, understandable, and enforceable performance standards.

RECOMMENDED SUBSTITUTE REGULATIONS

(8) Low-Frequency Noise.

(A) The Noise and Vibration Study shall evaluate low-frequency sounds in accordance with the dB(C) limits defined in section 10(c)(7).

(B) Where testing demonstrates a material low-frequency noise impact as defined in section 10(c)(7), the owner or operator shall implement reasonable mitigation measures.

Setback Modification

The proposed setback modification provision below is intended to provide flexibility for property owners while maintaining the underlying purpose of the setback standards. In certain circumstances, the owner of an adjoining property may determine that the full setback requirement is unnecessary due to existing site conditions, planned land uses, private agreements, buffering, or other considerations. In those situations, the County should allow neighboring property owners to voluntarily agree to a reduced setback rather than requiring a variance or amendment to the CUP.

The proposed provision establishes a clear and durable process for accomplishing this objective. Any setback reduction would require the written consent of the affected adjoining property owner, be memorialized in a recorded instrument, and run with the land so that it remains binding on future owners, successors, and assigns. This ensures certainty for both properties and allows the data center developer to rely upon the agreed setback reduction when planning and constructing improvements.

Importantly, the proposed language also prevents the setback requirement from being reopened due to a later transfer of ownership, redevelopment, rezoning, subdivision, or change in land use on the adjoining property. Once the agreement is properly executed and recorded, it provides a permanent and predictable land-use framework for both properties unless all affected owners subsequently agree to amend or terminate the agreement. This approach respects private property rights, reduces the need for additional governmental approvals, and provides long-term certainty for both the data center owner and surrounding landowners.

10(a)(4) Setback Modification by Recorded Agreement.

- (1) Any setback required by this Regulation may be reduced with respect to a common property line through a written setback modification agreement executed by:
 - a. the Owner of the Project Site; and
 - b. the owner of the adjoining property benefiting from the setback.
- (2) The agreement shall:
 - a. identify the affected properties;
 - b. identify the applicable setback requirements
 - c. specify the approved reduced setback;
 - d. contain legal descriptions sufficient for recording; and
 - e. be recorded with the Butler County Register of Deeds.
- (3) Upon recording, the setback modification agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of all present and future owners, operators, lessees, mortgages, successors, and assigns of the affected properties.
- (4) A recorded setback modification agreement shall satisfy the setback requirements of this Regulation without further approval by the Board, Planning Commission, or Zoning Administrator.
- (5) A subsequent transfer, subdivision, rezoning, annexation, redevelopment, or change in use of the adjoining property shall not restore, increase, or otherwise alter the setback requirement once a setback modification agreement has been recorded.

- (6) A recorded setback modification agreement may be amended or terminated only by a written instrument executed by the then-current owners of all affected properties and recorded with the Butler County Register of Deeds.
- (7) The County shall not be a party to, nor responsible for enforcing, any private obligations contained within a setback modification agreement except to recognize the reduced setback established therein for the purposes of compliance with this Regulation.

DATE: 8/4/26

SIGN IN SHEET FOR PLANNING COMMISSION MEETING

Please Print **NAME** and **ADDRESS**

Toby Stewart 121 S Gordy St. El Dorado

Kathy Donovan 5452 NW 20th 67042

Susan McConeghey 21dd SW 70th El Dorado, KS.
67042

Marvin Daniels 1602 W 3rd - El Dorado, KS

Lane Volavka 628 Main St, Towanda, KS

Carrie Shearburn 324 N. Orchard El Dorado KS

Nelvis Stanna 2512 Belmont "

Renae Watson 125 N. Summit El Dorado

Amy Gardner 6622 NW Kinn Rd El Dorado KS.

Cinda Darwin 619 Post Rd. " " "

~~Raeann~~ Loumster 857 NW 90th El Dorado, KS

~~Terry~~ Loumster 857 NW 90th El Dorado

Mary O'Brien 555 N. E 60th El Dorado

Kathleen Mabey 409 NW 60th, El Dorado

Christie Bowman El Dorado

Meghan Wright rural Towanda

Rachel Harder 2757 NE Grant Rd El Dorado, KS

Donna Dean 515 W 13th Ave El Dorado, KS

Kyle Lehn 511 W Central

Vickie Fox 5750 NE 10th St El Dorado, KS

Amber Briggs 1428 Golf St Augusta, KS

Linda Johnson 501 S Heatherhill El Dorado

DATE:

8/4/26

SIGN IN SHEET FOR PLANNING COMMISSION MEETING

Please Print **NAME** and **ADDRESS**

CLINTON WINGER 10055 SW HAVERHILL RD

LaDonna Johnson 15063 SW Thistle Rd

Laura Matchette 11303 SW Santa Fe Lake Rd

Numen 2 1017 Clark K #2

Amanda Shindle 15683 NW 10th Benton

Mindy Markley 9813 SW Haverhill Rd

Kelly Christensen 13685 SW 134th St 67133

Shirley Sweeney 13511 SW 134th St Rose Hill KS 67133

DATE: Aug 4, 2026

SIGN IN SHEET FOR PLANNING COMMISSION MEETING

Please Print **NAME** and **ADDRESS**

Crystal Reed-Sallee	217 N 8th St.
Karen M. Reed	15759 N.W. 10th St.
	Benton, KS

MEMORANDUM ON COUNTY AUTHORITY

Countywide exclusion of a class of land use under Kansas law

To: Butler County Counselor / County Attorney

From: Carrie J. Shearburn, 324 N. Orchard Street, El Dorado, Kansas

Date: August 4, 2026

Re: Draft Section 20 ¶4(f), Project Exclusion Area — authority to exclude data center development from all unincorporated Butler County

Note: Submitted by a private citizen. Not a legal opinion and not offered as one. Citations are provided so they may be verified independently.

1. Controlling authority

Zimmerman v. Board of County Comm'rs of Wabaunsee County

- **Zimmerman I** — 289 Kan. 926, 218 P.3d 400 (2009), filed October 30, 2009.
- **Zimmerman II** — 293 Kan. 332, 264 P.3d 989 (2011), filed October 21, 2011.

Facts. Wabaunsee County had no regulations governing commercial wind energy conversion systems. On November 12, 2002, two weeks after learning of a proposed project, the Board adopted a moratorium on accepting conditional use permit applications; it was extended at least five times. The county adopted a revised comprehensive plan on April 26, 2004 following a countywide survey and focus groups. On June 28, 2004 it amended its zoning regulations to prohibit CWECS throughout the county, formalized in Resolution No. 04-18 on July 12, 2004. Landowners holding signed wind farm easement agreements, and intervenors holding purported severed wind estates and option agreements, sued.

Holdings.

- The countywide prohibition was lawful, reasonable, and legislative in character. Zimmerman I.
- Neither state nor federal law preempted the amendment; the Contracts Clause claim failed. Zimmerman I.
- No compensable taking occurred, because no vested property right existed. An applicant has no vested right in a conditional use permit whose issuance depends on the discretionary approval of the governing body. Zimmerman II.
- A vested right is one not dependent on any future act, contingency, or decision. Signed easements and option agreements conferred no constitutionally cognizable interest. Zimmerman II.

- No taking means no inverse condemnation and no 42 U.S.C. § 1983 takings claim. Zimmerman II.
- A moratorium on accepting or processing applications in which no vested right ever existed cannot support a takings argument. Zimmerman II.
- The prohibition was not facially discriminatory against interstate commerce; it applied regardless of where power would be sold. Zimmerman II.

2. Limits — stated for completeness

- **Record adequacy was decisive.** On October 12, 2006 the district court remanded to the Board, finding it had not met its responsibility to produce evidence that it acted reasonably. The Board supplemented its findings November 16, 2006. The judgment rests on the supplemented record.
- **The dormant Commerce Clause claim was not resolved in the county's favor.** Zimmerman II reversed dismissal of the claim that the prohibition placed incidental burdens on interstate commerce clearly excessive in relation to local benefits, and remanded for discovery and balancing under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). The Court noted it could not know how much electricity would have been generated and kept out of the interstate grid — an evidentiary gap on both sides of the scale.
- **Resolution No. 04-18 recited multiple independent grounds** and stated that each reason stands on its own. That construction limits the effect of a reviewing court rejecting any single ground.
- **Established uses are protected.** K.S.A. 12-758; *Crumbaker v. Hunt Midwest Mining, Inc.*, 275 Kan. 872 (2003).
- **County zoning reaches unincorporated territory only.**

3. Statutory authority

- **K.S.A. 12-741 et seq.** — enabling legislation for planning and zoning by cities and counties. K.S.A. 12-741(a) provides the act is not intended to prevent additional regulations on the same subject not in conflict with the act. Cited in the draft at Section 20 ¶12(a).
- **K.S.A. 12-755** — authorizes zoning regulations providing for issuance of special use or conditional use permits.
- **K.S.A. 19-2960** — county zoning procedure; regulations uniform for each class of use within each classification; notice, hearing, and protest provisions.
- **K.S.A. 12-757** — amendment procedure, including the protest petition and supermajority provisions. See *Am. Warrior, Inc. v. Bd. of County Comm'rs of Finney County*, 319 Kan. 78, 552 P.3d 1219 (2024) (K.S.A. 12-757 governs amendments to zoning regulations, not issuance of conditional use permits; counties may delegate CUP issuance).
- **Moratoria** — *Frick v. City of Salina*, 290 Kan. 869 (2010); *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).

4. Kansas counties that have acted, 2026

County	Action
Harvey	Moratorium adopted unanimously January 2026, effective through December 31, 2028, unincorporated areas; adopted with no application pending. Borders Butler County.
Sedgwick	Interim development control adopted January 14, 2026; extended March 4 and again May 6 to September 11, 2026. Borders Butler County.
Saline	4-0 vote; three-year moratorium covering data centers, nuclear, and hydrogen facilities in unincorporated areas.
Kingman	Resolution No. 2026-R9, February 2026; temporary moratorium in unincorporated areas.
McPherson	Temporary moratorium in unincorporated areas through December 1, 2026.

State law context. SB 98 (2025), K.S.A. 74-50,331 to 74-50,334, created the data center tax exemption and amended K.S.A. 66-101j to exclude data centers from economic-development electricity rate discounts. In the 2026 session SB 526 and SB 531 both died. **No statewide siting restriction, moratorium, water mandate, or reporting requirement was enacted.** Local governing bodies remain the siting authority.

5. Requested action

Primary. That Section 20 ¶4(f), Project Exclusion Area, be amended to add a third subparagraph excluding data center development from the unincorporated areas *within* the Urban Growth Area, so that the Exclusion Area covers all unincorporated Butler County.

Supporting. That findings be adopted, drawn from the twenty-six issues already enumerated at Section 20 ¶1(b)(6), each stated to stand independently, in the form used in Wabaunsee County Resolution No. 04-18.

Structural. That the Project Exclusion Area be relocated from ¶4 (Definitions) to ¶3 (Applicability). An operative prohibition presently sits within a definitions section.

Alternative, if the Exclusion Area is not expanded. Four amendments: (1) ¶(k)(2) change *may* to *shall* as to maximum water use limits and reporting obligations; (2) add a separate metering requirement, as ¶12(a)(4) requires a water use summary but nothing requires measurement; (3) extend the water and discharge provisions to construction and commissioning, which ¶11 does not presently address; (4) ¶(k)(4) change *should* to *shall* as to closed-loop cooling.

Drafting note. ¶4(f)(3) contains unresolved revision artifacts. The text reads in part “(21) hasis below 1 MW power demand and less than 1020,000 cumulative square-foot building size” and “no BESS over 10-50 MW, with a storage duration of 2-6 hours,” with subparagraph numbering running (1)(21)(32)(4)(53). The thresholds are ambiguous as written.

All citations should be verified against the official reporter and the enrolled statutes. Draft language is quoted from the version marked “Draft – For Discussion Purposes Only – 7.21.2026” and may have been revised. Submitted by a private citizen; not legal advice.

FACT SHEET

Cheyenne, Wyoming — reclaimed water contamination, 2026

Submitted by: Carrie J. Shearburn, 324 N. Orchard Street, El Dorado, Kansas

Date: August 4, 2026

Purpose: Submitted for the record. This sheet states facts and their sources. It contains no argument and takes no position on any project or applicant.

Timeline

Date	Fact
February 2026	Laboratory staff of the Cheyenne Board of Public Utilities identified the bacterium <i>Cupriavidus gilardii</i> in the city's wastewater during routine testing for fecal contamination.
March 24, 2026	The Board of Public Utilities terminated the discharge privileges of the responsible industrial user.
June 26, 2026	The Board of Public Utilities issued a public news release disclosing the presence of the bacterium and stating that its source had been traced to an industrial user within the system. The user was not named at that time.
July 2, 2026	The Board of Public Utilities identified Goat Systems LLC, a contractor on a data center campus under construction, as the source of the discharge.
July 2026	The Board of Public Utilities suspended the city's reclaimed water irrigation program, drained and disinfected the system, and used drinking water for irrigation of parks and sports fields during the interruption.
July 2026	The Board of Public Utilities adopted a new policy prohibiting wastewater discharges from data centers using closed-loop cooling systems and fill-and-flush systems.
July 2026	A member of the United States House of Representatives wrote to the operator's chief executive regarding the incident and the interval between termination of discharge privileges and public notice.
July 2026	A spokesperson for the operator stated that when the board reported finding a substance in the city's wastewater — not public drinking water — the general contractor stopped discharging industrial wastewater and began hauling it offsite, and commissioned independent testing.

Corrections to accounts that circulated publicly

Several widely shared descriptions of this incident were inaccurate. The following corrections are part of the factual record.

- **Drinking water was not affected.** The bacterium was identified in the reclaimed water system used for irrigation. The Board of Public Utilities stated it did not enter the drinking water supply.
- **Infection is extremely rare.** *Cupriavidus gilardii* occurs naturally in water and soil. The Board of Public Utilities characterized infections as extremely rare, while noting potential risk to elderly and immunocompromised persons directly exposed. Mortality figures circulated online were drawn from a review of approximately 32 known infections since 2009 — a sample too small to describe risk to a general population.
- **The facility was not in operation.** The discharge arose during construction and commissioning, from a fill-and-flush process used to clear construction debris, flux residue, and pipe scale from new cooling piping. Operations at the campus are expected in 2027.

Facts bearing on regulatory design

- The contamination originated in a **closed-loop cooling system** — the cooling technology generally described as reducing data center water consumption.
- The city had **no rule prohibiting such a discharge before the incident**. The prohibition was adopted afterward.
- The incident occurred **during construction and commissioning**, not during operation of the facility.
- The bacterium was detected by the **municipal utility's own laboratory**, during routine testing, and was not detected by any state or federal agency.
- The interval between termination of discharge privileges on **March 24** and public disclosure on **June 26** was approximately three months.

Sources

Primary sources — recommended for verification:

- Cheyenne Board of Public Utilities news releases of June 26, 2026 and July 2, 2026.
- Letter from the office of the United States Representative for Wyoming to the chief executive of the facility operator, July 2026.

Contemporaneous reporting:

- Wyoming Tribune Eagle (wyomingnews.com), reporting of July 2, 2026.
- WyoFile, reporting of July 2026.

- Fortune, July 10, 2026; Forbes, July 9, 2026.
- Snopes review of July 17, 2026, which declined to issue a true-or-false rating and described the circulating claim as containing both accurate and exaggerated information.

This fact sheet is submitted by a private citizen. Each item should be verified against its primary source. No statement here is offered as legal advice or as a characterization of any project, applicant, or official.

STATEMENT — THREE MINUTES

Butler County — Draft Section 20, Project Exclusion Area

About 3:10 at a normal podium pace. If you need to come in under 3:00, drop paragraph 10 — it is already in the memorandum you handed counsel. That brings it to about 2:50.

1. My name is Carrie Shearburn. I live at 324 North Orchard Street in El Dorado. I have read the July 21 draft of Section 20 — all thirty-seven pages.

2. **First, what this draft gets right**, because it is a great deal. It requires a conditional use permit rather than allowing data centers by right. It prohibits private wells and direct withdrawals from surface watercourses. It requires financial assurance for decommissioning. That is careful work, and whoever did it should hear so.

3. **My request tonight is one subparagraph.**

4. Paragraph 4(f), Project Exclusion Area, already prohibits data centers in the Flint Hills Ecoregion and in all unincorporated areas **outside** the Urban Growth Area.

5. This county has already decided that most of its unincorporated territory is the wrong place. What is left is a band inside the Urban Growth Area.

6. **I am asking you to finish the sentence.** Add a third exclusion covering the unincorporated areas *within* the Urban Growth Area, so Paragraph 4(f) covers all unincorporated Butler County. That is not new policy. It completes one this draft already contains.

7. **You have the authority.** *Zimmerman versus Wabaunsee County* — 289 Kansas 926, and 293 Kansas 332. Wabaunsee prohibited commercial wind farms countywide. Landowners holding signed easements sued for a taking. **The Court upheld the county.** No one holds a vested right in a permit you have discretion to deny.

8. And I will give you the hard part myself, because your counsel will find it anyway. Wabaunsee nearly lost — in 2006 the district court sent the case back because the Board had not shown it acted reasonably. Zimmerman says you can do this **on a record** — and you have one starting. Paragraph 1(b)(6) lists twenty-six issues. Findings drawn from those, each standing on its own, is what carried Wabaunsee.

9. I have handed your County Counselor a memorandum with the citations and the limits stated honestly.

10. One technical note. The Exclusion Area sits in Paragraph 4, the Definitions section. An operative prohibition should not live in a definitions paragraph. Please move it to Paragraph 3, Applicability.

11. If you will not expand the Exclusion Area tonight, four amendments instead. Paragraph (k)(2) says the permit *may* impose water limits — everything else in that subsection says *shall*. Nothing in thirty-seven pages requires the water to be metered. The Construction Management Plan says nothing about water or discharge during construction — which is how contamination reached a city water system in Cheyenne, Wyoming this year, before that facility ever operated. And (k)(4) says data centers *should* use closed-loop cooling. Please make it *shall*.

12. Five Kansas counties have already paused to write rules — **Harvey, Sedgwick, Saline, Kingman, and McPherson**. Harvey and Sedgwick border this county. Butler County is further along than any of them. I am asking you to finish it. Thank you.

Quoted language is from the draft marked "Draft – For Discussion Purposes Only – 7.21.2026." If tonight's body is the Planning Commission, it recommends and the Board of County Commissioners adopts — phrase the request as a recommendation to the Board.

Good evening, my name is Lane Volavka. I live at 628 Main St in Towanda. My parents are Rex and Collette Baughman, and they live at 11876 SW 15th St in rural Benton.

Thank you for giving us the chance to speak tonight. That said, I do so with a heavy heart and a critical request: I ask that you protect our community by prohibiting all data centers and BESS facilities in Butler County. There are many other development opportunities that would bring economic growth to our county without compromising our safety, resources and rural character the way these will. BESS facilities and massive data centers are simply not the right fit for Butler County.

Please be deeply mindful of the threat of eminent domain. As some of ~~your own Planning Commissioners~~ ^{YOU} rightly pointed out at the last work session, these facilities not only impact the families living next door, but also carry the potential to burden every landowner who happens to fall in the path of their immense water pipelines and high-voltage energy infrastructure.

If you won't consider banning these types of projects, then please at least hit the "pause button". Place an immediate moratorium on these developments and take the extra time required to do this right. Please don't gamble with our health or well-being. The current zoning draft still desperately needs regulations that will shield us from the documented dangers of tonal noise and extreme thermal heat. Please know we're not just here to voice opposition; we're here to help. There's several folks in this room who are willing to help put you in touch with qualified industrial hygiene professionals who can help you properly measure, evaluate, and regulate these hazards.

Lastly, I'm asking you to please amend our zoning regulations to state that NO community meetings or public hearings can ever be waived. Every citizen in Butler County deserves complete transparency and the right to voice their concerns before massive industrial projects like these alter their homes and lives forever.

As we stand here tonight, we are all at your mercy. We're asking you to please govern responsibly, listen to the constituents who put their trust in you, and put our protection first. If you won't ban these facilities entirely, then please make every attempt within your power to shield us from them.

Thank you.

Butler county meeting 8/4/26
(Data Center Zoning Regs)

Lane Volavka

Lane Volavka
628 main St
Towanda, KS 67144

BUTLER COUNTY, KANSAS
PLANNING COMMISSION HEARING AUGUST 4, 2026
PUBLIC COMMENT MATRIX

#	Speaker	Main concern category	Summary of concerns / suggested changes
1	Amy Gardner	• Regulatory • Land use / scale • Noise • Notice	Said the baseline draft could permit a hyperscale facility occupying up to 640 acres, with a very large building, 60-foot height, continuous noise, limited setbacks, no stated maximum water-use limit, 1,000-foot notice, and a waivable community meeting. Asked the County to strengthen the protections before adoption.
2	Lane Volavka	• Opposition / moratorium • Eminent domain • Public health • Transparency	Asked the County to prohibit data centers or, at minimum, impose an immediate moratorium. Warned that major water and electric infrastructure could burden landowners through easements or eminent domain; requested stronger controls for tonal noise and thermal heat and stated that community meetings and public hearings should never be waived.
3	Meghan Wright	• Notice • Noise • Environmental • Regulatory	Requested that public and community-meeting notice extend three miles and be measured from the project boundary. Asked that facilities be prohibited from increasing ambient sound by more than 5 dBA, with protective dBC limits, and that protected species and farms be included among environmental considerations and noise-sensitive receptors.
4	Christie Bowman	• Economic • Tax incentives • Moratorium • Regulatory	Asked that requested abatements and exemptions be removed from the cost-benefit and fiscal-impact section, stating that state incentives already provide substantial tax relief. Requested that the regulations be returned to the County Commission for a moratorium while remaining language is reworked.
5	Diana Harder	• Opposition • Water • Environmental	Urged the County not to allow data centers. Raised concern that a project in the area identified for development could contaminate or deplete groundwater resources and cause impacts extending well beyond nearby properties.
6	Victoria (Vickie) Fox	• Environmental • Notice / transparency • Community character • Facility lifespan	Described her rural home near El Dorado Lake as a refuge for a veteran family affected by PTSD and emphasized eagles, trees, and the Flint Hills ecosystem. Said notice and disclosure had been inadequate, asked that the matter be tabled for further work, and questioned the useful life and long-term need for very large facilities.

#	Speaker	Main concern category	Summary of concerns / suggested changes
7	Rachel Harder	• Moratorium • Public health • EMF / tonal noise • Research	Asked the County to pause and seek additional research before acting. Raised concerns about electromagnetic fields, tonal noise, and effects on neurodivergent and medically sensitive residents; recommended consultation with industrial hygienists and said she was not categorically opposed if safety could be demonstrated.
8	Crystal Reed-Sallee	• Trust • Governance • Transparency • Public process	Focused on the loss of public trust and the opportunity for County officials to rebuild it. Used the prolonged Flint, Michigan water crisis as a cautionary example of how public decisions can have lasting consequences and asked the County to proceed in a manner that restores confidence.
9	Carrie Shearburn	• Opposition • Project exclusion area • Water • Legal / regulatory	Asked the County to expand the project exclusion area to cover all unincorporated Butler County and to place the operative prohibition outside the definitions section. Cited Kansas wind-farm litigation as support for countywide exclusion. Alternatively requested mandatory water limits, metering, and construction-phase water and discharge controls.
10	Kye Lehr	• Technical review • Water supply • Building / fire code • Public safety	Identified himself as a retired plumbing and mechanical inspector and said the draft was generally well researched but still needed technical discussion. Asked how water would be supplied and questioned whether the referenced building code and fire-protection provisions adequately address very large electronic facilities and electrical fires.
11	Katherine Donovan	• Agriculture • Public health • Noise / lighting • Public safety	Asked for stronger protection of agricultural land and family farms from bright lighting, noise, vibration, and possible water or soil pollution. Described her neurodivergent son's sensitivity to noise and light and reported that a local volunteer fire official said current resources would be insufficient for a data-center or battery-related fire.
12	Cinda Darwin	• Property values • Land use • Economic trade-offs • Governance	Compared data-center land arrangements to long-term programs or leases that may provide short-term income while limiting future uses, financing, marketability, and property value. Said many residents still do not understand the proposal and asked officials to consider the long-term outcome and their public legacy.

#	Speaker	Main concern category	Summary of concerns / suggested changes
13	Amanda McGee	• Trust / transparency • Public health • Environmental • Technical expertise	Criticized discussion of nondisclosure agreements and said the County lacks sufficient environmental expertise. Raised concerns about electromagnetic frequencies and effects on neurodivergent people, as well as groundwater contamination from construction, blowdown, or other discharges; asked for additional study and a more fully informed process.
14	Clinton Winger	• Economic • Utilities • Water • Transparency	Asked what tangible benefit data centers would provide to the County, citing tax abatements and limited permanent employment. Asked whether residents or the facility would be curtailed first during power shortages or drought-related water restrictions and objected to what he viewed as secrecy and unanswered questions.
15	Kelly Christensen	• Moratorium • AI / employment • Governance • Privacy / security	Supported a moratorium and cited public warnings about rapid artificial-intelligence development, job displacement, surveillance, cyberattacks, autonomous weapons, and the absence of effective national safeguards. Urged government action and a pause until broader safety issues are addressed.
16	Janet Sweeney	• Public health • Noise • Neurodivergence • Opposition	Said she has ADHD and adrenal insufficiency and is concerned that noise or other emissions could aggravate existing conditions or trigger a medical crisis. Stated that the health risks appear greater than the benefits and opposed a large data center.
17	Nicholas Tong	• Water • Public health • Noise • Trust	Said water is an essential community resource that should not be placed at risk. Described sensitivity to electrical humming and concern that continuous noise could harm neurodivergent children or reverse developmental progress; asked County officials to rebuild public trust.
18	Mindy Markley	• Noise • Animals / agriculture • Property values • Economic	Emphasized that animals and people experience continuous sound differently and said decibel limits alone may not address tonal or persistent noise. Opposed data centers and questioned their expected operating life, effects on neighboring property values, and the County's ability to recover lost tax base after closure.
19	LaDonna Johnson	• Governance • Campaign finance • Transparency • Public vote	Raised concern about spending by a pro-data-center political action committee in a County Commission race and questioned whether outside money was influencing the process. Asked that the matter be tabled and returned to the commissioners and that County voters be allowed to decide the issue.

#	Speaker	Main concern category	Summary of concerns / suggested changes
20	Sarah Hinshaw	• Notice • Decommissioning • Scale limits • Water / energy	Requested expansion of the 1,000-foot notice distance and annual financial assurance demonstrating that funds remain available for decommissioning. Asked whether the County would cap the total number of facilities, acreage, water use, and megawatts, and questioned why megawatt limits had been removed.

End of Public Comment Matrix

To Jeff Masterson

NO DATA CENTER IN BUTLER COUNTY

There is a movement underway to put a Data Center here in Butler County. As citizens of Butler County we are adamantly opposed to any Data Center. Data Centers place huge loads on the energy system and require extremely large volumes of cooling water, neither of which is available in Butler County. Any attempts to shoehorn a Data Center into our county will result in a serious cost increase for our citizens and no real benefits. Data Centers require very few employees and are recruited to an area by providing large tax advantages. That is great for the company but comes at the expense of the local citizens. As representatives of your fellow citizens of Butler County it is your responsibility to prevent any Data Center from being built here.

Dana Herring

H Dana Herring
13155 SW 130th St
Rose Hill, KS 67133

To Jeff Master son

Regarding issues with the Butler County Survey

Since newspapers have gone the way of the dinosaur, I have been pretty much in the dark about what is happening in Butler County. I have trusted my county commissioners to represent my best interests, but how do they know what I want? Somehow, we need to figure out an effective means of communication so that the residents of Butler County can easily hear about developments in Butler County and then give their input. The survey that you devised will not provide proper input because nobody even knows that it exists! I knew nothing about it until, quite by chance, I happened to watch Channel 3 news the day after the election. They said that the commissioners were looking for feedback from Butler County residents on data centers. What is going on? On Friday, August 7, I called Dan Woydziak and asked him about how I could provide feedback. Dan told me about the survey. He told me that although it was online, I could go to any senior center in Butler County and pick up a copy. That afternoon my husband and I went to the Andover Senior Center. I told my husband to try to get 20 copies so that I could hand them out to friends and family who I knew were as clueless about the survey as I was.

The lady at the senior center had no clue as to what my husband wanted. Since she didn't know about the survey, she had to make at least 2 phone calls. Finally, she went into a locked office and came out with one copy of the survey which she reluctantly allowed my husband to take because the surveys were really only there for the regulars at the senior center. My husband was told to return it in a couple of days, because the surveys were being returned to El Dorado the following week even though they don't have to be returned until September 9. So the surveys, at least in Andover, are under lock and key and not openly available to either the community or to the seniors.

My daughter had similar luck when she went to look for the survey on the Butler County website. Because I told her that Dan said it was there, she looked. Because she failed to find it, she called Butler County. The person she talked to didn't have a clue about a survey and had to make some enquiries before they finally were able to direct my daughter to the survey location. My daughter was then informed that the survey was being sent to every property owner in Butler County.

As a property owner, I started looking for the survey in the mail. That day we received mail from Butler County notifying us about a change in property tax. My husband spent a lot of time examining our property tax notification but barely glanced at the BuCo information sheet about jobs, etc. that is always enclosed in any BuCo mailing. After he was done I, being of a more inquisitive nature, finally found the survey printed on the back side of the BuCo ad sheet. Since then I have been in contact with several BuCo residents. Only one found the survey. Most had kept their tax notices, but had thrown away the ad sheet with the survey printed on the back side.

Why were only Butler County property owners sent the survey? I discovered online that Evergy is trying to convince the KCC to raise electric rates to the tune of over \$240 per hook up per year to build a 15+ gigawatt pipeline to satisfy the electric needs of a data center. Since the rates of every Evergy electric hookup will be increased, this is not just a property owner issue. This is an issue that should concern every citizen because of the negative impact that it will have on their pocketbook. Every registered voter in Butler County should be made aware of this survey and the issues it is addressing, and they should

have a straightforward, easy way of obtaining the survey and weighing in on the issue. 'Economic development survey' doesn't turn many ears. 'Data center' survey would. 'Every rate increase' would.

This brings me to another concern. Dan said that there wasn't a map, but that a logical location would be 160th and Meadowlark because of a power substation nearby. That is just plain wrong because it is against the planning concept for Butler County. When I complained about a development years ago, I was told that it was in a development corridor which was set up to keep developments in limited areas so as to keep Butler County rural and farming. 160th and Meadowlark is not an industrial complex. It is rural and farming. Industry needs to be with industry in complexes set up to deal with the noise and light and air pollution, trucking, etc. that is involved with industry. If, God forbid, we do get a data center in Butler County, it should not go in a rural/residential/farming area.

Although there is an electric substation in that area, that electric serves our homes and our barns. At a minimum, a small data center could take as much electricity as 100,000+ homes. That is a lot of power and the additional transmissions lines needed to provide it would detract from the rural environment. The turbines and generators for backup power would make noise and light and air pollution which would detract from the rural environment. And the water usage would deplete the water table. I have lived in Butler County since 1986. More and more we are experiencing drought conditions in Kansas and Butler County. Only recently, Cheney and El Dorado Lakes were dangerously low and wells were dry. Our aquifers are being depleted. Does anyone care? The extreme water usage of a data center could destroy Butler County as our home. Dan said that often they use air conditioning instead of water, but that just means more required electric power and transmission lines and turbines, etc.

Please preserve Butler County for its residents and for our children and our grandchildren. Please preserve our rural way of life. Please do not open the door to allow our land and our resources to be depleted by big corporations which do not care about our families or our land. The economic returns are not enough to offset the negative impacts that a data center would have on our county. Please preserve our rural lifestyle and our precious resources. Please say no to data centers. I have been looking at the impact of data centers nationwide, and more and more states that have allowed them in are stepping back and imposing moratoriums on them. They are seeing the negative impacts that data centers are having on the environment and they are now trying to figure out how to control them. Let's make life simple and just say no now rather than looking back someday and wishing that we had said no.

Sincerely,

Nancy L. Herring

13155 SW 130th

Rose Hill, KS 67133

316-733-2842

P.S. Since I wrote this, I have been informed that the surveys at the Rose Hill Senior Center are also under lock & key. A friend finally persuaded them to let her have one copy.