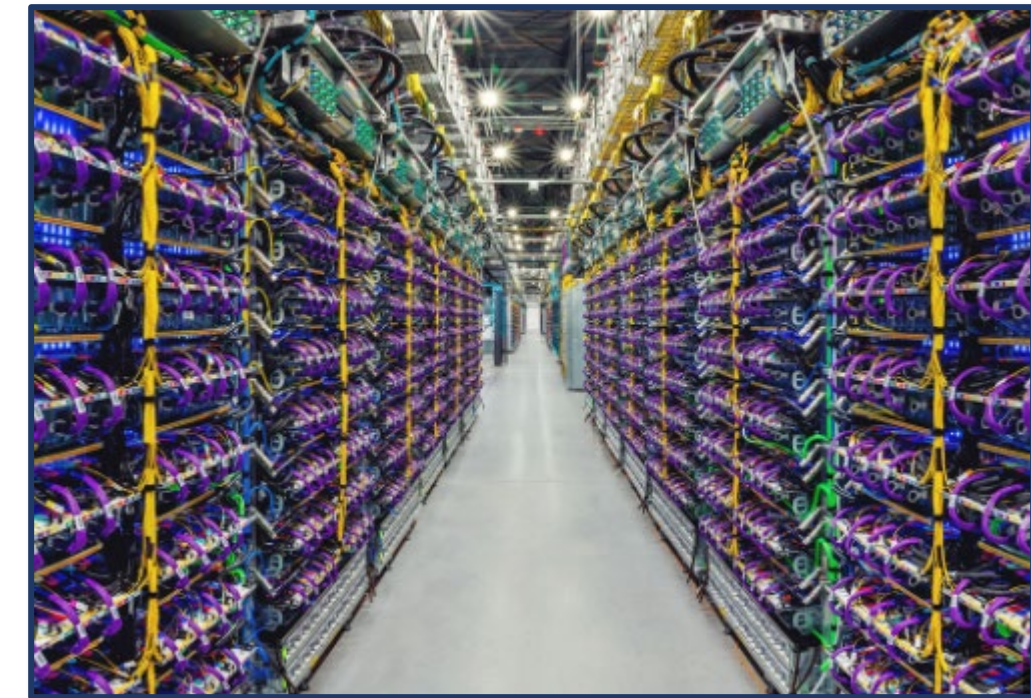




Zoning Considerations for Rural Industrial Uses

Natalie Pierce

Planning & Zoning Director, Morton County



Rural Industrial Uses

and Typical Impacts

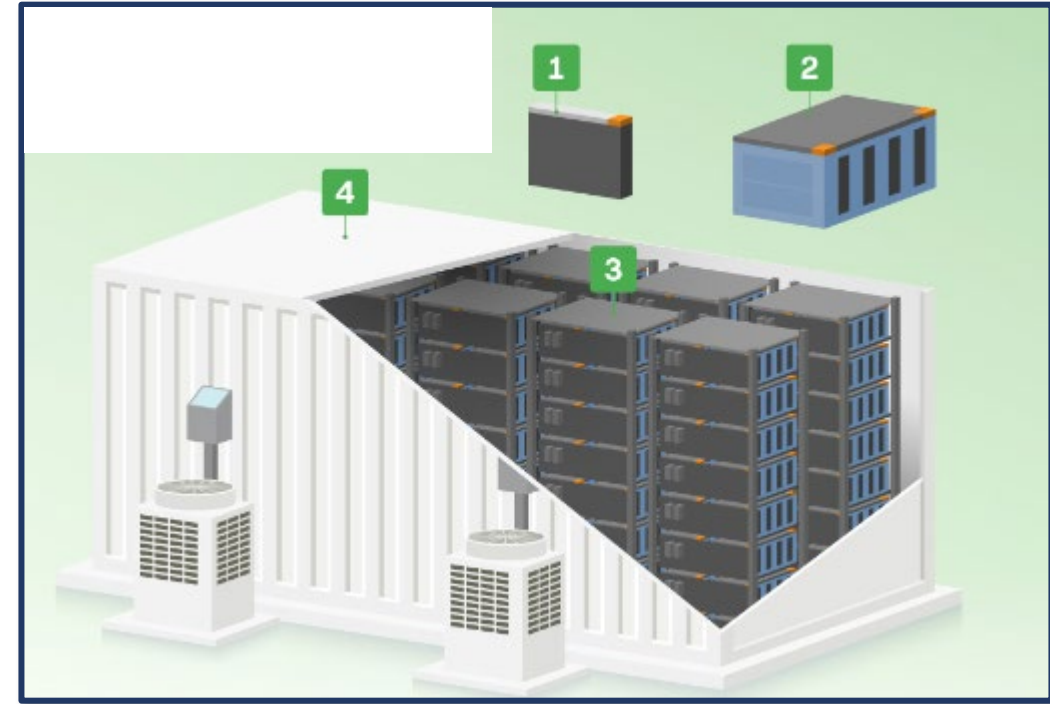
Data Centers – Typical Impacts

- Heavy water use (for cooling)
- Heavy electrical use
- Noise (from fans)
- Overweight truck loads, impacts to roads during construction



Battery Energy Storage Systems (BESS)

- *Biggest risk*: potential for thermal runaway, causing fire and in rare cases explosion
- *Key impact*: noise from fans



Solar Facilities

- Loss of productive agricultural lands
- Noxious weeds
- Glare



CAFOs – Typical Impacts

- Water use and wastewater discharge
- Impacts to roads
- Odor



Updating Your Zoning Code

Short-term Work-arounds

- Adopt a moratorium on these uses until you can develop your standards
- Establish a catch-all process for uses that are not otherwise defined in your code
- Applicant must provide “any additional materials” determined by Zoning Administrator to be relevant to the application

Must adopt sound regulations

If it's not written in your code, it's not enforceable – say what you mean

- Requirements must be tied to a *public purpose*
 - Health, safety & welfare
 - Organize land uses to reduce conflicts / keep incompatible uses separated
 - Responsible use of public funds
- Research land use standards in other jurisdictions
 - GA, MA, MD, MT, NC, NY, UT, VA, WA
- Research industry standards, site visits
- Think through all the scenarios, be thorough & detailed

Require all the information you need to thoroughly evaluate the impacts of the project

- Noise impact study
- Traffic impact study
- Haul road plan (approved by County Engineer)
- Detailed site plan
- Manufacturer equipment specifications
- Evidence of land control (lease agreements, sensitive info redacted)
- Emergency response plan (approved by County EM)
- Evidence of electric utility approval/signed power purchase agreement
- Others...

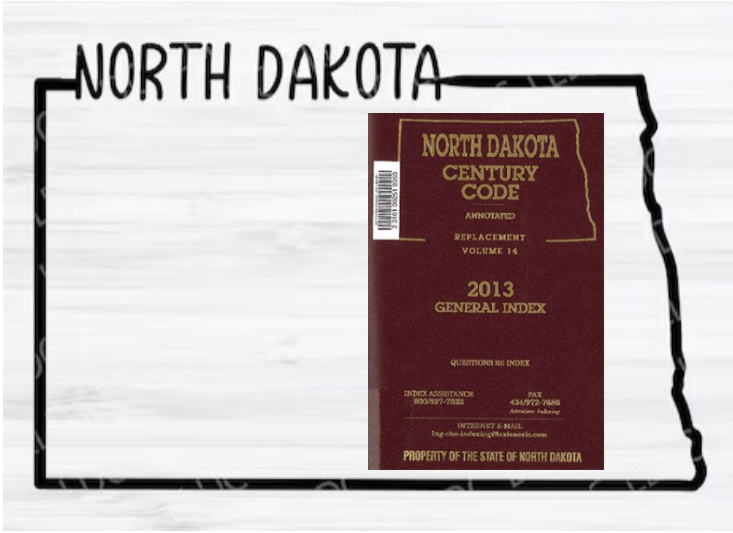
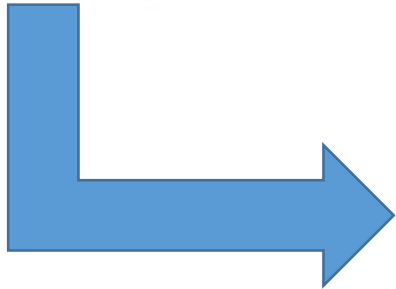
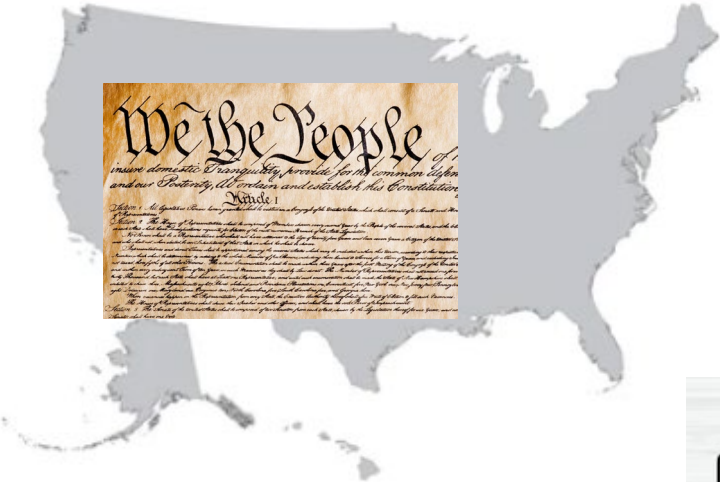
Siting & Performance Standards in Zoning Code

- Allowable zones. Approval process.
- Minimum setbacks from occupied residences or other “sensitive land uses”
- Road use agreement
- Decommissioning plan, reclamation bonds
 - (bond value = engineer’s estimate x 2; to encourage them to do it themselves)
- Timeframe for substantial performance to begin
- Shielded lighting
- Vegetative screening/landscape buffers
- Others...

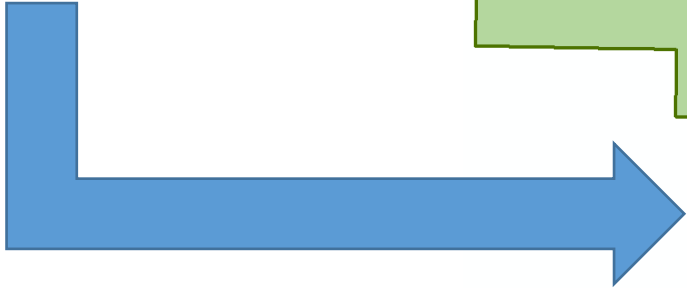
Zoning Authority

Framework for regulations

Where Does Zoning Authority Come From?



Chapter 11-33 County Zoning
Chapter 11-33.2 Subdivision Regulation



#1

You **DO** have very broad authority to be creative and develop regulations that are tailored for your specific community.

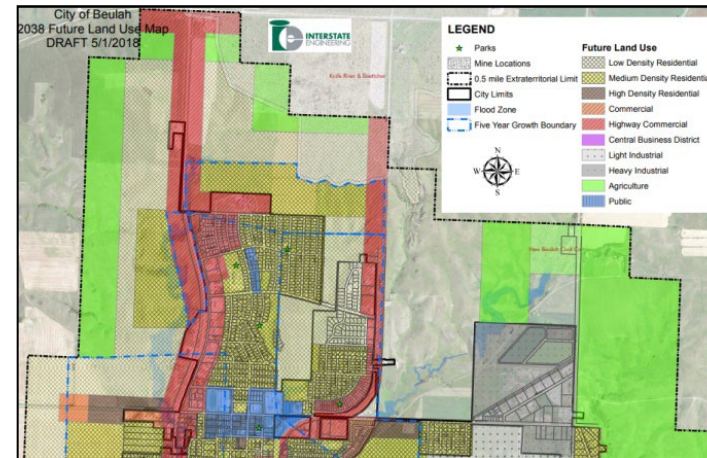


...But You Cannot:

- Disallow a specific land use altogether.
 - You must designate an appropriate location in your community for every possible land use.
- Regulate land uses that the state reserves authority over:
 - Energy transmission facilities, pipelines (PSC)
 - Oil wells, CO2 sequestration wells (Industrial Commission)
 - Environmental regulations, wastewater discharge (DEQ)
 - *Almost all* aspects of farming, ranching, CAFOs

Must Have Basic Planning Documents

Section 2-200 Use Table		Zoning Districts										
Use Type (with reference to applicable standards)	A	E	R	RM	C	CR	I	IL	PI	PR	O	
Office	-	-	-	-	P	P	-	P	P	-	-	
Parking Lot or Parking Garage	-	-	-	-	P	-	-	-	-	-	-	
Retail, automotive	-	-	-	-	P	-	P	-	-	-	-	
Retail, farm implements	-	-	-	-	P	-	P	P	-	-	-	
Retail, general	-	-	-	-	P	P	-	-	-	-	-	
Retail, grocery	-	-	-	-	P	P	-	-	-	-	-	
Services, personal	-	-	-	-	P	P	-	-	-	-	-	
Services, automotive repair	-	-	-	-	P	-	P	P	-	-	-	
Services, general repair	-	-	-	-	P	P	P	P	-	-	-	
Sign, outdoor advertising	-	-	-	-	P	-	P	-	-	-	-	
Undertaking Establishment - Section 3-070	S/C	-	-	-	-	-	P	P	-	-	-	
Arts, Entertainment and Recreational Uses												
Adult Entertainment Center - Section 5-020	-	-	-	-	-	-	S/C	-	-	-	-	
Amusement Parks / Commercial Recreation	S	-	-	-	P/R	-	-	-	-	S	-	
Arts and Crafts Gallery	-	-	-	-	P	P	-	-	-	-	-	
Bar or Tavern	-	-	-	-	S	-	-	-	-	-	-	
Bowling Alley	-	-	-	-	P	-	-	-	-	-	-	
Drive-in Theater - Section 5-080	S/C	-	-	-	S/C	-	S/C	-	-	-	-	
Event Center - Section 5-230	-	-	-	-	P/C	-	S/C	-	-	-	-	
Golf Driving Range - Section 5-100	S/C	-	-	-	S/C	-	-	-	-	S/C	-	
Hunting Cabin	S	-	-	-	-	-	-	-	-	-	-	
Neighborhood Park or Playground	P	P	P	P	P	P	-	-	P	P	P/R	
Marina/Boating Facility	-	-	-	-	P	P	-	-	-	P	-	
Miniature Golf Course - Section 5-100	S/C	-	-	-	S/C	-	-	-	-	-	-	
Pool or Ice Rink, public	-	-	-	-	P	-	-	-	-	P	-	
Race Track	S	-	-	-	-	-	-	-	-	-	-	



Zoning Code

Regulations

Rules that apply “right now”

Black & white answers

Comprehensive Plan/ Future Land Use Plan

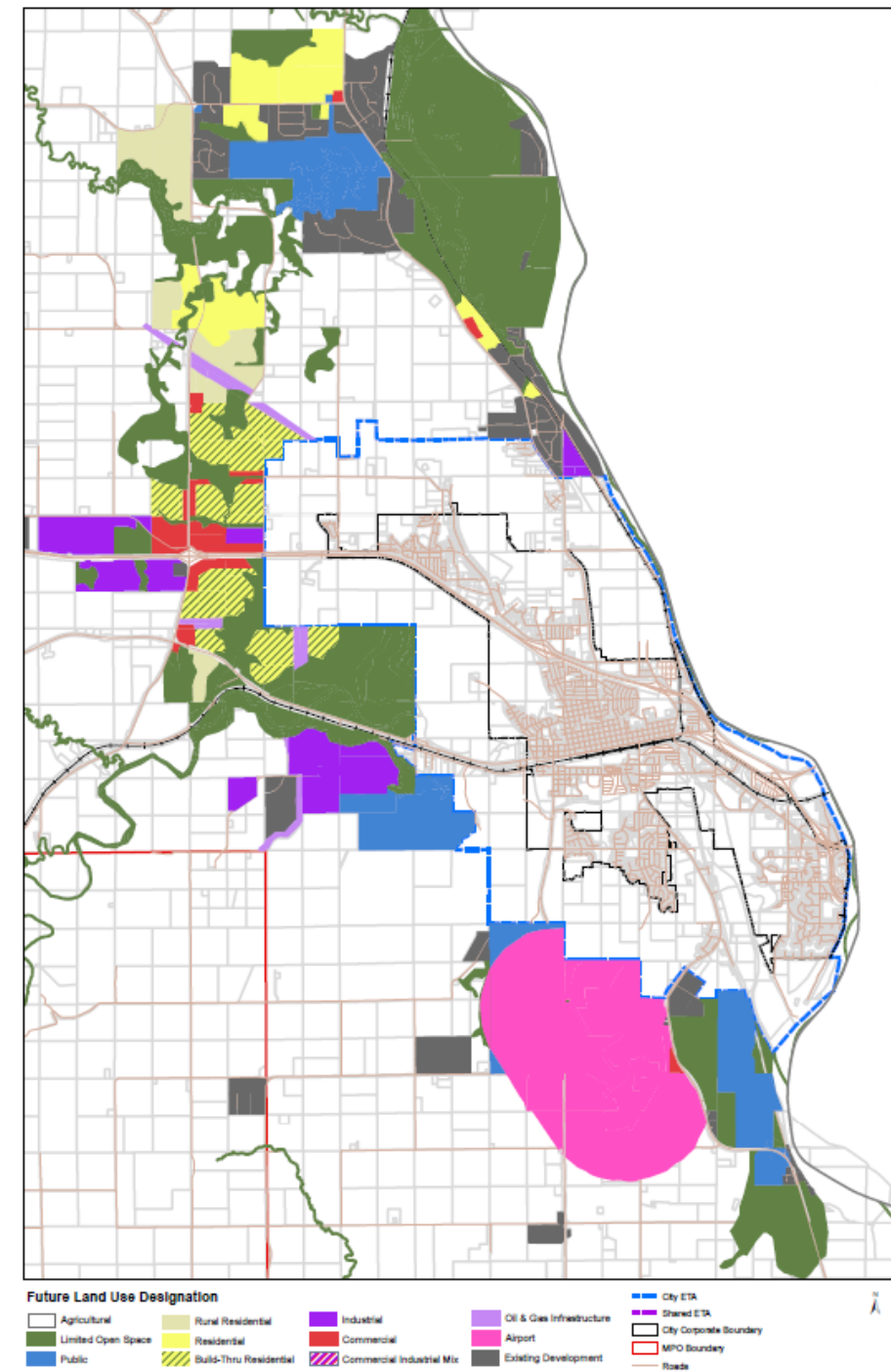
Policies, Goals

Applies to future development

Decision-making guide to evaluate development applications

Future Land Use Plan

- Predict future growth over a period of time (~30 years)
 - Demographics/population growth
 - Economic trends
- Assess suitability of certain areas to “receive” that growth
 - Infrastructure availability
 - Land characteristics
- Designate future land use categories (put color on the map)



In the Absence of a Future Land Use Plan

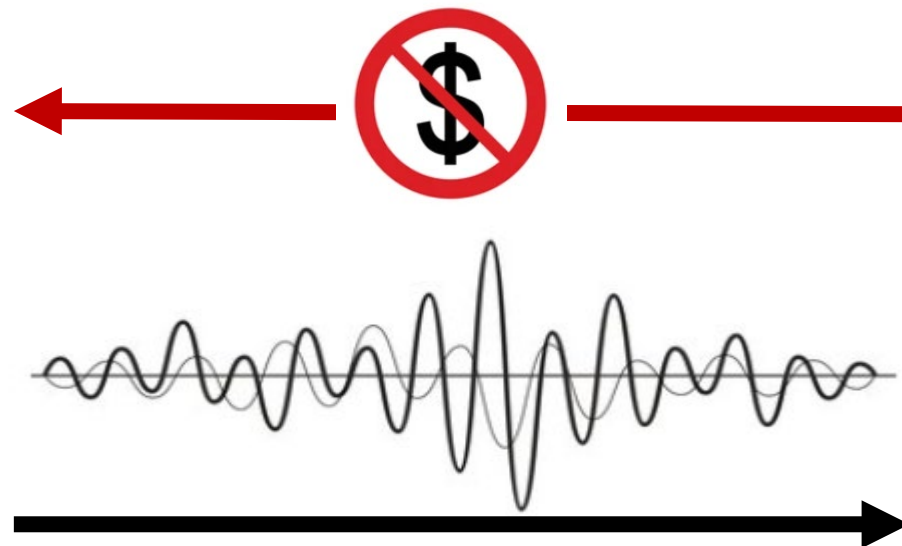
How do you evaluate SUP/CUP applications?

Whose property rights are more important?

Land owner #1
Right of Use



Impacts



Land owner #2
Right of Quiet
Enjoyment

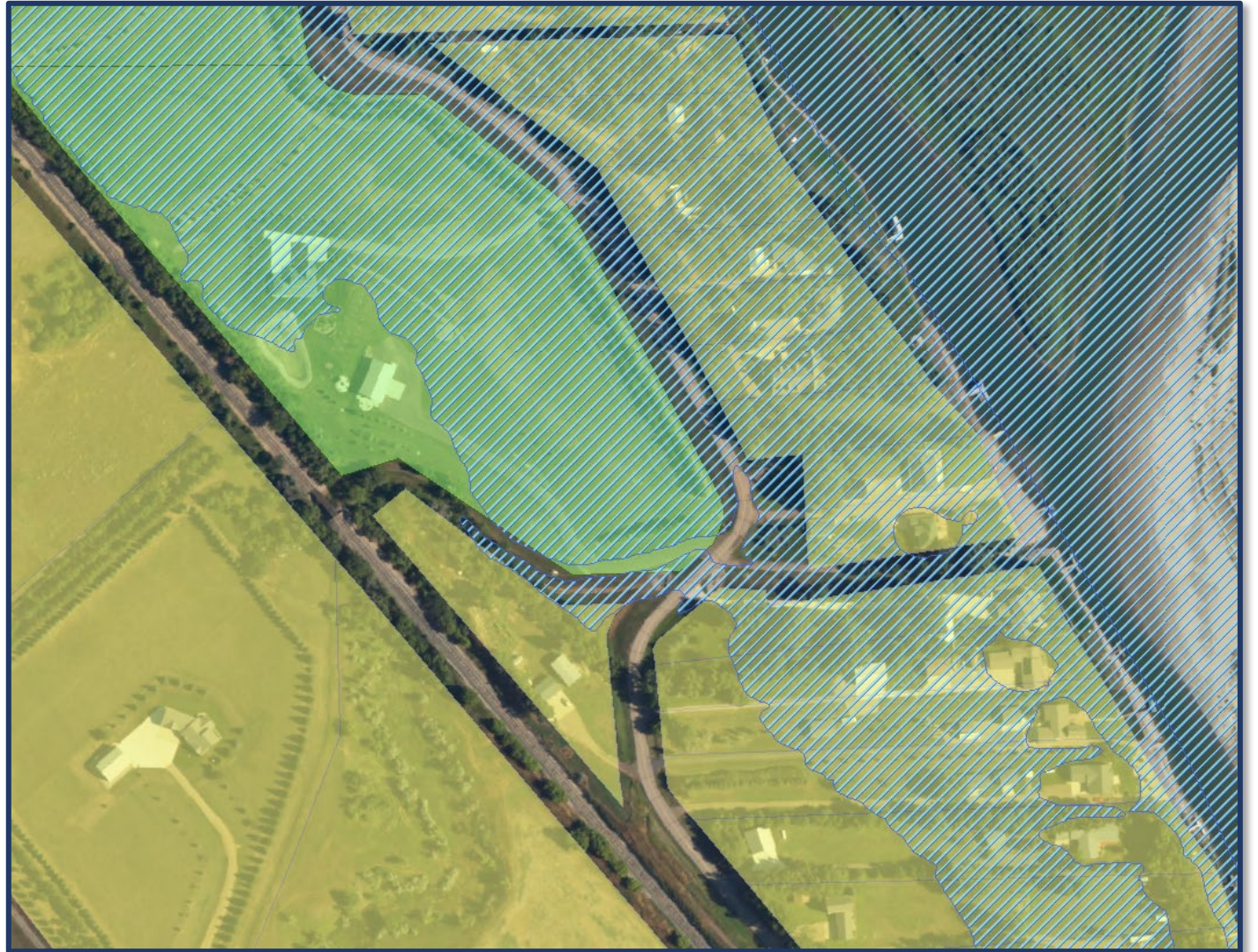


Rural Industrial Land Uses

- Present a challenge to standard planning model
- Particular site needs/difficult to site
- Difficult to designate priority areas for these uses in a FLUP without a lot of analysis
- Essentially a spot zoning. Application process/review can be controversial.

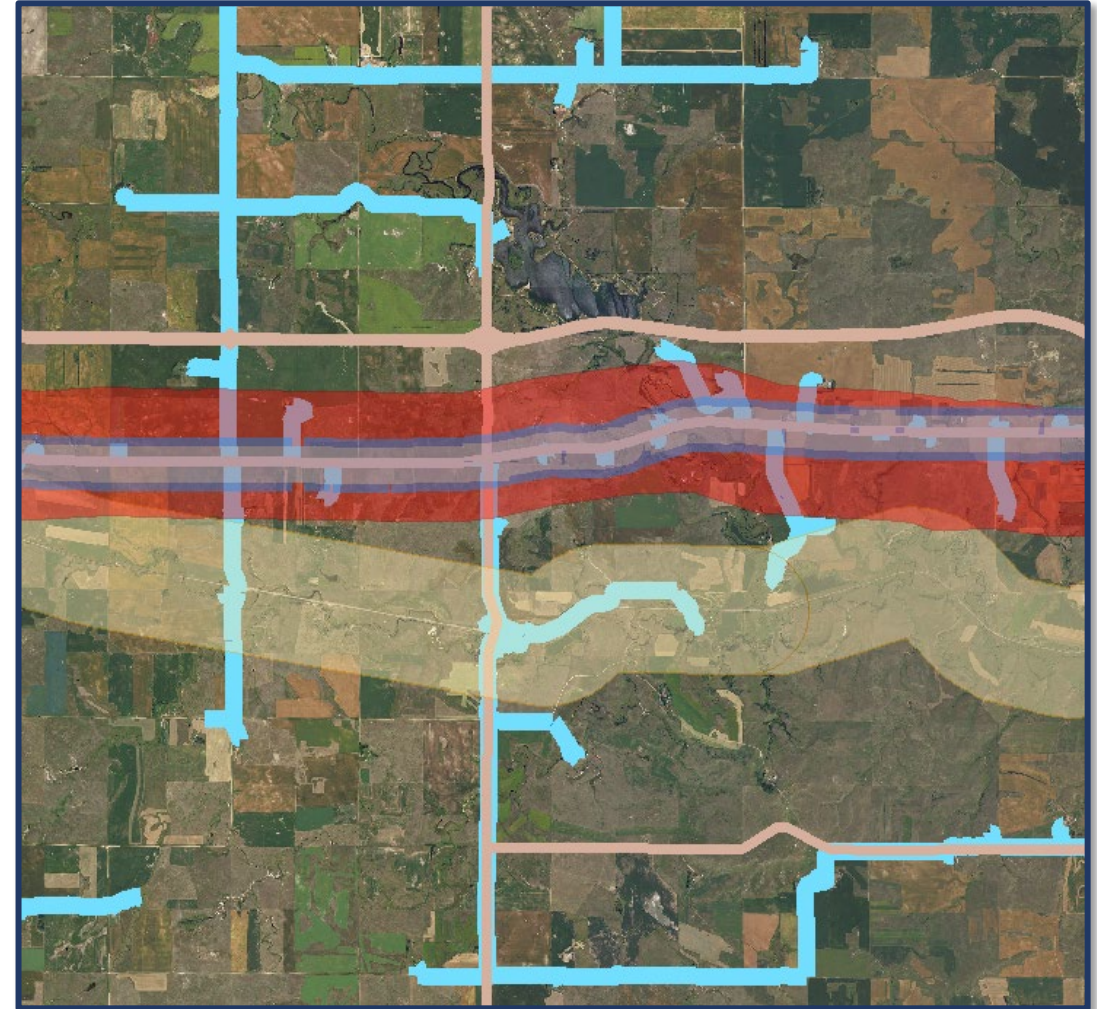
Approaches to Avoid Spot Zoning

- Define allowable areas
 - Overlay district
- Define “protected” areas
- Adopt siting criteria in zoning code
- Combination of the above



Regional Livestock Development & Planning Grant

- Community-wide site analysis by a consultant
- Each participating community can vet results & choose to incorporate these areas into their FLUP or not
- Communities should still adopt **performance standards** for rural industrial uses in your **zoning code**

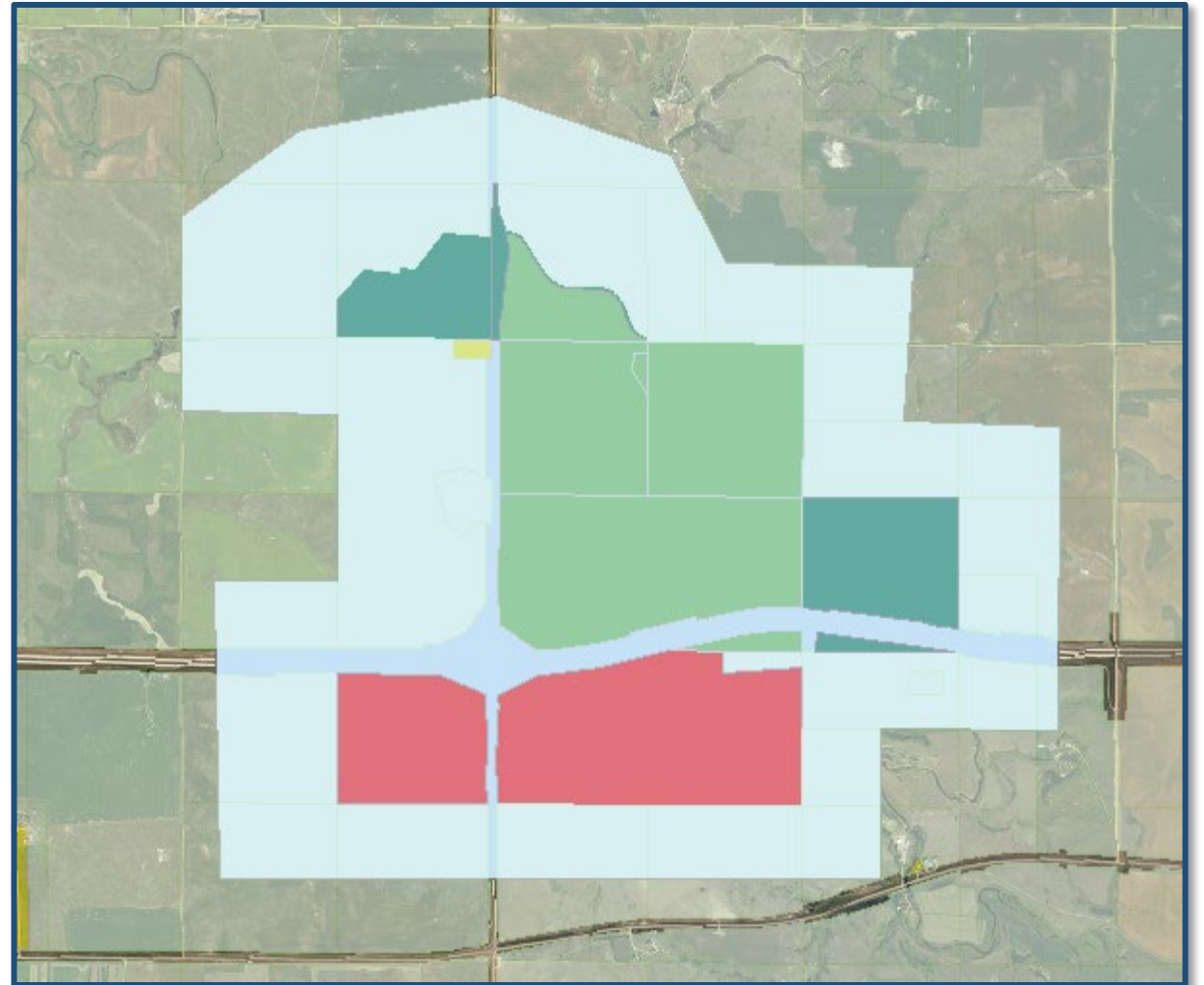


Status of Zoning for CAFOs

- Unclear what basis Counties have to deny CAFOs that meet state setbacks - NDCC 23.1-06-14(7)(a)
 - Evaluating: location, scope/animal type, size
- Currently no authority for Counties to apply conditions to CAFO applications
 - No fees > \$500
- Counties can allow CAFOs in locations with *less* than the state setbacks

Low-Impact Ag Zoning District

- CAFO setbacks can be > minimums, but not greater than 1.5 miles.
- “around areas zoned for residential, recreational, or nonagricultural commercial uses”
- NDCC 11-33-02.1 (8)(b)



Development Project Examples

Minimal to No Zoning for the Proposed Use

Atlas Power Data Center /
Judson Twp, Williams County



~800 ft



Follow-up Actions

- Williams County hired a consultant to develop standards for Data Center siting.
 - This land use is relatively new, even to consultants, not a ton of examples to draw from
- Settled on 1 mile setback requirement from boundary of any sensitive property



Applied Digital Data Center
Ellendale Twp/Dickie County



Rendering of proposed
Retract CO₂ DAC & Sequestration Facility /
Morton County

Tax Impacts

- Equipment is personal property, not real property.
 - Buildings are taxed, equipment is not.
- CAFOs are taxed at an agricultural rate for the land + tax on structures

A photograph of a wheat field at sunset. The sun is low on the horizon, casting a warm, golden glow over the scene. The sky is filled with scattered, light-colored clouds. The wheat stalks are in the foreground, some in sharp focus, showing their golden-brown heads and long, thin awns. A semi-transparent white rectangular box is overlaid on the lower right portion of the image, containing text.

Questions?

P&Z Directors Meeting 3:15 (Atrium)