

MEMORANDUM

TO: ST

FROM: SW

DATE: August 31, 2026

RE: Analysis of Data Center Moratorium

QUESTIONS PRESENTED

1. Whether the construction of a data center presents an “emergency” involving the public health, safety, morals, or general welfare sufficient to support an interim zoning moratorium under § 76-2-206, where the asserted harms (water use and noise) are unsubstantiated hypotheticals and what evidentiary showing would be required to establish such an emergency.
2. Whether a “regulatory gap”, the fact that the County has no zoning addressing data centers, can itself be the emergency that justifies interim zoning.
3. Whether Missoula County’s recently adopted data-center interim zoning resolution supports a comparable measure in Yellowstone County.
4. Whether an interim moratorium can reach the unzoned data-center site; whether the Montana Right to Compute Act bars it; and whether it could bar a data center that has acquired land, obtained permits, and begun construction, or whether that facility is protected as a prior nonconforming use.

BRIEF ANSWER

An interim moratorium is legally vulnerable, and the two most serious problems are the empty emergency record and the Right to Compute Act. The unzoned status of the site is not the obstacle, interim zoning is designed to reach unzoned land *Liberty Cove, Inc. v. Missoula Cnty.*, 2009 MT 377, 353 Mont. 286, 220 P.3d 617. But MCA § 76-2-206 requires a genuine “emergency,” verified by a study the County must begin within 30 working days and identified as a “specific emergency” in the public notice and the current file contains only hypotheticals. To establish a data-center emergency, the County would need particularized, project-specific evidence of a concrete and reasonably imminent threat that existing law cannot address, not the generalized “potential impacts” language on which Missoula relied. Finding such an emergency is more difficult in light of the recent information regarding water impacts that Quantica has provided.

Independently, the Right to Compute Act is likely to bar a categorical moratorium outright: it subjects any government action restricting computational resources to a strict-scrutiny-style test, “demonstrably necessary and narrowly tailored to fulfill a compelling government interest” grounded in fundamental constitutional rights, and a blanket ban premised on unproven harms is close to the opposite of narrow tailoring. MCA § 2-10-204. Missoula’s resolution offers little support: it rests on the same hedged theory and was never tested because no data center could challenge it (BCC Public Meeting Agenda Packet at 312), while Yellowstone’s developer will. Finally, a facility that is permitted and substantially built before the moratorium takes effect is a protected nonconforming

use the County “must allow” to continue MCA § 76-2-208, *Egan Slough Cmty. v. Flathead Cnty. Bd. of Cnty. Commissioners*, 2022 MT 57, 408 Mont. 81, 506 P.3d 996).

If a moratorium is pursued, it needs a concrete, evidence-based emergency record and the narrowest feasible form.

STATEMENT OF FACTS

A data center is being built near Broadview in an unzoned area of Yellowstone County, Montana. The developer has acquired the land. It appears that the developer may have obtained some permits and begun construction. Citizens want the County to adopt an interim zoning moratorium under § 76-2-206 to bar data centers. Citizens have primarily cited concerns about water use, noise, or power usage that on the current record, are hypothetical or have competing narratives.¹

For comparison, on July 9, 2026, the Missoula Board of County Commissioners adopted a countywide “Data Center Interim Zoning Overlay District” imposing a one-year moratorium on new or expanded data centers, effective July 9, 2026 and expiring July 8, 2027 or when replaced by permanent zoning. BCC Public Meeting Agenda Packet at 312. Its stated trigger was that the County “recently received a proposal to establish a new data center... which has resulted in an enhanced understanding of the significant impacts... that current zoning regulations do not adequately address”, and its operative finding was that “an emergency exists relative to potential impacts of data centers,” including noise, heat, air quality, water, and energy use. The staff materials likewise described the “identified emergency” only as the fact that “[d]ata centers are a relatively new use and current regulations do not adequately address potential impacts”, listing “[p]otential significant adverse impacts” in the abstract.

ANALYSIS

I. The emergency finding: the standard, the absent evidence, and what the County would need to show.

- a. The standard is deferential but fact-bound, and the current statute demands verification of a specific emergency.*

A board of county commissioners may establish an interim zoning district or regulation “to address an emergency that involves the public health, safety, morals, or general welfare” only if the measure’s purpose is to classify the uses that must be regulated to mitigate the emergency and, “within 30 working days, the county initiates a study or investigation to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency”. Mont. Code Ann. § 76-2-206. The published notice must state “the specific emergency compelling” the measure. A measure lasts one year and may be extended only once, for one additional year, and the verification study must be completed before any extension. A two-year outer limit that is

¹ There is competing information. For example, citizens have raised concerns about water usage or contamination. The data center has indicated that it intends to use a close-looped system with water usage that is less than a hotel building.

strictly construed and cannot be enlarged by stipulation or court order. The Montana Supreme Court reads “emergency” broadly: an emergency exists where there is “some exigent circumstance impacting the public health, safety and welfare, and zoning is required to address the exigency,” and what constitutes an exigency is “necessarily fact-bound” and “left largely to the discretion of the local governing body” *Liberty Cove, Inc. v. Missoula Cnty.*, 2009 MT 377, 353 Mont. 286, 220 P.3d 617. But discretion operates on facts; the standard still requires an exigent circumstance that zoning is “required to address” *Id.*

b. The current record contains no evidence of an emergency.

The current citizen-driven claims of an emergency are generally unsubstantiated concerns about water use and noise. Specifically, there have been complaints that the water usage will exacerbate droughts, dry up neighboring wells, or cause leaching of chemicals. Some of these issues are regulated by the state. Additionally, Quantica has produced information that contradicts the claimed water impact that its data center would create. Quantica asserts that it will use a closed loop system reducing the impact on the surrounding properties, or concerns about leaching.

The claim that an emergency exists is likely to fail for three reasons.

First, the qualifying emergency in the controlling case was a concrete, identified change in circumstances, such as the imminent loss of anticipated DEQ environmental review and MDT traffic review for a specific project, not a generalized worry. *See Liberty Cove, Inc.* There, the County there had earlier found *no* emergency and acted only when specific facts changed. *Id.*

Second, the statute now forces the County to substantiate its finding: it must, within 30 working days, begin a study “to verify that an emergency exists and to identify the facts and circumstances that constitute the emergency” and its notice must name “the specific emergency”. Mont. Code Ann. § 76-2-206. Hypotheticals give the County nothing to verify or to name and have been rebutted to some degree.

Third, if the verification study cannot substantiate the concerns, the finding is exposed and the measure cannot even be extended, because a completed study is a precondition to extension.

The generalized “potential impacts” recital Missoula used is more dangerous in Yellowstone because it will be litigated.

c. What the County would need to show to establish a data-center emergency.

To convert generalized concern into a defensible emergency finding, the County would need to assemble particularized, project-specific evidence, developed before or in the mandatory study, that identifies a concrete and reasonably imminent threat to public health, safety, or welfare that existing regulation cannot address and that interim zoning is required to mitigate. Tailored to data centers, that record would likely require some combination of the following, tied to this facility rather than to data centers in the abstract:

- **Water quantity.** The facility’s actual projected water demand (e.g., gallons per minute and acre-feet per year for evaporative cooling), the specific source (a

named aquifer, stream, or municipal system), and evidence that this draw would meaningfully impair the source, for example, aquifer drawdown, stream depletion, or interference with senior water rights or municipal supply. Generic statements that “data centers use a lot of water” will not suffice.

- **Water quality.** Evidence of a specific discharge or contamination pathway (cooling-tower blowdown, chemical additives, stormwater) that threatens a identified receiving water, beyond what state permitting already controls.
- **Noise and vibration.** Modeled or measured decibel and vibration levels from the facility’s specific equipment (chillers, transformers, and especially backup diesel generators) at the property line and nearest sensitive receptors, exceeding recognized health or nuisance thresholds.
- **Energy / grid and air quality.** Documented strain on grid capacity or reliability from the facility’s specific load, or air-quality impacts from on-site generation (generator run-hours, emissions) that create a concrete public-health risk.

The unifying point is that the record must show a real, particularized exigency and explain why existing tools cannot address it. The “facts and circumstances that constitute the emergency” the statute requires the County to identify. *See* Mont. Code Ann. § 76-2-206 . A study that merely restates that data centers are new and unregulated will not carry the finding.

II. A “regulatory gap” alone is not a sufficient emergency basis.

Citizens may argue that the County’s lack of data-center zoning is itself the emergency. That overreads *Liberty Cove Inc.* The regulatory gap that qualified there was concrete and imminent. The impending loss of expected DEQ/MDT review of a specific pending project, not the standing fact that a use was unregulated. Two features of Montana law confirm a bare gap is not enough. First, the verification-study and “specific emergency” requirements presuppose a concrete, articulable condition; a generalized gap gives the County nothing to verify or name Mont. Code Ann. § 76-2-206. Second, the permissible *purpose* of interim zoning, to pause and plan, is not the *emergency* that unlocks it. Interim zoning lets a county “enact temporary zoning to avoid suffering serious detriment while pursuing the necessary planning efforts to adopt a growth policy”. *Liberty Cove Inc.* Additionally, § 76-2-206 has long been described as “the provision for interim zoning regulation in emergency circumstances” that lets a county begin planning “without suffering any serious detriment” *Allen v. Flathead Cnty.*, 184 Mont. 58, 601 P.2d 399 (1979). The desire to study an unregulated use is the use of the tool, not the emergency that authorizes it. A defensible measure must anchor the gap to the concrete, imminent facts described in Section I(C) not the bare absence of regulation.

III. Missoula County’s resolution offers limited support, and its key weakness is Yellowstone’s key exposure.

Citizens will likely point to Missoula. That resolution is of limited persuasive value for two reasons. First, it rests on exactly the regulatory-gap, “potential impacts” theory that Sections I–II show is thin: its trigger was a new proposal revealing that “current zoning regulations do not adequately address” data centers, its recitals are hedged in the conditional (“may adversely affect,” “may create”) (BCC Public Meeting Agenda Packet

at 313), and its operative finding is an “emergency... relative to potential impacts”. An adopted resolution shows a county *can enact* such a measure; it does not show the record *withstands challenge*. Second, and decisively, Missoula’s finding was never tested. Judicial review of a § 76-2-206 emergency finding occurs only when a party with standing and incentive challenges it, as the losing landowner did in *Liberty Cove Inc.* Missoula had no such party: the one pending project, Krambu’s Bonner Mill proposal, had no complete application, no signed lease, and no power purchase agreement. A developer that is not subject to the measure and holds no permits has neither the injury nor the vested interest to mount a serious challenge. Yellowstone’s posture is the opposite: a data center that has acquired land, obtained permits, and begun construction is directly targeted and will force a court to review the emergency finding against the fact-bound standard of *Liberty Cove Inc* and the statute’s verification and specific-notice requirements Mont. Code Ann. § 76-2-206. The same hedged “potential impacts” record that passed unchallenged in Missoula is materially more vulnerable where it will be litigated. Missoula is therefore distinguishable.

IV. An interim moratorium can reach the unzoned site.

The unzoned status of the site is not an obstacle. In *Liberty Cove Inc* the County had granted a zoning compliance permit “noting that the site location was not zoned,” yet the Supreme Court upheld interim zoning placing designations on that previously unzoned land. A local government “may adopt interim zoning without a comprehensive plan (now growth policy) ... to address an emergency of public health, safety, or welfare, while developing a growth policy,” and spot-zoning challenges “are not applicable to interim zoning measures adopted pursuant to § 76-2-206”. *Liberty Cove Inc.* That an interim moratorium would be the first zoning to touch the parcel does not defeat it; that is interim zoning’s ordinary function. The vulnerability lies in the emergency finding (Sections I–III), not in the unzoned character of the land.

V. The Right to Compute Act is likely an independent bar to a categorical moratorium.

The Right to Compute Act is not merely a litigation risk; for a blanket ban on data centers it is likely dispositive. The analysis proceeds in three steps, coverage, standard, and application, and the moratorium fails at the third.

a. Coverage: the Act plainly reaches a county data-center moratorium.

The Act binds local governments: “government entity” is defined to include “counties, cities, towns, or political subdivisions” Mont. Code Ann. § 2-10-203. “Government actions” expressly include “any law, ordinance, regulation, rule, policy, condition, test, permit, or administrative practice... that restricts the common or intended use of computational resources”, language that squarely captures an interim zoning ordinance barring data centers. And “computational resources” is defined broadly enough to encompass a data center’s physical plant: “any tools, technologies, systems, or infrastructure... that facilitate any form of computation, data processing, storage, transmission,” including “hardware, software, algorithms, sensors, networks, protocols, platforms, services, systems” *Id.* A moratorium on data centers is therefore a “government action” restricting “computational resources” by a covered “government entity.”

b. *Standard: strict-scrutiny-style review grounded in fundamental rights.*

The operative provision commands that government actions restricting the ownership or use of computational resources “must be limited to those demonstrably necessary and narrowly tailored to fulfill a compelling government interest”. Mont. Code Ann. § 2-10-204. The Legislature grounded that command in fundamental constitutional rights, finding that the rights to acquire and protect property and to free expression “embody the notion of a fundamental right to own and make use of technological tools, including computational resources”. Mont. Code Ann. § 2-10-202. That framing matters: it signals heightened scrutiny in which the County bears the burden of justification, and it requires the County to prove both that its interest is compelling and that its means are the least restrictive available.

c. *Application: a blanket ban is close to the antithesis of narrow tailoring.*

A categorical moratorium barring all new or expanded data centers is a total prohibition; it is the *most* restrictive means, not the least. Even accepting that the Act contemplates some data-center regulation, its definition of “compelling government interest” includes “taking actions that prevent or abate common law nuisances created by physical datacenter infrastructure”. Mont. Code Ann. § 2-10-203. That carve-out cuts against a moratorium: it frames the permissible interest as *abating a specific nuisance* through the least restrictive means, and narrower tools plainly exist (noise or water performance standards, setbacks, conditional-use conditions). A ban that forecloses the use entirely, rather than regulating its impacts, is difficult to defend as “narrowly tailored” to nuisance abatement. Worse, “demonstrably necessary” is an evidentiary command, and it fails on the same record deficiency that dooms the emergency finding: the County cannot demonstrate that a ban is necessary to abate harms it has not substantiated (Section I). The two failures reinforce each other. The thinner the emergency record, the weaker the necessity showing under the Act. A measure that also appears aimed at one identified developer invites the further argument that it is neither general nor narrowly tailored, but targeted.

d. *Consequence.*

It does not appear that a Montana decision has yet construed the Act, so its application here is a matter of first impression. While the Act does not contain no damages remedy or private right of action, it is likely that a sophisticated party would try to incorporate damages or fees under a different cause of action. The realistic and likely outcome is a declaratory-judgment and injunctive action by the developer, who has clear standing and every incentive, resulting in the likely invalidation of the moratorium as applied to data centers.

In short, even if the County could somehow satisfy the emergency standard, the Right to Compute Act supplies a second, independent, and probably decisive ground on which a categorical moratorium would fall. The narrower and more evidence-based the measure, the better its chances; a blanket ban is the version most likely to be struck.

VI. A permitted, substantially built data center is a protected nonconforming use.

It is not clear what the current status of the construction of the Broadview Data center is. It should be noted, however that even a valid moratorium likely could not bar a facility that is already vested. County zoning regulations “must allow for the nonconforming use of land or buildings legal at the time or prior to the time” the regulation was adopted, with any ambiguity resolved “in favor of the nonconforming use”. Mont. Code Ann. § 76-2-208. In *Egan Slough Cmty. v. Flathead Cnty. Bd. of Cnty. Commissioners*, 2022 MT 57, 408 Mont. 81, 506 P.3d 996 the Court applied this to a permitted, substantially built water-bottling facility reached by a new district: because it “existed” as a facility capable of its intended use and the developer had acquired (or applied for) its permits and constructed the facility before the regulation took effect, it was a legal nonconforming use that could continue “to an extent consistent with” its permits. Whether Yellowstone’s data center qualifies turns on how far it has progressed. If, like the developer in *Egan Slough Cmty.*, it holds the permits needed to build and operate and has substantially constructed the facility before any moratorium takes effect, it is likely a protected nonconforming use whose continuation the County “must allow”, limited to the scope of those permits, with expansion beyond them still regulable. If instead it holds only preliminary permits and has done only early earthworks in anticipation of further approvals, its rights may not have vested: a mere application does not vest rights “unless and until it is actually received”. *Town Pump, Inc. v. Bd. of Adjustment of City of Red Lodge, Montana*, 1998 MT 294, 292 Mont. 6, 971 P.2d 349. Similarly, building on unzoned land in anticipation of a permit is not absolutely protected against pending zoning *Little v. Bd. of Cnty. Comm’rs of Flathead Cnty.*, 193 Mont. 334, 631 P.2d 1282 (1981).

CONCLUSION

An interim zoning moratorium under § 76-2-206 can reach the unzoned data-center site, but it faces two serious and largely independent barriers. First, the emergency finding: the standard is deferential but fact-bound and now backed by a mandatory verification study and a specific-emergency notice, and the current record holds only unsubstantiated water-and-noise hypotheticals Mont. Code Ann. § 76-2-206, *Liberty Cove Inc.* A bare “regulatory gap” does not supply the missing emergency. *Allen v. Flathead Cnty.*, 184 Mont. 58, 601 P.2d 399 (1979)); to sustain a finding, the County would have to develop concrete, project-specific evidence of an imminent threat that existing law cannot address (Section I.C). Second, the Right to Compute Act likely bars a categorical moratorium outright: it reaches county data-center ordinances, subjects them to a strict, fundamental-rights-based “demonstrably necessary and narrowly tailored” test, and a blanket ban premised on unproven harms is close to the opposite of narrow tailoring. Mont. Code Ann. § 2-10-203. Missoula’s resolution does not change this. It uses the same hedged theory and went untested because no data center could challenge it, whereas Yellowstone’s developer will. Further, even a valid moratorium likely could not bar a permitted, substantially built facility, which would be a protected nonconforming use

To have any realistic chance of a moratorium, the County would need a concrete, evidence-based emergency record and the narrowest feasible measure. The County would need to confirm the specific permits the data center holds and obtain any evidence capable of substantiating a genuine, imminent public-health or safety emergency before a moratorium is attempted.