DATA CENTER CHECKLIST

REAL ESTATE LAND ACQUISITION

Data Center Projects in an AI-Scale Environment

HOW TO USE THIS CHECKLIST

This checklist is designed to help executive teams and in-house counsel identify and manage legal, regulatory, and operational risks that commonly arise in complex data center projects. It is not intended to be exhaustive or to provide legal advice, but rather to highlight issues that can materially affect project feasibility, timing, cost, or long-term flexibility if not addressed early. The questions below are intended to support informed decision-making and coordinated planning across legal, infrastructure, finance, and operational teams.

WHO THIS IS FOR

CEOs, COOs, GCs, heads of infrastructure, real estate teams, and project sponsors evaluating potential sites and executing real estate transactions for new or expanded data center developments.

01. Transaction Structure & Deal Framework

- ☐ What is the proposed transaction structure—outright purchase, ground lease, build-to-suit, sale-leaseback, option to purchase, joint venture, or entity or asset purchase?
- ☐ If a ground lease, what is the initial term and are there renewal options sufficient to support the anticipated useful life of the data center and any financing requirements?
- ☐ If an option to purchase or right of first refusal is contemplated, are the exercise terms, pricing mechanism, and timeline clearly defined?
- ☐ Are there multiple parcels, sellers, or landowners involved, requiring coordinated closings or assemblage agreements?
- ☐ Is the acquisition contingent on entitlements, rezoning, environmental clearance, or power availability? Are contingency periods and termination rights clearly structured?
- ☐ Are earnest money deposits, option payments, and at-risk capital structured to align with diligence milestones and go/no-go decision points?
- ☐ Has a phased acquisition or option structure been considered to support future expansion without committing all capital up-front?
- ☐ Are there exclusivity or non-compete provisions restricting the seller from marketing the property or adjacent parcels to competing data center operators during the diligence period?

INTERACTION OF REAL ESTATE, POWER & DEVELOPMENT AGREEMENTS

The real estate purchase agreement must be coordinated with related power, development cost, supply chain, and incentive agreements—a failure under any one can cascade across the others.

- ☐ Has the full suite of project agreements—real estate purchase/sale, power offtake, development cost reimbursement, supply chain/equipment procurement, and economic development/incentive agreements—been identified, and is the interplay among them understood before any single agreement is executed?
- ☐ Are closing conditions, milestone dates, and termination triggers aligned across all project agreements so that a delay or failure under one does not leave the buyer exposed under the others?
- ☐ Are development cost reimbursement obligations clearly defined, capped, auditable, and tied to verified completion milestones—not incurred costs alone?
- ☐ Are supply chain and procurement obligations (e.g., transformers, switchgear, generators) clearly allocated between buyer and seller/developer, with delivery timelines, specification compliance, warranty pass-throughs, and risk of loss addressed?
- ☐ If the buyer is funding development costs before closing or in phases, are those payments secured by escrow, letters of credit, lien rights, or the right to take assignment of underlying contracts if the seller/developer fails to perform?
- ☐ Do cross-default and cross-termination provisions ensure that a material default under the power, development cost, or supply chain agreement gives the buyer remedies under the real estate agreement (and vice versa)?
- ☐ Is the land purchase price clearly delineated from payments for power infrastructure, development costs, and supply chain items—for independent valuation and proper tax, accounting, and financing treatment?
- ☐ Where multiple counterparties are involved (land seller, power developer, EPC contractor, local government), has the buyer identified who bears integration risk—the risk that the workstreams do not converge on time and on budget—and is that risk priced in the deal terms?

WHY IT MATTERS:

Transaction structure directly affects risk allocation, financing flexibility, tax treatment, and scalability. Negotiating the real estate agreement in isolation from related project agreements risks misaligned timelines and gaps in remedies.

02. Title Review—Encumbrances, Restrictions & Defects

- ☐ Has a preliminary title report or title commitment been obtained, and have all exceptions to title been reviewed by counsel?
- ☐ Are there outstanding mortgages, deeds of trust, or security interests that must be released or subordinated at closing?
- ☐ Are there liens—including mechanic's liens, tax liens, judgment liens, or UCC fixture filings—affecting the property?
- ☐ Are there deed restrictions, covenants, conditions, and restrictions (CC&Rs), or other recorded covenants that could restrict data center use, development intensity, building height, equipment placement, or operational requirements (e.g., noise, hours of operation, screening)?

- ☐ Are there restrictive use covenants imposed by prior owners or developers that could prohibit or limit industrial, utility, or data center uses?
- ☐ Are there reciprocal easement agreements (REAs), operating agreements, or declarations affecting the property or adjacent parcels?
- ☐ Are there unrecorded agreements, side letters, or informal arrangements affecting the property that may not appear on title?
- ☐ Are there boundary disputes or overlapping claims with adjacent landowners?
- ☐ Has an ALTA/NSPS survey been commissioned? Does the survey identify easements, encroachments, boundary discrepancies, setback violations, or access issues?
- ☐ Is title insurance being obtained? Are any enhanced endorsements needed (e.g., zoning, access, survey, contiguity for assembled parcels, or minerals or energy endorsements)?
- ☐ Are there any pending or threatened condemnation, eminent domain, or governmental taking actions affecting the property or adjacent parcels?

WHY IT MATTERS:

Unresolved title defects, encumbrances, or restrictions can delay or prevent development, impair financing, and create long-term operational constraints. Title issues not identified before closing can be costly or impossible to cure after the fact.

03. Easements—Existing, Required & Third-Party

- ☐ Does the property have legal and physical access to public rights-of-way sufficient for construction and ongoing operations (including heavy vehicle and oversized load access)?
- ☐ Are there existing easements—utility, access, drainage, conservation, or otherwise—that cross the property? Do any conflict with the proposed site plan, building footprint, or equipment placement?
- ☐ Are new easements required for power delivery, water and sewer connections, fiber optic routes, natural gas pipelines, or transmission line corridors?
- ☐ If power or fiber infrastructure must cross third-party land, have those easement rights been secured, or is condemnation or eminent domain a possibility? What is the timeline and risk for each?
- ☐ Are there shared access, maintenance, or cost-sharing agreements with adjacent properties? Are the terms adequate and assignable?
- ☐ Are utility easements adequate for future expansion, densification, or the addition of on-site power generation or substation facilities?
- ☐ Are there any private road or shared driveway arrangements that could create access disputes or maintenance obligations?
- ☐ Have railroad crossings, pipeline easements, or high-voltage transmission line corridors been identified and evaluated for potential conflicts with development?
- ☐ Are easement agreements being negotiated with appropriate protections, including relocation rights, maintenance obligations, indemnification, and insurance requirements?

- ☐ Are there any conservation easements, scenic easements, or agricultural preservation easements that could restrict development on any portion of the site?

WHY IT MATTERS:

Insufficient access or infrastructure easement rights can strand an otherwise viable site and delay construction. Securing corridor rights for transmission lines and fiber is a critical-path item in large data center developments.

04. Mineral Rights Review

- ☐ Does the seller own the mineral estate, or have mineral rights been severed from the surface estate? Has a mineral title opinion or mineral rights search been conducted?
- ☐ If mineral rights are severed, does the mineral estate owner have a right of surface entry (express or implied under state law) for exploration, drilling, or extraction?
- ☐ Are there outstanding mineral leases, mining permits, or active extraction operations on or adjacent to the property?
- ☐ Are there oil, gas, or other mineral reservations in the chain of title? Do any reservations include surface use rights that could conflict with data center development?
- ☐ Are there existing or proposed wells, drilling pads, pipelines, tank batteries, or other mineral-related infrastructure on or near the property? What are the setback requirements?
- ☐ Are there abandoned wells on the property that have been properly plugged and documented in accordance with state regulatory requirements?
- ☐ Has subsurface activity been evaluated for risks to data center foundations, vibration-sensitive equipment, or structural integrity?
- ☐ Can surface use agreements, non-surface-disturbance agreements, or surface waivers be obtained from the mineral estate owner to protect the data center site from future drilling or extraction activity?
- ☐ Are there state-specific regulations governing the relationship between surface and mineral estate owners that may limit or expand surface protections?
- ☐ Has the property been evaluated for potential subsidence risk from prior or ongoing mining, extraction, or injection well activity?
- ☐ Are there any pending or threatened regulatory actions, environmental liabilities, or orphan well obligations associated with prior mineral activity on the site?
- ☐ If the transaction involves a ground lease, does the lease address mineral rights, surface access by mineral owners, and allocation of risk from subsurface activity?

WHY IT MATTERS:

Severed mineral rights can give third parties the legal right to access and disturb the surface, posing a direct threat to data center operations and structural integrity. Mineral rights issues must be identified and resolved during diligence.

05. Power Delivery—Real Estate Interfaces Only

This section addresses only the real estate and land rights dimensions of power delivery. Substantive power procurement and energy regulatory matters are addressed separately in the ***Energy, Power & Sustainability Checklist***.

- ☐ Is the power delivery infrastructure—including transmission lines, substations, switchyards, and interconnection facilities—located on the data center site, on adjacent land controlled by the buyer/tenant, or on third-party land requiring easements or land rights?
- ☐ If an on-site or adjacent substation is required, has the land for the substation been identified and included in the real estate transaction (whether by purchase, lease, easement, or license)?
- ☐ Are transmission line corridors and rights-of-way secured for the full route from the generation source or grid interconnection point to the data center site? Are they sufficient in width and duration?
- ☐ If behind-the-meter or co-located power generation is contemplated (e.g., on-site natural gas, solar, battery storage, or other generation), has the real estate transaction addressed the land, access, and easement requirements for those facilities?
- ☐ Are there separate parcels, ground leases, or subdivisions required to accommodate power generation, substation, or microgrid facilities adjacent to or integrated with the data center campus?
- ☐ If the power developer is a different entity from the data center operator, are land rights, access agreements, and shared infrastructure arrangements clearly documented between the parties?
- ☐ Are there encumbrances, zoning restrictions, or land use limitations that could affect the siting or operation of power infrastructure on or adjacent to the data center property?
- ☐ If the utility or transmission provider requires dedicated land or easements for infrastructure upgrades (e.g., new switching stations, line extensions, or transformer pads), are those land requirements incorporated into the overall site plan and real estate budget?
- ☐ Are easement or land rights for fuel delivery infrastructure (e.g., natural gas pipelines) required? Have those been secured or is securement in process?
- ☐ Are there real estate implications arising from the commissioning timeline for power infrastructure—for example, phased land delivery, temporary construction easements, or early access agreements tied to power project milestones?
- ☐ Does the power offtake agreement or utility interconnection agreement require the data center operator to deliver or maintain specific land rights, and are those obligations reflected in the real estate transaction documents?
- ☐ Has the overall site plan been coordinated between the real estate team, the power development team, and the utility to ensure that power delivery infrastructure does not conflict with data center building footprints, expansion areas, or other planned improvements?
- ☐ Are there condemnation or eminent domain risks associated with transmission line routing, utility corridor expansion, or public infrastructure projects that could affect the data center site or adjacent power facilities?

SELLER & POWER DEVELOPER COUNTERPARTY DILIGENCE

Where the seller or developer is responsible for delivering power-ready land or securing entitlements, the buyer should vet the counterparty's qualifications, capacity, and track record before committing.

- ☐ Does the seller or power developer have sufficient financial capacity—including balance sheet strength, committed capital, and access to credit—to fund its obligations through project completion, including power infrastructure buildout, land improvements, and entitlement costs?
- ☐ Is the seller or developer entity thinly capitalized or a special-purpose vehicle with no assets beyond the project site? If so, are parent guarantees, letters of credit, or other credit support in place to backstop the counterparty's obligations?
- ☐ Does the seller or developer have a demonstrated track record of successfully delivering powered land, data center-ready sites, or comparable large-scale infrastructure projects?
- ☐ Has the seller or developer successfully navigated the local entitlement, zoning, and permitting process in the relevant jurisdiction? Does it have established relationships with local government officials, planning commissions, and utility providers?
- ☐ Does the seller or developer have experience managing community engagement, public opposition, and reputational risk associated with large-scale data center development in the relevant market?
- ☐ Has the buyer evaluated the reputational risk of being associated with the seller or developer—including any history of litigation, regulatory enforcement, community opposition, failed projects, or controversies that could affect the buyer's standing with local authorities or the public?
- ☐ If the seller or developer is responsible for securing or maintaining tax incentives, abatements, or economic development agreements, does it have the experience and credibility with the relevant governmental bodies to deliver and sustain those commitments?
- ☐ Are the transaction documents structured to protect the buyer if the seller or developer fails to perform—including milestone-based payments, performance guarantees, termination rights, earnback or clawback mechanisms, and the right to step in and complete the seller's obligations at the seller's cost?
- ☐ If the buyer anticipates needing to provide meaningful oversight, technical direction, or hands-on support to the seller or developer to ensure project delivery, is that additional burden reflected in the purchase price, deal terms, or risk allocation—rather than being absorbed as an uncompensated cost by the buyer?
- ☐ Are representations, warranties, and indemnities from the seller or developer adequate to cover risks arising from the counterparty's failure to deliver on entitlements, power commitments, incentive obligations, or community commitments?

WHY IT MATTERS:

In powered-land transactions, failure to coordinate land rights, easements, and site planning with power delivery can result in delays, stranded investment, or inability to energize the facility on schedule. Counterparty execution risk must be identified, priced, and allocated in the transaction documents from the outset.

06. Environmental & Physical Due Diligence

- ☐ Has a Phase I Environmental Site Assessment (ESA) been completed in accordance with ASTM E1527-21? Does it identify recognized environmental conditions (RECs)?

- ☐ If RECs are identified, has a Phase II ESA (subsurface investigation) been conducted? Is the site subject to any regulatory oversight for contamination or remediation (e.g., state cleanup program, RCRA, CERCLA/Superfund)?
- ☐ Are there environmental indemnities, escrow holdbacks, or insurance products (e.g., pollution legal liability policies) appropriate to address known or suspected contamination?
- ☐ Has a geotechnical investigation been completed to evaluate soil-bearing capacity, groundwater levels, seismic risk, and suitability for the structural loads associated with data center construction?
- ☐ Are there wetlands, floodplains, or other regulated features on or adjacent to the site that could affect buildable area or require permits? (See also ***Site Selection & Land Use Risk Checklist***, Section 3.)
- ☐ Has a topographic survey been completed to evaluate grading requirements and stormwater management needs?
- ☐ Are there underground storage tanks, wells, septic systems, or other subsurface features on the property?
- ☐ Have natural hazard risks been evaluated, including wildfire risk, earthquake fault zones, flood zones, tornado risk, and extreme weather exposure? (See also ***Site Selection & Land Use Risk Checklist***, Section 3.)
- ☐ Are there any cultural, archaeological, or historical resource constraints that could trigger additional review or mitigation requirements? (See also ***Site Selection & Land Use Risk Checklist***, Section 3.)

WHY IT MATTERS:

Physical and environmental site conditions can fundamentally alter project cost, timeline, and feasibility. Failure to identify contamination or natural hazard exposure early can result in costly remediation or regulatory delays.

07. Real Property Tax, Incentives & Abatements

- ☐ What is the current assessed value and tax classification of the property? How will the proposed data center use affect reassessment?
- ☐ Are property tax exemptions, abatements, or incentive programs available for data center development in the jurisdiction? What are the qualification criteria, application deadlines, and clawback provisions?
- ☐ Are there enterprise zones, opportunity zones, tax increment financing (TIF) districts, or other economic development districts that provide tax benefits? (See also ***Site Selection & Land Use Risk Checklist***, Section 1.)
- ☐ Are sales or use tax exemptions available for data center equipment, construction materials, or electricity purchases?
- ☐ Is the jurisdiction offering or willing to negotiate an economic development agreement or payment-in-lieu-of-taxes (PILOT) arrangement?
- ☐ Are any incentive commitments contingent on job creation, capital investment thresholds, or performance benchmarks? What are the reporting and compliance obligations?
- ☐ Are there special assessment districts, community facilities districts (CFDs/Mello-Roos), or improvement districts that impose additional tax or assessment burdens on the property?
- ☐ Has the tax structure been modeled across the full project lifecycle, including expansion phases?

WHY IT MATTERS:

Tax structure and available incentives can materially affect total cost of ownership and site competitiveness. Incentive programs often have narrow qualification windows, complex compliance requirements, and meaningful clawback risk.

08. Lease Structure & Key Terms (If Leasing)

- ☐ Is the lease structured as a ground lease, build-to-suit, or shell/warm-shell lease? Does the structure align with the operator's investment in tenant improvements and equipment?
- ☐ Is the lease term (including renewal options) sufficient to support the anticipated useful life of the data center facility and any financing or investment recovery requirements?
- ☐ Are there co-tenancy, exclusivity, or use restriction provisions in the lease that could affect operations or future expansion?
- ☐ Does the lease permit assignment, subletting, or collateral assignment to lenders without landlord consent (or with consent not to be unreasonably withheld)?
- ☐ Are landlord step-in rights, cure rights, and non-disturbance agreements (SNDAs) in place to protect the tenant in the event of a landlord default or foreclosure?
- ☐ Does the lease address responsibility for structural maintenance, roof, HVAC, and other building systems critical to data center operations?
- ☐ Are rent escalation provisions, operating expense pass-throughs, and CAM charges clearly defined and capped where appropriate?
- ☐ Does the lease include expansion options, rights of first offer (ROFOs), or rights of first refusal (ROFRs) on adjacent space or land?
- ☐ Are restoration and surrender obligations clearly defined? Does the tenant have the right to remove specialized data center improvements and equipment at lease expiration?
- ☐ Does the lease address condemnation and casualty provisions with sufficient detail to protect the tenant's investment in improvements and equipment?

WHY IT MATTERS:

Data center leases involve significant tenant capital investment in improvements and equipment. Poorly structured lease terms can impair financing, limit operational flexibility, and create significant exposure at expiration or landlord default.

09. Construction, Development & Project Delivery

- ☐ If a build-to-suit or development arrangement, are the development agreement terms clearly defined, including scope of work, specifications, delivery timeline, and acceptance criteria?
- ☐ Are construction cost overruns addressed through guaranteed maximum price (GMP), stipulated sum, or other risk allocation mechanisms?
- ☐ Are delay liquidated damages, force majeure provisions, and schedule relief mechanisms adequate to protect the owner/tenant?
- ☐ Has the construction contract been reviewed for lien waiver, bonding, and insurance requirements?
- ☐ Are construction permits and approvals (including building, grading, electrical, and mechanical permits) identified and the permitting timeline understood?

- ☐ Are there restrictions on construction traffic, hours, noise, or staging that could be imposed as mitigation or by local ordinance, HOA, or adjacent property owners? (See also ***Site Selection & Land Use Risk Checklist***, Section 6.)
- ☐ Are labor availability, prevailing wage requirements, and workforce constraints understood for the project location? (See also ***Site Selection & Land Use Risk Checklist***, Section 6.)
- ☐ Is sufficient laydown, staging, and temporary construction access available on-site or on adjacent parcels? (See also ***Site Selection & Land Use Risk Checklist***, Section 6.)
- ☐ Are design-build, EPC, or construction management delivery methods being evaluated? Is the delivery method consistent with the owner's risk tolerance and timeline requirements?

WHY IT MATTERS:

Construction and development risk—including permitting delays, cost overruns, and schedule disruptions—can materially affect project cost, commissioning timelines, and financing milestones. Clear allocation of these risks in the development agreement is critical.

10. Financing, Security Interests & Lender Requirements

- ☐ Is the real estate transaction structured to support project financing, including mortgage or deed of trust, leasehold mortgage, or mezzanine financing?
- ☐ Are lender consent, estoppel, and SNDA requirements identified and addressed in transaction documents?
- ☐ Does the ground lease or purchase agreement include provisions that satisfy lender requirements (e.g., notice and cure rights, lender protections, assignment restrictions)?
- ☐ Are environmental indemnities, insurance requirements, and representations and warranties sufficient to satisfy lender due diligence standards?
- ☐ Are there restrictions on future liens, encumbrances, or subordination that could impair refinancing flexibility?
- ☐ Is the power procurement structure—whether utility-supplied, behind-the-meter, or through a power purchase agreement—compatible with the real estate financing structure?
- ☐ Are appraisal and valuation considerations understood, including the treatment of specialized data center improvements and equipment versus real property?

WHY IT MATTERS:

Misalignment between real estate transaction terms and lender requirements can delay closing, increase financing costs, or limit future capital options.

11. Insurance & Risk Transfer

- ☐ Has a comprehensive insurance program been evaluated, including property (all-risk), builder's risk, general liability, environmental liability, and business interruption coverage?
- ☐ Are coverage limits adequate for replacement cost of specialized data center improvements and equipment?
- ☐ Are there any exclusions or sublimits in insurance policies that could create gaps in coverage for data center-specific risks (e.g., electrical/mechanical breakdown, flood, earthquake, windstorm)?

- ☐ Are landlord and tenant insurance obligations clearly defined in the lease, including waiver of subrogation provisions?
- ☐ Has cyber insurance been evaluated for risks related to data hosted in the facility?
- ☐ Are contractor and subcontractor insurance requirements adequate, including additional insured endorsements and hold-harmless provisions?

WHY IT MATTERS:

Data center facilities concentrate significant value in a single location. Gaps in insurance coverage can expose the owner or operator to catastrophic loss.

12. Ongoing Operations, Compliance & Exit Planning

- ☐ Are operational requirements—including 24/7 access, security, noise, vibration, and heat discharge—compatible with lease terms, local regulations, and neighboring land uses?
- ☐ Are emergency services (fire, EMS) adequate for the site? Has the applicable fire district or emergency services provider been identified and consulted? (See also ***Site Selection & Land Use Risk Checklist***, Section 7.)
- ☐ Are ongoing compliance obligations—including property tax filings, incentive program reporting, environmental monitoring, and permit conditions—tracked and managed?
- ☐ Are there restrictions on the transfer, sale, or change of control of the property or entity holding the property?
- ☐ Has exit planning been addressed, including the ability to sell, sublease, or repurpose the facility if the data center use is no longer viable? (See also ***Site Selection & Land Use Risk Checklist***, Section 7.)
- ☐ Can the site accommodate a different power source, alternative technology, or use conversion if market conditions change? (See also ***Site Selection & Land Use Risk Checklist***, Section 7.)
- ☐ Are power contracts, water rights, and utility agreements assignable in connection with a sale or transfer of the facility?
- ☐ Are decommissioning, restoration, or environmental closure obligations understood and budgeted?

WHY IT MATTERS:

Long-term operational compliance and exit flexibility directly affect asset value and the ability to adapt to changing technology, market, and regulatory conditions. Limited flexibility can constrain future strategic options.

When To Call Us

YOU SHOULD INVOLVE US EARLY IF:

- Real estate acquisition involves multiple parcels, complex assemblage, or phased development
- Title, easement, mineral rights, or access issues could constrain development or operations
- Transaction structure requires coordination with financing, tax incentives, or power procurement
- Power delivery infrastructure requires land rights, easements, or site plan coordination with the real estate transaction
- Ground lease or build-to-suit terms require negotiation to protect long-term investment
- Environmental conditions or natural hazard exposure require risk allocation and indemnification
- Mineral rights are severed or subsurface activity poses a risk to operations
- National security or foreign ownership considerations affect transaction structure
- Exit, transfer, or change-of-control scenarios need to be addressed in transaction documents

We help clients structure real estate transactions, manage due diligence and deal execution risk, and build long-term flexibility into data center development strategies.

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