DATA CENTER CHECKLIST

SITE SELECTION & LAND USE RISK

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 for new or expanded data center developments.

01. Zoning, Land Use & Entitlement Risk

- ☐ Is the proposed data center use permitted as-of-right, conditionally permitted, prohibited, or not specifically addressed under current zoning regulations? If not specifically addressed, is there a similar use or code interpretation process that could be used to confirm the use is allowed? If prohibited (either explicitly or implicitly), is there a text amendment, annexation, rezone, or other pathway to changing the map/code to allow for data centers?
- ☐ Who is the regulatory body (city or county)? Are there any interlocal agreements? Any anticipated changes to jurisdictional boundaries?
- ☐ Are there development limits or requirements that could constrain data center development on the site, such as setbacks, dimensional standards (height/square footage/lot coverage/FAR), building design criteria, parking requirements, utility siting constraints, noise limits, landscaping, screening, operational restrictions, etc.?
- ☐ Are there overlay districts, specific plans, planned unit developments, or form-based codes that impose additional requirements beyond base zoning?
- ☐ Is the site near potentially incompatible uses, such as residences or airports?
- ☐ Are site plan review, special use permits, variances, or development agreements required?
- ☐ What are the anticipated entitlement timelines and key approval milestones? Are there appeal rights or referendum processes that could extend timelines?
- ☐ What vesting protections can be secured? And what is the duration of vesting?

- ☐ What is the local government's authority to impose conditions of approval?
- ☐ Have local authorities recently approved, delayed, or denied data center or comparable infrastructure projects?
- ☐ Are there pending zoning amendments, moratoria, or policy changes that could affect approvals?
- ☐ Are there any enterprise zones or opportunity zones that may offer additional benefits?

WHY IT MATTERS:

Zoning and entitlement risk can materially affect project timelines, financing assumptions, and overall feasibility.

02. Community, Political & Public Opposition Risk

- ☐ Is there a history of community opposition to data centers or large-scale infrastructure projects in the area?
- ☐ Is the site located in a region experiencing rapid growth or development pressure? Are there competing demands for land (e.g., for housing, agriculture, open space preservation)?
- ☐ Does the developer, operator, or end-user have a track record in this market that could affect community perception (positive or negative)?
- ☐ Have key stakeholders been identified, including neighborhood/homeowners associations, environmental organizations, agricultural interests, business groups, and civic organizations?
- ☐ Are there tribal nations with interests in the area and has tribal consultation been conducted or planned?
- ☐ Have concerns been raised regarding noise, heat, water usage, visual impact, or environmental footprint?
- ☐ Are local elected officials supportive, neutral, or opposed to data center development?
- ☐ Are there any upcoming elections that could change the composition of the decision-making body (e.g., city council, board of supervisors, planning commission)?
- ☐ Have elected officials made prior commitments or public statements regarding land use in the area, data center development, or related issues (e.g., water conservation, power)?
- ☐ Are there pending or potential measures, initiatives, or referenda that could affect data center development?
- ☐ Is there a strategy to manage public engagement, hearings, and stakeholder communications?
- ☐ Have there been any commitments or investments in the community (e.g., local hiring, workforce training, infrastructure improvements)?
- ☐ Are there opportunities to partner with local entities?
- ☐ What economic or other benefits can be quantified and communicated (e.g., tax revenue, jobs, local spending)?

WHY IT MATTERS:

Community and political resistance can lead to regulatory delays, litigation exposure, or additional conditions on development.

03. Environmental, Water & Sustainability Constraints

- ☐ Are environmental assessments, impact statements, or other regulatory reviews required? What specific environmental review process is anticipated and what is the expected level of review (categorical exemption, mitigated determination of nonsignificance, full environmental impact statement)?
- ☐ Are there federal permits, funding, or land that would trigger NEPA review (e.g., wetlands permit, FAA review, federal land, grid interconnection)?
- ☐ What is the typical timeline for environmental review?
- ☐ Is water availability sufficient to support cooling needs at projected AI-scale loads? What is the source of water (municipal system, groundwater, surface, recycled)?
- ☐ In prior appropriation states (western US), are water rights secured or available for purchase/lease, and what is the priority date and reliability of those rights?
- ☐ Has a will-serve letter been obtained from the water provider and does it commit to specific volumes?
- ☐ Are there pending water rights adjudications or groundwater sustainability plans that could impact supply?
- ☐ What are the wastewater discharge requirements (connection to sewer, onsite treatment, zero liquid discharge)?
- ☐ Is an NPDES permit required and what are effluent limits?
- ☐ Is the site located in a nonattainment area for any criteria pollutants under the Clean Air Act?
- ☐ What air permits are required for emergency generators, and what are emission limits?
- ☐ Are there limits on generator runtime and how do these limits affect operational flexibility?
- ☐ Are there state or local greenhouse gas emission reporting, reduction, or offset requirements?
- ☐ Are there wetlands, floodplains, or other critical areas on the site? Are they mapped?
- ☐ Has a biological assessment or habitat survey been conducted to identify threatened, endangered, or sensitive species or protected habitats?
- ☐ Are there migratory bird concerns?
- ☐ Are there any trees or vegetation subject to protection?
- ☐ Has a Phase 1 Environmental Site Assessment been completed and is there any contamination issues present? Is the site subject to any regulatory oversight for contamination/cleanup (state cleanup, RCRA, Superfund)? If so, what is the status of the remediation?
- ☐ Are there cultural or archaeological resource constraints?
- ☐ Do local, state, or federal sustainability requirements impose operational or reporting obligations?

WHY IT MATTERS:

Environmental and water constraints increasingly determine whether a site can be developed or expanded as planned.

04. Energy Access & Infrastructure Readiness

- ☐ Is sufficient power capacity available at the site within required timelines?
- ☐ Are grid interconnection agreements, utility upgrades, or transmission approvals required?
- ☐ Are there known congestion, curtailment, or reliability issues affecting the area?
- ☐ Can the site support future densification or expansion as AI demand grows?
- ☐ Is there an existing utility corridor or right-of-way for a transmission line? If so, are there access conflicts? Is there a need to secure access to third-party land?
- ☐ Are there underground or above ground restrictions for a transmission line?

WHY IT MATTERS:

Sites without scalable energy access risk becoming stranded assets, regardless of land availability.

05. National Security & Sensitive Location Considerations

- ☐ Is the site located near sensitive government, military, or critical energy infrastructure facilities?
- ☐ Could proximity trigger heightened regulatory scrutiny or national security review?
- ☐ Are there restrictions on foreign ownership, control, or access based on location?
- ☐ Has national security risk been evaluated alongside zoning and environmental considerations?

WHY IT MATTERS:

Location-based national security concerns can introduce regulatory review even in the absence of foreign investment.

06. Construction, Access & Logistics Feasibility

- ☐ Does the site support heavy construction, equipment staging, and delivery access?
- ☐ Is there sufficient on-site laydown space?
- ☐ Are there temporary construction access roads required?
- ☐ Are there restrictions on construction hours, noise, or transportation routes?
- ☐ Are roads, bridges, and utilities adequate for specialized equipment and materials? Are there use conflicts with that infrastructure?
- ☐ Are there stormwater controls during grading?
- ☐ Has local labor availability and supply chain reliability been assessed?
- ☐ Is the site easily accessible or remote?

WHY IT MATTERS:

Logistical constraints can materially affect construction schedules, costs, and contractor performance.

07. Long-Term Flexibility & Exit Considerations

- ☐ Can the site accommodate future expansion, densification, or alternative uses?
- ☐ Can the site accommodate a different power source?
- ☐ Are there land use restrictions that limit repurposing or resale?
- ☐ Are there operational restrictions?
- ☐ Are power contracts reassignable?
- ☐ Does the site align with long-term regulatory, energy, and sustainability trends?
- ☐ Have exit scenarios been evaluated from a land use and entitlement perspective?

WHY IT MATTERS:

Limited long-term flexibility can reduce asset value and constrain future strategic options.

When To Call Us

YOU SHOULD INVOLVE US EARLY IF:

- A site requires rezoning, variances, or discretionary land use approvals
- Community or political opposition is anticipated
- Environmental, water, or sustainability constraints are present
- Power availability is uncertain or subject to extended lead times
- National security or sensitive-location issues may apply
- Long-term flexibility is critical to the project's investment thesis

We help clients evaluate site viability early, manage land use and regulatory risk, and structure development strategies that protect timelines, capital investment, and long-term optionality.

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