STATE INTERVENTION IN LOCAL ZONING: LESSONS FROM HOUSING APPLIED TO DATA CENTERS

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There is growing regulatory tension at the intersection of data center development and local land use law. As states aggressively court data centers with tax incentives and economic policies, they have largely declined to regulate where and how these facilities are sited. Local governments, left to absorb the consequences, have responded unevenly, attempting to fit extraordinary land, water, power, and noise-intensive data centers into zoning frameworks designed for far less demanding industrial uses. The result has been a cycle of uncertainty and conflict: developers face unpredictable approvals, moratoria, and litigation, while residents bear escalating infrastructure strain, environmental impacts, and diminished trust in local governance.

Drawing on the history of state intervention in exclusionary single-family zoning during the affordable housing crisis, this Note contends that states can reconcile statewide economic objectives with local planning concerns through a light preemption framework for data centers. Just as states intervened in housing markets not to eliminate local zoning, but to discipline it through procedural mandates and objective standards, states can similarly structure data center siting to reduce local obstruction while preserving community protections.

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INTRODUCTION

On April 15, 2025, an X user posed a seemingly innocuous question to the internet: "I wonder how much money OpenAI has lost in electricity costs from people saying 'please' and 'thank you' to their models."[1] The following day, Sam Altman, the chief executive officer of OpenAI, responded in earnest: "tens of millions of dollars well spent—you never know."[2] Nearly two-thirds of artificial intelligence (AI) users are polite to their chatbots,[3] with nearly one-fifth of that group saying "please" and "thank you" to protect themselves from a "possible AI uprising."[4] But how do these seemingly innocuous interactions with AI programs cost "tens of millions of dollars"?[5]

ChatGPT is OpenAI's generative AI chatbot.[6] The average ChatGPT query uses 0.34 watt-hours and 0.000085 gallons of water—the equivalent of powering a conventional oven for one second and using one-fifteenth of a teaspoon of water.[7] And when ChatGPT responds to the niceties of a "please" and "thank you" with the three words "you are welcome," it uses forty to fifty milliliters of water.[8]

Considering that ChatGPT processes over two billion queries a day,[9] the intangible nature of AI becomes more tangible when viewed through a different lens—the resources it must consume to operate. This begs the question: where does the water and electricity come from, and who is supplying it? The answer: data centers.

Data centers house information technology (IT) infrastructure[10] and serve a critical function in processing, storing, and distributing data, water, and

1. Tomie (@tomieinlove), X (Apr. 15, 2025, at 19:28 ET), https://x.com/tomieinlove/status/1912287012058722659 [https://perma.cc/4QB6-2QUH].

2. Sam Altman (@sama), X (Apr. 16, 2025, at 19:15 ET), https://x.com/sama/status/1912646035979239430?s=46 [https://perma.cc/3S54-A5DN].

3. A chatbot is an automated computer program that simulates conversations with human users. *See* Chiranjib Chakraborty, Soumen Pal, Manojit Bhattachary, Snehasish Dash & Sang-Soo Lee, *Overview of Chatbots with Special Emphasis on Artificial Intelligence-Enabled ChatGPT in Medical Science*, FRONTIERS IN A.I., Oct. 2023, at 1, 2.

4. *See* Sherin Shibu, *Saying 'Please' and 'Thank You' to ChatGPT Costs OpenAI 'Tens of Millions of Dollars'*, ENTREPRENEUR (Apr. 21, 2025), https://www.entrepreneur.com/business-news/saying-thank-you-to-chatgpt-costs-millions-in-electricity/490341 (on file with the *Fordham Law Review*).

5. Altman, *supra* note 2.

6. *See Introducing ChatGPT*, OPENAI (Nov. 30, 2022), https://openai.com/index/chatgpt/ [https://perma.cc/772H-TGVN].

7. *See* Sam Altman, *The Gentle Singularity*, BLOG OF SAM ALTMAN (June 10, 2025, at 17:12 ET), https://blog.samaltman.com/the-gentle-singularity [https://perma.cc/ZCP7-QW82].

8. *See* Shibu, *supra* note 4.

9. *See* Shubham Singh, *ChatGPT User Stats (February 2026)—Growth & Usage Data*, DEMAND SAGE, https://www.demandsage.com/chatgpt-statistics/ [https://perma.cc/KCJ4-FUSG] (last visited Feb. 18, 2026).

10. IT infrastructure is the hardware, software, and networking components data centers use to carry out their functions. *See* Mesh Flinders & Ian Smalley, *What Is IT Infrastructure?*, IBM, https://www.ibm.com/think/topics/infrastructure [https://perma.cc/X8BW-CY43] (last visited Jan. 11, 2026).

electricity for AI programs.[11] Given the incredible national surge in AI technologies and their use, there is a corresponding demand for data centers to support this trend.[12]

While thirty-seven states have rushed to adopt legislation incentivizing the construction of data centers,[13] competing to secure lucrative tax revenue from an emergent sector, these states have also been silent on regulating where and how data centers can be situated.[14] This silence is salient: data centers differ from other industrial buildings because their construction requires a significant amount of land, water, and electricity.[15] Today, U.S. data centers consume about 4.4 percent of the nation's electricity, which may increase to nearly 12 percent by 2028.[16] But due to the strain they have on local resources, localities nationwide are pushing back against data center development in their backyards,[17] leaving states wondering how to support their economic policies while protecting the welfare of their localities.

The need for data center construction in the coming years—and the equal need to protect local residents from its harmful effects—is analogous to the need for affordable housing.[18] In the wake of a national housing crisis, states realized they had to preempt localities' single-family housing zoning policies to support their goal of developing more affordable housing.[19] The data center development boom presents a similar narrative: states seek to support their policy goals of generating revenue through securing data center development, while protecting their constituents. They thus must intervene and set guidelines for their localities to follow.

This Note argues for a recalibrated state-local framework that governs the siting and regulation of data centers, emphasizing the need for objective, infrastructure-based standards that preserve local planning authority while

11. *See What Is a Data Center?*, CISCO, https://www.cisco.com/c/en_ca/solutions/data-center-virtualization/what-is-a-data-center.html [https://perma.cc/RZ9C-QMPS] (last visited Jan. 11, 2026).

12. *See* Felicity Barringer, *Thirsty for Power and Water, AI-Crunching Data Centers Sprout Across the West*, STAN. UNIV. BILL LANE CTR. FOR THE AM. WEST (Apr. 8, 2025), https://andthewest.stanford.edu/2025/thirsty-for-power-and-water-ai-crunching-data-centers-sprout-across-the-west/ [https://perma.cc/KW6Q-ENAV].

13. This type of legislation frequently comes in the form of exemptions on sales tax, property tax, and/or use tax. *See Policy Snapshot: Data Center Incentives*, NAT'L CONF. OF STATE LEGISLATURES (NOV. 17, 2025), https://www.ncsl.org/fiscal/policy-snapshot-data-center-incentives [https://perma.cc/PRQ7-F8SA].

14. *See* HUSCH BLACKWELL, TAX INCENTIVES FOR DATA CENTERS: 50 STATE SURVEY (2024), https://hbfiles.blob.core.windows.net/webfiles/TaxIncentivesforDataCenters50StateSurvey.pdf [https://perma.cc/2GK5-8HAL] (collecting state tax incentive statutes).

15. *See infra* Part I.B.3.

16. *See* ARMAN SHEHABI ET AL., 2024 UNITED STATES DATA CENTER ENERGY USAGE REPORT, LAWRENCE BERKELEY NAT'L LAB'Y 5–6 (2024), https://escholarship.org/content/qt32d6m0d1/qt32d6m0d1.pdf?v=lg [https://perma.cc/ZZ2W-CYVE].

17. *See infra* Part II.B.

18. *See generally* Maria Massimo, Note, *Housing as a Right in the United States: Mitigating the Affordable Housing Crisis Using an International Human Rights Law Approach*, 62 B.C. L. REV. 273 (2021).

19. *See Developments in the Law—Climate Change*, 135 HARV. L. REV. 1524, 1592 (2022).

addressing regional housing, land-use, and environmental pressures. This Note argues that state affordable housing legislation presents a helpful model for achieving these policy goals. Part I discusses how localities have used zoning power to legislate more affordable housing and details the infrastructural benefits and drawbacks of modern data centers. Part II identifies the key regulatory issues data centers face and how localities are zoning around them. Part II then compares this emerging issue with how states preempted local zoning policies to stimulate the production of affordable housing. Finally, Part III contends that states should draw on the same legislative frameworks and strategies used to stimulate affordable housing production to ensure their localities effectively zone for data centers.

I. AFFORDABLE HOUSING AND DATA CENTERS

This Note begins by describing the history and current landscape of both the affordable housing crisis and data center development. Part I.A discusses zoning power, the history of single-family zoning, and how local residents resist multifamily affordable housing. Using this foundational framework, Part I.B gives an overview of data centers and their infrastructure.

A. Zoning and Affordable Housing

Localities have historically zoned against the development of denser housing, such as apartments or duplexes, in favor of less dense single-family housing.[20] Part I.A.1 discusses a brief history of zoning power, while Part I.A.2 examines how localities have used their zoning power to exclude the development of dense, affordable housing.

1. A History of Zoning

Zoning is the legislative division of a locality into separate districts, with different regulations within each district dictating land use, building size, and the like.[21] Zoning is an archetypical local governmental power used to control land use,[22] despite being a relatively recent development in American history.[23]

In 1923, the U.S. Department of Commerce drafted the Standard State Zoning Enabling Act[24] (SSZEA), giving states model language for use in

20. *See id.*

21. *Zoning*, BLACK'S LAW DICTIONARY (12th ed. 2024).

22. *See* Richard Briffault, *Our Localism: Part I—the Structure of Local Government Law*, 90 COLUM. L. REV. 1, 3 (1990) ("[Z]oning [is] the principal operation[] of local governments.").

23. In 1916, New York City became the first city in the nation to enact a comprehensive zoning resolution. *See* James E. Berger, *Zoning Adult Establishments in New York: A Defense of the Adult-Use Zoning Text Amendments of 1995*, 24 FORDHAM URB. L.J. 105, 115 (1996).

24. U.S. DEP'T OF COM., ADVISORY COMM. ON ZONING, A STANDARD STATE ZONING ENABLING ACT UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATION (rev. ed. 1926), https://www.govinfo.gov/content/pkg/GOVPUB-C13-18b3b6e632119b6d94779f558

municipal zoning.[25] Almost every state has adopted the SSZEA, allowing its localities to regulate nearly all matters of land use.[26] Shortly after, the U.S. Supreme Court held in *Village of Euclid v. Ambler Realty Co.*[27] that localities have the state-delegated right to engage in zoning so long as such ordinances are not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."[28] The Court likened a municipality's right to preserve a neighborhood's desirability to their right to reduce nuisance.[29] *Euclid* upheld the concept of "use zoning," under which a locality establishes zoning ordinances to determine how land in a specific area can be used—such as for residential, commercial, industrial, or mixed-use purposes.[30]

While *Euclid* set the national precedent for the legality of zoning authority, some state courts adopted more stringent standards. In 1975, the Supreme Court of New Jersey held in *Southern Burlington County NAACP v. Township of Mount Laurel*[31] ("*Mount Laurel I*") that the state's due process and equal protection requirements mandate that every locality ensure a realistic opportunity for the construction of affordable housing.[32] While the court also encouraged the state legislature to aid in the production of affordable housing, little changed following the *Mount Laurel I* decision.[33] Eight years later, the New Jersey court decided *Southern Burlington County NAACP v. Township of Mount Laurel*[34] ("*Mount Laurel II*"), which prescribed guidelines and procedures for localities to implement *Mount Laurel I*.[35] Yet localities continued to resist the court's authority, remaining steadfast in their belief that they controlled all local zoning power.[36] In response, the New Jersey legislature created a Council on Affordable Housing (COAH) to preside over cases of exclusionary zoning rather than

b9d3873/pdf/GOVPUB-C13-18b3b6e632119b6d94779f558b9d3873.pdf [https://perma.cc/RZ37-YLBD].

25. *See Developments in the Law—Climate Change*, *supra* note 19, at 1594.

26. *See* Brian J. Connolly & David A. Brewster, *Building a More Equitable Land Use Regulatory System: Toward a Twenty-First-Century Zoning Enabling Act*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 493, 494 (2021).

27. 272 U.S. 365 (1926).

28. *See id.* at 395.

29. *See id.* at 387–88; *see also* David Schleicher, *City Unplanning*, 122 YALE L.J. 1670, 1681 (2013).

30. *See Zoning*, BLACK'S LAW DICTIONARY (12th ed. 2024).

31. 336 A.2d 713 (N.J. 1975).

32. *See* Paula Franzese, Mount Laurel III*: The New Jersey Supreme Court's Judicious Retreat*, 18 SETON HALL L. REV. 30, 31 (1988).

33. *See id.* at 32; Prentiss Dantzler, *Exclusionary Zoning: State and Local Reactions to the* Mount Laurel *Doctrine*, 48 URB. LAW. 653, 657–64 (2016).

34. 456 A.2d 390 (N.J. 1983).

35. *See* Franzese, *supra* note 32, at 33–34. Notably, the Mount Laurel cases are arguably outliers on exclusionary zoning cases in the United States, as most states merely employ heightened review for the denial of affordable housing. *See* Gerald S. Dickinson, *Inclusionary Eminent Domain*, 45 LOY. U. CHI. L.J. 845, 872 n.124 (2014). New Jersey went further by mandating the implementation of affordable housing. *Id.*

36. *See* Dantzler, *supra* note 33, at 669.

leaving them to the courts.[37] Yet state leaders still resisted implementing *Mount Laurel II* until the COAH was dissolved in 2015 for being "ineffective."[38]

In 2024, New Jersey further intervened with a landmark affordable housing law, which "add[ed] teeth to the *Mount Laurel* framework" by codifying the doctrine, making it harder for affluent localities to block affordable housing through state-mandated enforcement mechanisms.[39]

2. Zoning Responses to the Affordable Housing Crisis

Many localities nationwide were similarly concerned with keeping property values high, as evidenced by the refusal to comply with the *Mount Laurel* doctrines, which resulted in exclusionary zoning policies that suppressed the availability of denser housing and developable land.[40] Many of these zoning policies included single-family zoning mandates.[41] Single-family residential zones are areas within the locality where only structures built for single families are permitted—prohibiting apartment complexes, commercial uses, or condominiums.[42] The majority of these zones mandate that houses be "detached," requiring a lawn that separates the structure from the property line.[43]

Residents have long resisted efforts to introduce denser or more affordable housing near single-family districts. Homeowner associations and civic groups mobilized to preserve low-density zoning, contending that new development would increase traffic, overcrowd schools, and diminish the quiet residential character of their neighborhoods.[44] At public hearings, opponents of denser housing often described apartment buildings as "out of scale" with the neighborhood, warning that they would produce excess noise, cast shadows, and erode open space.[45] Others have argued that

37. *See id.* at 670.

38. Tim Evans, *New Jersey's Housing Landscape: The Mount Laurel Doctrine and the Search for the Missing Middle*, N.J. FUTURE (July 30, 2024), https://www.njfuture.org/news/new-jerseyaes-housing-landscape-the-mount-laurel-doctrine-and-the-search-for-the-missing-middle/ [https://perma.cc/8NAW-TZS6].

39. With state intervention, "the vast majority of municipalities in New Jersey are now creating affordable homes." *See* Jag Davies, *Mount Laurel at 50: New Jersey's Blueprint for Dismantling Residential Segregation*, STATE CT. REP. (Sep. 2, 2025), https://statecourtreport.org/our-work/analysis-opinion/mount-laurel-50-new-jerseys-blueprint-dismantling-residential-segregation [https://perma.cc/2RHK-HZUF].

40. *See Developments in the Law—Climate Change*, *supra* note 19, at 1595; Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 510 (1977); *see also* John Infranca, *Singling Out Single-Family Zoning*, 111 GEO. L.J. 659, 666–67, 674 (2023).

41. *See Developments in the Law—Climate Change*, *supra* note 19, at 1595.

42. *See* SONIA A. HIRT, ZONED IN THE USA 28–29 (2014).

43. *See id.*

44. *See Developments in the Law—Climate Change*, *supra* note 19, at 1595–96.

45. *See, e.g.*, S.F. PLAN. DEP'T, EXECUTIVE SUMMARY APPEAL OF PRELIMINARY MITIGATED NEGATIVE DECLARATION 31 (2021), https://commissions.sfplanning.org/cpc

higher-density zoning would overburden local water, sewer, and power systems, and that municipal infrastructure was "never designed" to support such intense use.[46]

These single-family zoning policies have only continued to grow stricter,[47] with three-quarters of land now zoned exclusively for single-family detached housing in most U.S. cities.[48] Setting aside land for single-family detached housing makes it more difficult for new community members to find affordable units in apartment buildings or access middle housing, such as duplexes and triplexes.[49] Accordingly, states have stepped in to stimulate and encourage the production of middle housing in myriad ways.[50]

B. Data Centers: Opportunities and Risks

The strong practice of single-family zoning forecasts a similar issue in the data center industry: localities seek to accommodate data center development, yet its residents are unwilling and resistant to do so. Part I.B.1 gives a brief overview of data centers, Part I.B.2 demonstrates why they are essential and desirable pieces of infrastructure, and Part I.B.3 focuses on the negative externalities created by data centers that residents are forced to bear.

1. An Overview of Data Centers

In the early phases of the internet, popular services like email and digital photos were stored on the user's device directly.[51] But as the internet modernized, these services shifted away from on-device storage to "cloud" storage, which delivers these services to devices over the internet from off-site servers.[52]

A familiar example comes in the form of Apple's "iCloud."[53] When a user takes photos on their iPhone, they can store those photos on the device

packets/2015-009955ENV.pdf [https://perma.cc/2TSL-MECL] (compiling community and stakeholder responses to the construction of an apartment building in San Francisco).

46. *See* Paul Barter, *Transport Dilemmas in Dense Urban Areas: Examples from Eastern Asia*, *in* COMPACT CITIES 271, 279 (Mike Jenks & Rod Burgess eds., 2004).

47. *See* Schleicher, *supra* note 29, at 1674.

48. *See Developments in the Law—Climate Change*, *supra* note 19, at 1595; *see also* Adie Tome, Joseph W. Kane, Jenny Schuetz & Caroline George, *We Can't Beat the Climate Crisis Without Rethinking Land Use*, BROOKINGS (May 12, 2021), https://www.brookings.edu/research/we-cant-beat-the-climate-crisis-without-rethinking-land-use [https://perma.cc/5FCF-WD6L].

49. *See* Brian J. Connolly, *The Black Box of Single-Family Zoning Reform*, 65 B.C. L. REV. 2327, 2332–33 (2024).

50. *See* Davies, *supra* note 39; *see also infra* Part II.C.

51. *See* LUIZ ANDRÉ BARROSO, JIMMY CLIDARAS & URS HÖLZLE, THE DATACENTER AS A COMPUTER 1 (2d ed. 2013).

52. Servers are powerful computers that deliver data to client machines, like personal computers and smartphones. *See* Bill Kte'pi, *Servers*, EBSCO (2024), https://www.ebsco.com/research-starters/computer-science/servers [https://perma.cc/7SRM-9LKK].

53. *iCloud User Guide*, APPLE INC., https://support.apple.com/guide/icloud/welcome/icloud [https://perma.cc/PP8V-82U7](last visited Feb. 18, 2026).

itself.[54] Alternatively, they can elect to have Apple store their photos "in the cloud," allowing the user to free up space on their device while Apple stores the photo on off-site servers.[55] When the user seeks to access these photos, cloud technology and supporting infrastructure facilitate the transfer of the off-site stored photo to the user.[56]

In their simplest form, traditional data centers are responsible for hosting the IT infrastructure that builds, runs, and delivers cloud applications and services.[57] Data centers are generally tailored and customized to meet the needs of their users, creating wide variation in data centers.[58] However, there are five common types of data centers: (1) enterprise data centers,[59] (2) colocation data centers,[60] (3) cloud data centers,[61] (4) edge data centers,[62] and (5) hyperscale data centers.[63]

Although data centers vary in form, their functions are largely similar. When a user sends a digital request—such as opening a web page or streaming a video—the command travels to a data center, where thousands of networked servers receive, process, and return the information to the user in real time.[64]

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54. *See* Emma, *How Does iCloud Photos Work?: Learn Features for iPhone, Mac, and Google Photos*, MULTCLOUD (May 7, 2025), https://www.multcloud.com/explore/how-does-icloud-photos-work-7201-ac.html [https://perma.cc/DGM4-YXNG].

55. *See id.*

56. *See id.*

57. *See* Stephanie Susnjara & Ian Smalley, *What Is a Data Center?*, IBM (Sep. 4, 2024), https://www.ibm.com/think/topics/data-centers [https://perma.cc/D7JM-KXP2].

58. *See* Susan J. Booth, *Behind the Walls of a Digital Palace: Understanding, Buying, Operating, and Financing Data Centers*, PRAC. REAL EST. LAW., July 2024, at 12, 14 (2024).

59. In enterprise data centers, a single organization uses data for its own purposes, and the facilities are often located on corporate campuses to serve internal users. *See* CISCO, *supra* note 11.

60. In colocation data centers, an organization rents space within a data center owned by others and located off company premises. *See* Booth, *supra* note 58, at 15. Multiple organizations provide their own computing equipment, such as servers, and the data-center owner hosts and supplies the infrastructure for their servers, such as cooling systems and electricity. *See* CISCO, *supra* note 11.

61. In cloud data centers, a cloud service provider (CSP) houses and uses its own infrastructure to provide computing resources to third parties through a network. *See* Booth, *supra* note 58, at 16. CSPs are third-party companies that provide scalable computing resources that businesses can access on demand over the internet. *See What Is a Cloud Service Provider?*, GOOGLE CLOUD, https://cloud.google.com/learn/what-is-a-cloud-service-provider [https://perma.cc/K63T-PZNQ] (last visited Jan. 11, 2026).

62. Edge data centers are smaller and located closer to the end user, designed to process information locally rather than through centralized data centers and prioritize low latency. *See Why Edge Data Centers Are Being Built in the Suburbs*, LDP ASSOCS. INC. (Dec. 20, 2021), https://www.ldpassociates.com/why-edge-data-centers-are-being-built-in-the-suburbs/ [https://perma.cc/W9ZK-K95W]. Latency refers to the delay between a data request and its response, meaning that a data center located closer to the end user will have lower latency as they receive the information faster. *See id.*

63. Hyperscale data centers can support myriad uses but differ from other data centers due to their increased power and land size demands. *See* Booth, *supra* note 58, at 17. Hyperscale data centers typically support AI processing due to their power-intensive nature. *Id.*

64. *See* KONSTANTIN PILZ & LENNART HEIM, COMPUTE AT SCALE: A BROAD INVESTIGATION INTO THE DATA CENTER INDUSTRY 13 (2023), https://arxiv.org/pdf/2311.02651 [https://perma.cc/D9L2-79EZ].

While this basic request-and-response loop explains how data centers serve traditional internet services, the rise of AI programs has necessitated greater technological developments in data centers.[65] Unlike conventional applications, which primarily store information and retrieve it on command, AI systems must train on massive datasets, perform mathematical operations, and run complex models.[66] As a result, data centers built for email, photo storage, or webpage hosting require different structural needs for the scale, speed, and density required by modern AI workloads.[67]

These different needs require massive amounts of power, water, and land.[68] Some estimate that AI data centers will drive a 165 percent increase in data center electricity demand by 2030, and others approximate that the annual global demand for data center capacity may reach up to 219 gigawatts, up from a current demand of sixty gigawatts.[69] To illustrate this scale, just one gigawatt can power approximately 876,000 households for one year.[70]

Further, the electricity used to power these functions generates heat, which can damage data center infrastructure, so data centers require advanced water-based cooling systems to keep their systems functional.[71] Larger data centers capable of supporting AI workloads can thus consume up to five million gallons of water per day, equivalent to the water use of a town populated by 10,000 to 50,000 people.[72] The massive infrastructural needs of these data centers also require significant amounts of land, occupying at least 10,000 square feet.[73]

2. Opportunities Presented by Data Centers

Data centers' significant demands for water, electricity, and land present lucrative opportunities for states and localities through taxation and job creation. As a result, thirty-seven states have enacted legislation offering property, sales, and use tax exemptions to attract data center development for their economic benefits.[74] This legislation often requires minimum levels of job creation to receive the incentives.[75] In 2023, Virginia secured $31.4 billion and 78,140 jobs from data center construction and operations,

65. *See* Alexandra Jonker & Alice Gomstyn, *What Is an AI Data Center?*, IBM, https://www.ibm.com/think/topics/ai-data-center [https://perma.cc/5ER6-V47B] (last visited Jan. 11, 2026).

66. *See id.*

67. *See id.*

68. *See id.*

69. *See id.*

70. *See* Zach Stein, *Gigawatt (GW)*, CARBON COLLECTIVE (Jan. 9, 2024), https://www.carboncollective.co/sustainable-investing/gigawatt-gw [https://perma.cc/5DXG-KJAS].

71. *See* SHEHABI ET AL., *supra* note 16, at 40–45.

72. *See* Miguel Yañez-Barnuevo, *Data Centers and Water Consumption*, ENV'T & ENERGY STUDY INST. (June 25, 2025), https://www.eesi.org/articles/view/data-centers-and-water-consumption [https://perma.cc/7MGY-AP2F].

73. *See* Jonker & Gomstyn, *supra* note 65.

74. *See* NAT'L CONF. OF STATE LEGISLATURES, *supra* note 13.

75. *See id.*

due to "attractive tax incentives" and an "increasingly large pool of skilled workers."[76]

Beyond providing the state with economic benefits, data centers are the backbone of the technological revolution.[77] By the end of 2024, 1,240 data centers were built or approved for development in the United States.[78] Their infrastructure powers not only daily internet service needs but also innovative applications of AI in finance, healthcare, education, transportation, defense, and other sectors.[79] The promise of AI innovation powered by data centers has been recognized on the national scale, with President Donald J. Trump stressing that for the United States to "win[] the AI race . . . [w]e need to build and maintain vast AI infrastructure and the energy to power it."[80] Accordingly, AI technologies are projected to comprise 70 percent of data center workloads by 2030.[81]

3. Attendant Risks to Localities

While data centers are attractive to state and local economies for their lucrative tax revenues, this section discusses how their intensive power use, water use, noise production, and land use pose risks to localities.

Power Use. In the United States, data centers alone account for approximately 4.4 percent of total electricity consumption, and this figure is projected to reach between 6.7 and 12 percent by 2028.[82] Globally, AI's energy needs could account for as much as 21 percent of all electricity usage by 2030.[83] The local and regional impacts of this electricity use are pronounced.

76. *See* N. VA. TECH. COUNCIL, THE IMPACT OF DATA CENTERS ON VIRGINIA'S STATE AND LOCAL ECONOMIES 6 (2024), https://e1.nmcdn.io/assets/loudoun/wp-content/uploads/2025/05/2024-NVTC-Data-Center-Report.pdf [https://perma.cc/7TMA-VJQ4].

77. *See* Nicol Turner Lee & Darrell M. West, *The Future of Data Centers*, BROOKINGS (Nov. 5, 2025), https://www.brookings.edu/articles/the-future-of-data-centers/ [https://perma.cc/7KTU-CEWN].

78. *See* Dakin Campbell & Hannah Beckler, *See Where Data Centers Are Across the US on Our Interactive Map*, BUS. INSIDER (Sep. 29, 2025, at 10:18 ET), https://www.businessinsider.com/data-center-locations-us-map-ai-boom-2025-9 [https://perma.cc/LY4A-GHDM].

79. *See* Lee & West, *supra* note 77.

80. "Simply put, we need to 'Build, Baby, Build!'" EXEC. OFF. OF THE PRESIDENT, WINNING THE RACE: AMERICA'S AI ACTION PLAN 1 (2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf [https://perma.cc/B8B6-XVHG].

81. *See* Katerina Henjes, *The Growing Demand for Data Centers in the U.S.*, AM. ASS'N FOR THE ADVANCEMENT OF SCI. (Aug. 21, 2025), https://www.aaas.org/news/growing-demand-data-centers-us [https://perma.cc/82DC-J6AT].

82. *See* SHEHABI ET AL., *supra* note 16, at 5–6.

83. *See* Lee & West, *supra* note 77.

In Virginia, for example, data centers consume more than 25 percent of the state's electricity.[84] In Arizona, data center growth has similarly stressed the state's electric grid: Arizona Public Service (APS) reported that the average data center power request has grown to 500 megawatts.[85] In Michigan, the energy and utility company Consumers Energy estimated it would need to spend $500 million to build a new data center.[86]

Increased power consumption has significant effects on electricity costs, as wholesale electricity near data centers costs as much as 267 percent more than it did five years ago.[87] Utility companies are passing on this sharp price increase to local consumers.[88] Approximately two-thirds of the electricity consumed in the United States comes from state or regional grids, which means that these wholesale costs are impacting households and businesses. Even customers who are not located near a data center are affected, as their energy supply comes from the same grid.[89]

So while Virginia has secured lucrative revenue from the data center industry,[90] electricity bills for everyday consumers could rise as much as 25 percent.[91]

Water Use. Data centers consume large volumes of potable water, primarily for cooling the heat generated by servers.[92] Most facilities rely on

84. *See* Elly Boehmer, *Data Centers Could Derail Virginia's Clean Energy Progress*, ENV'T VA. (Nov. 18, 2024), https://environmentamerica.org/virginia/articles/data-centers-could-derail-virginias-clean-energy-progress/ [https://perma.cc/P698-M9TG].

85. Five-hundred megawatts is enough to power 375,000 homes. *See Data Centers Are Pushing Arizona's Grid to a Breaking Point*, DISTILLED (Jan. 14, 2026), https://www.distilled.earth/p/data-centers-are-pushing-arizonas [https://perma.cc/KU9D-LGDG]. In central Arizona, data centers account for 94 percent of the growth in energy demand. *See* Rhett B. Larson, *The Private Sector's Role in Arizona's Water Future*, 44 STAN. ENV'T L. REV. 243, 246 (2025).

86. *See* Carol Thompson, *Data Centers Fuel Fear of Higher Electricity Costs in Michigan*, GOV'T TECH. (Oct. 20, 2025), https://www.govtech.com/products/data-centers-fuel-fear-of-higher-electricity-costs-in-michigan [https://perma.cc/K63Y-9EUH].

87. *See* Josh Saul, Leonardo Nicoletti, Demetrios Pogkas, Dina Bass & Naureen Malik, *AI Data Centers Are Sending Power Bills Soaring*, BLOOMBERG (Sep. 25, 2025), https://www.bloomberg.com/graphics/2025-ai-data-centers-electricity-prices (on file with the *Fordham Law Review*). Wholesale electricity prices are the costs utilities and energy retailers pay to buy and sell large amounts of power in regional markets. *See id.*; Rachel Reed, *How Data Centers May Lead to Higher Electricity Bills*, HARV. L. TODAY (Sep. 3, 2025), https://hls.harvard.edu/today/how-data-centers-may-lead-to-higher-electricity-bills/ [https://perma.cc/TA82-W5WV].

88. *See* Saul et al., *supra* note 87.

89. *See id.*

90. *See* N. VA. TECH. COUNCIL, *supra* note 76, at 6.

91. *See* Dan Charles, Emily Kwong, Rebecca Ramirez, Berly McCoy & Marjorie Valburn, *Why a New Data Center in Your Area Could Change Your Electricity Bill*, NPR (Dec. 3, 2025), https://www.npr.org/2025/12/03/nx-s1-5626900/ai-data-center-cost-electric-bill [https://perma.cc/AS5Y-JVL9].

92. *See* SHEHABI ET AL., *supra* note 16, at 39. For example, Microsoft projects its annual water needs will triple this decade to 28 billion liters in 2030 to support its data center complexes, whereas that figure was 10.4 billion in 2024. *See* Adam Satarino, Paul Mozur & Karen Weise, *Microsoft Pledged to Save Water. In the A.I. Era, It Expects Water Use to Soar.*,

evaporative or chilled-water systems, which require a stable supply of fresh water.[93] Some data centers use as much as 500,000 gallons of water per day to cool their facilities.[94] A recent study reported that data centers worldwide consume between 312.5 and 764.6 billion liters annually.[95]

When data centers are sited in arid climates, such as Arizona, water use is even more sensitive.[96] For example, Meta's data center in Goodyear, Arizona, used around fifty-six million gallons of potable water annually, equivalent to 670 Goodyear households.[97] Other cities, like The Dalles, Oregon, reported similar metrics from Google's data centers: in 2021, one data center used 355.1 million gallons of water, more than 25 percent of the town's annual water use.[98] While the industry is responding with efficiency improvements,[99] water usage is still expected to increase up to nearly 14.5 billion gallons per year in the United States.[100] Increased water usage threatens to strain local water basins, pollute residents' drinking water, and raise the cost of water.[101] One county in Georgia raised its water rates 33 percent due to data center demand.[102]

Noise Production. Data centers produce continuous mechanical noise from their internal processes, which operate day and night.[103] Interior sound levels by the servers in data centers can exceed ninety decibels ("dBA"),[104]

N.Y. TIMES (Feb. 1, 2026), https://www.nytimes.com/2026/01/27/technology/microsoft-water-ai-data-centers.html (on file with the *Fordham Law Review*).

93. *See* Yañez-Barnuevo, *supra* note 72.

94. *See* Lee & West, *supra* note 77.

95. *See* Alex de Vries-Gao, *The Carbon and Water Footprints of Data Centers and What This Could Mean for Artificial Intelligence*, PATTERNS, Jan. 2026, at 1, 1. To highlight this magnitude, the estimated global annual consumption of bottled water is 446 billion liters. *See id.* at 9.

96. *See* Barringer, *supra* note 12.

97. *See id.*

98. *See* Sebastian Moss, *We Now Know How Much Water Google's Oregon Data Centers Use, After City Drops Lawsuit Against Journalists*, DATA CTR. DYNAMICS (Dec. 19, 2022), https://www.datacenterdynamics.com/en/news/we-now-know-how-much-water-googles-oregon-data-centers-use-after-city-drops-lawsuit-against-journalists/ [https://perma.cc/QEV3-3KJL].

99. For example, Google's data center fleet now uses recycled water at twenty-five sites and has pledged to replenish 120 percent of the fresh water it consumes by 2030. *See* Urs Hölzle, *Our Commitment to Climate-Conscious Data Center Cooling*, GOOGLE (Nov. 21, 2022), https://blog.google/company-news/outreach-and-initiatives/sustainability/replenishing-water/ [https://perma.cc/84JK-5QSS].

100. *See* KIRSTEN JAMES, SHARMA PERVEEN & BENJAMIN JACOBSON, CERES, DRAINED BY DATA CENTERS: THE CUMULATIVE IMPACT OF DATA CENTERS ON REGIONAL WATER STRESS 3 (2025), https://www.ceres.org/resources/reports/drained-by-data-the-cumulative-impact-of-data-centers-on-regional-water-stress [https://perma.cc/4DJA-3U9S].

101. *See id.* at 11; *see also* Eli Tan, *Their Water Taps Ran Dry When Meta Built Next Door*, N.Y. TIMES (July 16, 2025), https://www.nytimes.com/2025/07/14/technology/meta-data-center-water.html (on file with the *Fordham Law Review*).

102. *See* Lee & West, *supra* note 77.

103. *See What Are the 5 Main Causes of Noise in Data Centers?*, DATA CTR. KNOWLEDGE (Mar. 17, 2025), https://www.datacenterknowledge.com/data-storage/what-are-the-5-main-causes-of-noise-in-data-centers [https://perma.cc/PMV9-NWWA].

104. *See id.*

about as loud as a hairdryer or lawnmower.[105] External equipment, particularly rooftop cooling systems and backup generators, can "force[] neighboring areas to endure noise levels of 110 dBA,"[106] as loud as an average nightclub.[107]

For example, residents in Virginia have reported persistent hums and vibrations from nearby data centers, prompting local planning commissions to study decibel standards and setback requirements.[108] Mechanical noise associated with data center growth is a top community concern for Virginia residents.[109] One resident spent $20,000 to replace his windows in an attempt to muffle the sound and vibrations from data centers.[110]

Land Use. Data centers require extensive land to accommodate their infrastructure.[111] A single hyperscale data center campus may include multiple buildings exceeding one million square feet each.[112] Average site sizes for new hyperscale developments often exceed 200 to 500 acres.[113] As of 2024, the average size of a data center is 224 acres—a 144 percent increase since 2022[114]—making such land no longer available for farming, nature, or housing.[115] For example, Virginia is home to 35 percent of hyperscale data centers worldwide.[116]

The physical layout of data centers also affects surrounding land uses, as well as the aesthetic character of the area, since facilities typically feature windowless facades and perimeter fencing.[117] In localities where data

105. *See* Carly Sygrove, *Decibel Chart: All You Need to Know*, MDHEARING (May 7, 2024), https://www.mdhearingaid.com/blog/decibel-chart/ [https://perma.cc/48SC-WA4T].

106. *See* DATA CTR. KNOWLEDGE, *supra* note 103.

107. *See* Sygrove, *supra* note 105.

108. Prince William County amended their zoning code limiting maximum sound levels in residential areas to sixty dBA during the day, and fifty-five dBA at night. *See* PRINCE WILLIAM CNTY., VA., CODE OF ORDINANCES § 14-4(a)(1) (2025).

109. *See* JOINT LEG. AUDIT & REV. COMM'N, DATA CENTERS IN VIRGINIA 75–78 (2024), https://jlarc.virginia.gov/pdfs/reports/Rpt598.pdf [https://perma.cc/HC3F-MY59].

110. *See* Dakin Campbell, Hannah Beckler, Robert Leslie & Jessica Orwig, *Satellite Images Show How Data Centers Are Changing America's Landscape*, BUS. INSIDER (Oct. 17, 2025, at 06:35 ET), https://www.businessinsider.com/satellite-images-show-how-data-centers-changing-american-landscape-2025-10 (on file with the *Fordham Law Review*).

111. *See* PILZ & HEIM, *supra* note 64, at 12–13.

112. *See, e.g.*, Bryn Dippold, *1 Million-Square-Foot Data Center Proposed for 141 Acres in Trenton*, J. NEWS (Oct. 29, 2025), https://www.journal-news.com/news/1-million-square-foot-data-center-proposed-for-141-acres-in-trenton/B5H4QD67PZGVRJY7HAVVSTJJBI/ [https://perma.cc/SZR3-TXYD].

113. *See* Jacob Roundy, *The Increasing Concern of Data Center Land Acquisition*, TECHTARGET (Aug. 21, 2025), https://www.techtarget.com/searchdatacenter/feature/The-increasing-concern-of-data-center-land-acquisition [https://perma.cc/KJ9U-WC6Z].

114. *See id.*

115. *See* Jon Gorey, *Data Drain: The Land and Water Impacts of the AI Boom*, LINCOLN INST. OF LAND POL'Y (Oct. 17, 2025), https://www.lincolninst.edu/publications/land-lines-magazine/articles/land-water-impacts-data-centers/ [https://perma.cc/8HPD-SPB8].

116. *See Data Centers*, VA. ECON. DEV. P'SHIP (2025), https://www.vedp.org/industry/data-centers [https://perma.cc/NZ9J-WE23].

117. *See* JOINT LEG. AUDIT & REV. COMM'N, *supra* note 109, at 74.

centers cluster, residents frequently worry about how the centers will affect housing prices and their local environment.[118]

II. LOCAL ZONING OF DATA CENTERS AND STATE SINGLE-FAMILY ZONING LAWS

While zoning is a local power, states may preempt local land use policies in furtherance of state or federal priorities.[119] A popular reason for state preemption of local zoning authority is to stimulate the production of more affordable housing.[120]

To understand how single-family zoning can help address emerging issues related to data centers, Part II compares the tension between the development of resource-intensive data centers and residents who live near them with the tension between the development of affordable housing and residents who live near them.[121] Part II.A examines regulatory challenges related to data center development and highlights how it has created conflict with local residents. Part II.B surveys selected local efforts to mitigate this tension through zoning laws. Part II.C reviews selected state efforts to encourage and stimulate affordable housing production in the context of single-family zoning. Finally, Part II.D demonstrates how those state efforts serve as a helpful model for states seeking to preempt data center development.

A. Regulatory Challenges in the Data Center Industry

Responding to the boom in data center development, the National Telecommunications and Information Administration (NTIA) designated AI as a critical and emergent technology,[122] noting that data center demand to support these technologies is projected to grow 9 percent every year through 2030.[123] On September 4, 2024, the agency published a request for comments on "Bolstering Data Center Growth, Resilience, and Security."[124] The NTIA sought comments on the challenges data centers face in supplying the computing power required by AI and how to modernize the data center

118. *See id.* at 75.

119. *See Preemption of Local Law by State Legislature*, 8 TOURO L. REV. 946, 949–50 (1992); *see also* Kenneth Stahl, *Home Rule and State Preemption of Local Land Use Control*, 50 URB. LAW. 179, 182 (2020) (describing how "many residents have become so accustomed to local control [of zoning] that they perceive it as something akin to a birthright").

120. *See Developments in the Law—Climate Change*, *supra* note 19, at 1601.

121. This Note does not seek to compare the essential human need of affordable housing to the housing of IT infrastructure; the parallel is offered only to illustrate how zoning frameworks struggle to accommodate rapidly evolving land uses.

122. The NTIA is an executive branch agency located within the U.S. Department of Commerce that is responsible for advising the president on telecommunications and information policy issues. *See About NTIA*, NAT'L TELECOMM. & INFO. ADMIN., https://www.ntia.gov/page/about-ntia [https://perma.cc/2V9B-MZK5] (last visited Jan. 11, 2026).

123. *See* Request for Comments on Bolstering Data Center Growth, Resilience, and Security, 89 Fed. Reg. 71890, 71890 (Sep. 4, 2024).

124. *See id.*

market to meet growing demand.[125] The request asked commenters to identify what "key regulatory barriers exist at the federal, state, local, tribal, and territorial level."[126]

The agency received comments from large data center developers, individuals, and everything in between.[127] Addressing the regulatory question, many spoke to issues related to land use. Part II.A.1 discusses the issues posed by the stakeholders in the data center industry, and Part II.A.2 discusses the concerns of individuals affected by data center development.

1. Perspectives of Data Center Stakeholders

Stakeholders in the data center industry—including AI companies, utility groups, and research organizations—argue that data centers promise substantial economic benefits but also acknowledge that the current framework of state and local zoning, permitting, and infrastructure regulation introduces significant uncertainty, delay, and cost.

OpenAI, a leading AI development company, urged that promoting data center development leads to increased state revenue, citing that local zoning laws only hinder positive state and local impacts.[128] It highlighted that building and operating a single data center could create or support 40,000 jobs and contribute between $17 and $20 billion to a state's gross domestic product.[129] However, the company stressed that "zoning laws" at the state and local level "vary widely, creating uncertainty and delays."[130] OpenAI also emphasized the potential negative societal impacts on "[c]ommunity transitions due to new land use" and how "[i]ncreased energy consumption and water utilization" stymie development.[131]

TechNet, a national bipartisan network of technology officers and senior executives, similarly argued that "[p]olicy environments at the state and local levels are also key determinants of whether it is economically and operationally efficient to build data centers."[132] TechNet underscored that

125. *See id.* at 71891.

126. *See id.*

127. *See NTIA Data Centers Policy Request for Comment*, REGULATIONS.GOV, https://www.regulations.gov/docket/NTIA-2024-0002 [https://perma.cc/TVS8-BZQV] (last visited Jan. 11, 2026).

128. *See* OpenAI, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 1 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0024 [https://perma.cc/RUW9-WQRK].

129. *Id.* at 1.

130. *Id.* at 5.

131. *Id.* at 6.

132. TechNet, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 3 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0047 [https://perma.cc/S5D4-BFFD]; *see also* INCOMPAS, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 4 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0032 [https://perma.cc/K8RD-43B7] ("[T]he policy environment at the state level is a key consideration on whether it is economically and operationally efficient to build data centers in certain locations.").

"[c]lear and efficient local and state approval processes [are] necessary for data center development, construction, and operations."[133]

Other commenters similarly argued that data center regulation can tie up projects for years. The Abundance Institute, a nonprofit that fosters growth for emergent technologies, urged the NTIA to "encourage state and local governments to expedite permits for data centers and related energy infrastructure . . . to overcome . . . localized opposition."[134] Uptime Institute, an organization dedicated to data center development, asserted that "local zoning rules" and "complex, layered permitting processes at federal, state, and local levels" are "the biggest reasons why data center projects are delayed or canceled."[135] Uptime Institute highlighted that "data centers face pushback from local communities" due to the "vast amounts of energy [they consume, which] strain local grids, particularly [due to] AI-driven workloads."[136]

Accordingly, groups in the utility space, working in electricity, water, and internet services, stressed their crucial role in promoting data center development. The Utilities Technology Council (UTC), an international trade association for the telecommunication and IT interests of electric, gas, and water utilities, argued that power companies must be part of the data center solution because data centers place huge demands on the grid and require the "navigat[ion] [of] complex local, state, and federal permitting processes."[137] The UTC recommended increased collaboration with utilities to explore "innovative energy efficiency solutions, such as advanced cooling technologies," to reduce the environmental impacts and accelerate development.[138]

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133. *See generally* TechNet, *supra* note 132.

134. Josh Smith, Abundance Inst., Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 3–4 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0038 [https://perma.cc/G3MK-7TGH]; *see also* Nasdaq, Inc., Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 2–3 (Nov. 1, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0015 [https://perma.cc/6HMN-PWX2] (noting "[a]ccess to land . . . is important for data center growth and resilience [and] . . . government support should . . . include assistance with pre-development work for data centers such as permitting and regulatory approvals which can take years to clear.").

135. Uptime Inst., Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 11 (Nov. 1, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0054 [https://perma.cc/A3G2-52HD].

136. *Id.* at 13.

137. Util. Tech. Council, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 4–6 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0058 [https://perma.cc/PXG3-FPG5] ("Data centers are energy-intensive, and the projected growth in computing demand could lead to increased stress on power grids.").

138. *Id.* at 6; *see also* Chemours Co., Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 2, 4 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0036 [https://perma.cc/7UGR-ZGGX] (noting the "traditional air-cooling approach is not a sustainable way to manage the growth of data center demand," in arguing for modernized cooling methods which are more "sustainable, cost effective, and efficient.").

INCOMPAS, the national industry association for providers of internet and communication networks, argued that hyperscale data centers are the most "pressing type of data center" and acknowledged the centers are "massive, . . . [and use] up to millions of square feet of space."[139] But INCOMPAS claimed that "state legislatures [that] want to discourage data center investment . . . by revoking" certain legislation create a "chilling effect" on future development and investment.[140] The Wireless Infrastructure Association (WIA), which represents businesses that develop the nation's wireless infrastructure, supported a broader argument that the federal government, not the states and localities, should dictate the terms of data center development to ensure construction.[141]

2. Perspectives of Affected Individuals and Coalitions

Conversely, individual residents and citizen coalitions expressed strong opposition to rapid data center expansion, emphasizing the significant risks to community welfare, environmental quality, and local autonomy.[142]

Similar to commenters from technological groups, some coalitions argued that the permitting process on the state and local level lacks transparency and urged developers to include more information tracking water and power use. For example, the Citizens Action Coalition of Indiana (the "Coalition"), the oldest and largest consumer environmental advocacy group in the state, spoke to how "[h]yperscaler data center growth poses unprecedented challenges and risks to . . . quality of life in Indiana," so much so that the Coalition called on the state legislature "to issue a moratorium on new hyperscale data centers and implement a task force to study the issue."[143] Although Indiana has not had "significant energy demand" for data centers, this is "rapidly changing" as large technology companies recently announced new data center developments in the state.[144] The Coalition conservatively estimated that "data center load growth in Indiana will reach approximately 6,500 [megawatts (MW)] by 2030, making it one of the largest data center markets in America."[145] Furthermore, a single data center of 1,000 MW

139. INCOMPAS, *supra* note 132, at 1–2.

140. *Id.* at 6.

141. *See* Wireless Infrastructure Ass'n, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 5–6 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0053 [https://perma.cc/WV6T-G4BH] (calling on the "federal government [to] speak on this issue [of increased development of data centers] with one voice" and "provide uniform guidance at the federal and state levels in support of this critical infrastructure").

142. *See infra* notes 143–55 and accompanying text.

143. Citizens Action Coal. of Ind., Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 1–2 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0041 [https://perma.cc/KB8P-9VBR].

144. *Id.* at 2.

145. *Id.*

"would have a higher [electrical] load than *all* of [the state's biggest power company's] 420,000 residential customers combined."[146]

The Coalition further contended that there are "numerous . . . state and local issues related to data centers that could create additional harms."[147] Among these concerns is the practice of data centers using confidential project code names when working with local governments, which can leave residents "in the dark" about both the nature of the industry entering their community and its potential impacts during the local approval process, including zoning decisions.[148] The Coalition urged "the federal government [to] issue new reporting requirements for data centers to improve transparency and information provision," including monthly reporting on water and power consumption.[149] The National Parks Conservation Association similarly argued for the federal government to "require data center operators to report certain metrics like total energy [and] total water use" because the industry's "unchecked" growth brings negative community impacts and "threaten[s] national park sites, [the] electric grid, and . . . climate goals."[150]

Individuals expressed these concerns too, arguing that hyperscale development strains water and land supply while degrading air, sound, and quality of life in surrounding neighborhoods. One commenter noted "there's so much empty land but shoving your noses in our backyard is the only option? SHAME."[151] Another commenter, referencing a Google data center development, expressed that they "fear for what is coming to [their] backyard and how it will impact [their] quality of life"; that they have "NO [positive] feelings regarding the data center"; and that their "air quality, water quality, and sound quality . . . will forever be impacted by Google and in a negative manner."[152] They continued that "local politicians [and big technology corporations] do not care about the citizens."[153]

But not all individuals were quick to express concerns. One individual commenter noted that data center zoning has been properly handled by local government, yet "continue[s] to be challenged by Not In My Back Yard (NIMBY) interests who wish to preserve their 'natural' view not just on their

146. *Id.* at 5.
147. *Id.* at 16.
148. *Id.*
149. *Id.* at 18.
150. Nat'l Parks Conservation Ass'n, Comment Letter on Request for Comments on Bolstering Data Center Growth, Resilience, and Security 2–3 (Nov. 4, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0037 [https://perma.cc/X5YE-ZNLA].
151. F*** Off, Comment on Request for Comments on Bolstering Data Center Growth, Resilience, and Security (Oct. 18, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0006 [https://perma.cc/U6YM-CRWT].
152. Anonymous, Comment on Request for Comments on Bolstering Data Center Growth, Resilience, and Security (Nov. 15, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0002 [https://perma.cc/CNV4-96TK].
153. *Id.*

own property, but on property owned by other people."[154] The commenter advanced that "[o]pponents are quick to point out the power demand of data centers . . . [but] utilities are already in the planning stages of how to generate and produce the power needed to support the data centers."[155]

B. Local Zoning Policies Regarding Data Center Development

While individuals and developers alike express frustration with the regulatory climate surrounding data center development, the majority of states have not yet preempted local land use policies around zoning for data centers.[156] The lack of state guidance leaves localities across the country to create their own rules, forcing them to grapple with how to appropriately zone for data centers while balancing the interests of developers and citizens.[157] This has resulted in divergent approaches to data center development across the country, revealing myriad local regulatory barriers about which developers and individuals have expressed concern.[158]

Part II.B.1 surveys a sample of localities that have attempted to zone data centers into existing use zones. Part II.B.2 reviews a sample of localities that, in recognizing the unique demands of data centers, have attempted to create specific use zones for data centers.

1. Placing Data Centers into Existing Zones

This section examines how three local governments have attempted to regulate data centers by placing them into existing zoning classifications.[159] This section also explores the frictions that arise when the extraordinary water, power, noise, and land demands of data centers are forced into frameworks built for less intensive industrial activity.

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154. Daren Coppock, Comment on Request for Comments on Bolstering Data Center Growth, Resilience, and Security (Nov. 1, 2024), https://www.regulations.gov/comment/NTIA-2024-0002-0019 [https://perma.cc/C7MA-2SB6].

155. *Id.*

156. *See* HUSCH BLACKWELL, *supra* note 14. The one exception is arguably West Virginia, which enacted a state program exempting data centers from certain municipal zoning requirements in state-created "microgrid" districts should they meet enumerated criteria. *See* W. VA. CODE § 5B-2-21b (2025). The legislation designated data centers as "critical national infrastructure," meaning that the state has a "significant interest" in encouraging their development to support economic policies and that their unique infrastructural demands "transcend local borders." *Id.* § 5B-2-21a.

157. *See infra* Parts II.B.1–2.

158. *See supra* Part II.A.

159. Such existing zoning classifications may be residential, commercial, industrial, or mixed-use purposes, among others, depending on the locality. *See Zoning*, BLACK'S LAW DICTIONARY (12th ed. 2024).

a. Saint Charles, Missouri

Saint Charles, Missouri, established eighteen districts but had not specifically zoned for data centers.[160] In the absence of a dedicated zone, the city looked to its "Light Industrial District," which covers the category of "storage warehouses."[161] The city interpreted storage warehouses to include data centers,[162] even though data centers have intensive infrastructure demands due to their extensive land, power, and water use,[163] which go beyond those of a traditional warehouse.

Saint Charles also established "Superimposed Districts," which are specialized districts overlaid onto the existing district map and carry specific rules on top of the existing district.[164] One of these districts is the "Wellhead Protection District" ("WHP District"), which is overlaid onto other districts to protect groundwater used as a public water supply.[165]

On May 12, 2025, an entity named CRG Cumulus ("CRG") filed an application to rezone a parcel of land within a WHP District from agricultural to light industrial to develop a data center.[166] The City Council of Saint Charles introduced an ordinance supporting the rezoning, noting it was reasonable and necessary for the development of the city.[167] On June 19, 2025, the city council unanimously voted for the ordinance's passage, and the mayor approved it.[168]

Upon the rezoning approval, CRG applied for two permits for a "multi-building data warehouse" with the Planning and Zoning Commission.[169] One application was a site plan request for the construction of the data center in the Light Industrial District.[170] In evaluating whether the data center was suitable for this district, the commission noted that data centers "function[] similarly" to traditional warehouses in terms of building

160. ST. CHARLES, MO., ZONING CODE § 400.060 (2026).

161. *See id.* § 400.240.

162. *See* CITY COUNCIL, ST. CHARLES, MO., AGENDA 4 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_08222025-1739 [https://perma.cc/CCA9-3KQ4] (agenda from Aug. 22, 2025).

163. *See supra* Part I.B.3.

164. ST. CHARLES, MO., ZONING CODE § 400.300 (2026).

165. While all uses permitted by right in a Light Industrial District are also permitted by right in a Wellhead Protection District, certain uses require a specific permit, particularly if they threaten the groundwater below the land. *See id.* § 400.320.

166. *See* PLAN. & ZONING COMM'N, ST. CHARLES, MO., AGENDA FOR REGULAR MEETING 44 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_05122025-1696 [https://perma.cc/VG2Y-5VBM] (agenda from May 12, 2025).

167. *See* CITY COUNCIL, ST. CHARLES, MO., AGENDA 299 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_06032025-1704 [https://perma.cc/SL8Z-CDSN] (agenda from June 3, 2025).

168. *See* CITY COUNCIL, ST. CHARLES, MO., AGENDA 11 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_07152025-1722 [https://perma.cc/F67H-65T9] (agenda from July 15, 2025).

169. *See* PLAN. & ZONING COMM'N, ST. CHARLES, MO., AGENDA 47 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_07142025-1721 [https://perma.cc/A8RT-T736] (agenda from July 14, 2025).

170. *See id.* at 48.

form, limited customer traffic, low on-site employment, and general site operations.[171] The commission thus held that the data center was considered a permitted use by right.[172]

The public hearing on the conditional permit was scheduled for August 19, 2025.[173] While the commission's approval of the data center in the light industrial zone was squarely in line with local procedure, multiple residents expressed concern. One resident argued against the development due to the "lack of information available to the citizen[s] about this project," its proximity to an "already . . . contaminated water field," and "the lack of utilities available currently to [Saint Charles citizens]."[174] Another resident expressed similar concerns about the lack of transparency, citing fears of water contamination, air pollution, and "huge hvac systems that continuously run."[175] Yet another resident sought "assurances that . . . air, water, noise levels, and utility bills will be unaffected by this project."[176]

However, on August 18, 2025, CRG emailed the city to withdraw its application from consideration at the August 19 hearing.[177] CRG cited that, despite the "extensive" and "comprehensive" analysis of the project, it needed to ensure that information was "accessible and clearly communicated to the public."[178] The city council, however, still held the hearing where residents in attendance continued to express their concerns.[179] Councilmember Justin Foust, expressing frustration with the application withdrawal, stressed citizens' right to "clear communication" and "transparency" rather than a project with "limited details."[180] Councilmember Denise Mitchell agreed that there needed to be a heightened understanding of development projects that "consume large amounts of water and electricity."[181]

Reactions to the CRG project withdrawal were varied and attracted considerable attention. Senator Bernie Sanders hailed the community of

171. *Id.* at 49.

172. *See id.*

173. CITY COUNCIL, ST. CHARLES, MO., AGENDA 2 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_08052025-1729 [https://perma.cc/TF98-MHQ9] (agenda from Aug. 5, 2025).

174. CITY COUNCIL, ST. CHARLES, MO., AGENDA 96 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Agenda/_09022025-1740 [https://perma.cc/CZ5K-MQDQ] (agenda from Sep. 2, 2025).

175. *Id.* at 98.

176. *Id.* at 100 (emphasizing that CRG Cumulus was not publicly known and requesting that the project be put on hold until more insight could be provided to citizens).

177. Email from Chris McLee, President, CRG, to Zachary Tushinger, Cmty. Dev. Dir. of St. Charles, Mo., and Lara Berry, Planner, Cmty. Dev. of St. Charles, Mo. (Aug. 18, 2025, at 14:42 CT), https://npr.brightspotcdn.com/81/a0/8ba01da44bfd963fe7ef6281241f/crg-letter.pdf [https://perma.cc/HTA5-6UFN].

178. *Id.*

179. CITY COUNCIL, ST. CHARLES, MO., MINUTES 1–4 (2025), https://www.stcharlescitymo.gov/AgendaCenter/ViewFile/Minutes/_08192025-1737 [https://perma.cc/T9HB-EGWD] (minutes from Aug. 19, 2025).

180. *Id.* at 5.

181. *Id.* at 7.

Saint Charles for "stand[ing] up to unfettered corporate greed."[182] Local tradespeople expressed frustration at the withdrawal, citing lost opportunities for construction work.[183] State Representative Travis Wilson added that while "large-scale economic development" is important, "community trust and clear communication must come first."[184]

On August 22, 2025, the city council proposed a new resolution: a one-year moratorium on the acceptance of applications to construct or expand data centers.[185] The goal of the legislation was to allow the city time to evaluate the effects of data centers and consider changes to the zoning code to protect the health, safety, and general welfare of residents.[186] The resolution stressed that the moratorium was necessary as "current zoning and development standards may not adequately address the unique characteristics, demands, and potential cumulative effects of data centers."[187] That same day, the resolution passed unanimously.[188]

b. Peculiar, Missouri

A similar story took place nearby in Peculiar, Missouri, where the absence of specific data center zoning procedures revealed tension between residents and data center development. Peculiar established sixteen districts yet had not specifically zoned for data centers.[189] However, the city's "Light Industrial District" covered "computer assembly and manufacturing."[190] But upon the receipt of a rezoning application by Diode Ventures ("Diode") to construct a data center, Peculiar proposed listing "data center" as a permitted use in the Light Industrial District and adding a definition of "data center" to the zoning code.[191] Accordingly, the city planner set forth an ordinance to permit data centers within the Light Industrial District, since it already permitted computer manufacturing facilities, and thus it was "logical" to allow for data centers as well.[192]

Yet in evaluating the rezoning application, the city planner still noted that "a data center campus will have significantly less . . . traffic and noise than

182. Bernie Sanders (@BernieSanders), X (Aug. 19, 2025, at 19:14 ET), https://x.com/BernieSanders/status/1957944169542099123 [https://perma.cc/B4AH-443G].

183. *See* John Gerding, *Withdrawn St. Charles Data Center Project Developers Remain Committed, Despite Public Feedback*, SPECTRUM NEWS (Aug. 20, 2025), https://spectrumlocalnews.com/mo/st-louis/news/2025/08/20/withdrawn-data-center-project-developers-remain-committed [https://perma.cc/BH2G-TFSX].

184. Press Release, Rep. Travis Wilson, State Rep. Travis Wilson Calls for Withdrawal of "Project Cumulus" Proposal in Saint Charles (Aug. 18, 2025), https://house.mo.gov/PressRelease.aspx?prid=372 [https://perma.cc/F58N-4QRS].

185. *See* CITY COUNCIL, ST. CHARLES, MO., *supra* note 162.

186. *See id.*

187. *Id.* at 4.

188. *See id.*

189. PECULIAR, MO., ZONING REGS. § 400.260 (2023).

190. *Id.* § 400.495(A)(2)(b)(3).

191. *See* PLAN. COMM'N, PECULIAR, MO., AGENDA 13–14 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket03-14-24054834031024PM1722.pdf [https://perma.cc/EBF7-SBDA] (agenda from Mar. 14, 2024).

192. *See id.* at 14.

most other light industrial uses."[193] The city planner stressed that Diode was "working . . . on how it will obtain the large amounts of water that will be required for cooling purposes," but that regardless, "approving this rezoning far exceeds the gain to the community by denying this application and any hardship upon neighboring landowners."[194] The Board of Aldermen of the City of Peculiar (the "Board of Aldermen"), the city's legislative body, approved the ordinance unanimously.[195]

In Diode's presentation to the community, it argued that the new "[z]oning designation would allow for data center development."[196] It further contended that data centers "are not pollutive to water or air"[197] and that they strengthen local power infrastructure.[198] Diode represented that it would develop a plan for the disposal of water from cooling towers; that the data center would not exceed the noise of a standard electrical substation; and that the project would generate $1.5 billion for federal, state, city, and other local governments.[199]

However, citizens still expressed concern about noise, increased water usage, and rising electricity prices, as well as a lack of trust in big technology corporations making agreements with cities.[200] Others worried that data centers would "greatly affect the character and feel of [the] neighborhood."[201] One citizen specifically opined that an appraiser told her the data center would devalue her property from $825,000 to $710,000.[202]

Facing significant resistance, Diode withdrew its application, seeking to submit it at the September 12, 2024, meeting.[203] On August 19, 2024, the Board of Aldermen unanimously declared a 100-day moratorium on new applications and permits pertaining to the development of data centers within

193. PLAN. COMM'N, PECULIAR, MO., AGENDA 18 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket04-11-24112235040824AM1722.pdf [https://perma.cc/N8ZM-TL7P] (agenda from Apr. 11, 2024).

194. *Id.* at 18–19.

195. *See id.* at 5.

196. *Id.* at 34.

197. *Id.* at 41.

198. *See id.* at 45.

199. *See* PLAN. COMM'N, PECULIAR, MO., AGENDA 6–7 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket06-13-24030125061024PM1722.pdf [https://perma.cc/RB85-9PJB] (agenda from June 13, 2024).

200. *See id.*

201. *Id.* at 8.

202. *See id.* at 9.

203. *See* PLAN. COMM'N, PECULIAR, MO., AGENDA 7 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket08-08-24100352080524PM1722.pdf [https://perma.cc/UHK3-S5NX] (agenda from Aug. 8, 2024). The Diode project cancellation contributed to the $64 billion of data center projects blocked by local opposition from May 2024 through March 2025. *See* DATA CTR. WATCH, $64 BILLION OF DATA CENTER PROJECTS HAVE BEEN BLOCKED OR DELAYED AMID LOCAL OPPOSITION 8 (2025), https://static1.squarespace.com/static/67819031da098341c45ac84a/t/6849bcfe640a951f79e00715/1749662975141/Data+Center+Watch+Report+.pdf [https://perma.cc/7YX9-QRAN].

the city.[204] The board indicated they needed more time to examine the issues data centers presented, including ensuring "substantial justice in the quiet enjoyment of homes."[205] The board furthered that data centers are "comprehensively designed," potentially necessitating stricter zoning standards that exceed the light industrial classification.[206]

In a public hearing to consider removing data centers from light industrial districts, one resident argued that "inadequate information in the beginning leading to the approval of data centers" was problematic and agreed that the data center definition was too broad.[207] Others similarly expressed concern over the lack of research on data centers' impact.[208] However, one resident noted many of these concerns could be mitigated and were exaggerated.[209] Another similarly felt removing the definition would be a mistake.[210] And Diode maintained that "data centers are increasingly becoming critical, necessary infrastructure."[211]

c. Saline, Michigan

Similar to Saint Charles and Peculiar, the town of Saline, Michigan, established seventeen zoning districts,[212] including "data processing equipment and systems" under their "Limited Industrial District."[213] On July 10, 2025, property development company Related Digital asked the township to rezone land from agricultural to industrial for the development of a data center.[214] In its proposal, Related Digital indicated that the proposed 575-acre data center would have minimal impacts on water, traffic, and other resources while generating "substantial tax revenues."[215]

Related Digital argued that the project would contribute $2.2 million in taxes to the township[216] and sought to approve the project quickly as "[s]tates

204. *See* PLAN. COMM'N, PECULIAR, MO., AGENDA 13 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket09-12-24060013090624PM1722.pdf [https://perma.cc/AX6N-PZ3X] (agenda Sep. 12, 2024).

205. *Id.* at 14.

206. *Id.*

207. *See* PLAN. COMM'N, PECULIAR, MO., AGENDA 4 (2024), https://files.municipalone.com/peculiar-mo/PlanningCommissionPacket11-14-24013524111224PM1725.pdf [https://perma.cc/Q697-6EU6] (agenda from Nov. 14, 2024).

208. *See id.* at 5.

209. *See id.* at 4.

210. *See id.* at 5.

211. Eli Tan, *A Rural Missouri Town Fights Big Tech, and Itself*, N.Y. TIMES (Oct. 29, 2024), https://www.nytimes.com/2024/10/29/technology/data-center-peculiar-missouri.html (on file with the *Fordham Law Review*).

212. *See* SALINE, MI., CODE OF ORDINANCES § 4.01 (2026).

213. *Id.* § 4.04(14).

214. *See* PLAN. COMM'N, SALINE, MI., MINUTES 3 (2025), https://salinetownship.org/uploads/minutes/1761140571_July%208.pdf [https://perma.cc/6KCL-36RW] (minutes from July 8, 2025); *see also* Complaint at 3, Related Digital v. Saline Twp., No. 25-001577-CZ (Mich. Cir. Ct. filed Sep. 12, 2025).

215. RELATED DIGITAL, WASHTENAW COUNTY DATA CENTER PROPOSAL 1 (Aug. 2025), https://salinetownship.org/uploads/notices/QA%20Data%20Center%20Proposal.pdf [https://perma.cc/Q4KV-JX3J].

216. *Id.* at 3–4.

and municipalities are competing aggressively" to attract data center development.[217] The company stressed that allowing at least one data center could "mitigate the risk of litigation and claims of exclusionary zoning," as data centers are a "clear commitment of land for industrial use."[218]

At a public hearing on August 5, 2025, Related Digital gave an overview of the project to citizens.[219] They stressed that noise levels would likely not exceed sixty-five decibels, that the project would employ 150 people, and that it could "more than triple" the township's tax revenue.[220] Some citizens expressed concern over the water usage and power surges, while others expressed support for diversifying the town's industries.[221]

At a hearing, Related Digital reaffirmed its claims about lucrative tax revenue,[222] but citizens questioned whether the town should audit those claims for accuracy.[223] Citizens also argued that the speed of the project was suspicious and expressed concerns that it did not give the "township time to review the project."[224] On September 10, 2025, Saline's Township Board denied the data center rezoning.[225]

Two days later, Related Digital sued Saline, alleging exclusionary zoning.[226] Related Digital noted that "the objectives of State law to encourage the development of data centers will be frustrated and never achieved" if such projects proposed on appropriate land are continually rejected.[227] On October 15, 2025, the parties settled and agreed to a consent judgment, allowing the data center project to continue with conditions.[228] The conditions included no high-water-use evaporative cooling,[229] a minimum of seventy-five feet between the data center and abutting property,

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217. *Id.* at 4.

218. *Id.*

219. *See* PLAN. COMM'N, SALINE, MI., MINUTES 2 (2025), https://salinetownship.org/uploads/minutes/1761140618_August%205.pdf [https://perma.cc/T7YG-NP8F] (minutes from Aug. 5, 2025).

220. *Id.*

221. *See id.* at 2–5.

222. *See* PLAN. COMM'N, SALINE, MI., MINUTES 1–2 (2025), https://salinetownship.org/uploads/minutes/1761140642_August%2012.pdf [https://perma.cc/SV7K-DSCC] (minutes from Aug. 12, 2025).

223. *See id.* at 2.

224. *Id.*

225. *See* TWP. BD., SALINE, MI., MINUTES 1–3 (2025), https://salinetownship.org/uploads/minutes/1760634328_9-10-25%20Minutes%20BOT.pdf [https://perma.cc/CX7P-3VYL] (minutes from Sep. 10, 2025) (arguing that the data center undermined environmental objectives and the industrial use and noise from the data center equipment would negatively impact surrounding properties).

226. *See* Complaint, *supra* note 214, at 11.

227. *Id.* at 9, 11 (alleging that a zoning ordinance which excludes an "otherwise legitimate land use" constitutes illegal exclusionary zoning).

228. Consent Judgment at 4–5, Related Digital v. Saline Twp., No. 25-001577-CZ (Mich. Cir. Ct. filed Oct. 15, 2025).

229. This prohibition ensures that there is no excessive water usage in cooling functions. *See* Tran Longmoore, *Saline Township Board Approves Consent Agreement to Avoid Lawsuit, Awaits Response*, SALINE POST (Oct. 1, 2025), https://thesalinepost.com/g/saline-mi/n/336585/saline-township-board-approves-consent-agreement-avoid-lawsuit-awaits-response [https://perma.cc/JFA5-DAWX].

landscape to buffer the view of the building, and a maximum noise level of fifty-five decibels.[230]

2. Placing Data Centers into Specific Zones

This section shows how some localities have moved beyond general industrial zones and begun crafting data center–specific zoning rules to manage the facilities' unusual water, power, noise, and land demands. By briefly examining these emerging districts, this Note highlights how municipalities are attempting to tailor siting standards to land use that may no longer fit comfortably within traditional commercial or industrial frameworks.[231]

a. Prince William County, Virginia

Virginia hosts approximately 35 percent of the world's data centers[232] but lacks state legislation addressing data center land use. Governor Glenn Youngkin vetoed[233] H.B. 1601 in 2025,[234] which would have expanded oversight of large-scale data centers and similar "high-energy-use facilities" by introducing land-use and environmental review requirements.[235] The bill did not create uniform statewide siting or building standards[236] but instead left implementation to local governments.[237]

Although the bill passed both houses of the Virginia General Assembly, Governor Youngkin vetoed it for "limit[ing] local discretion and . . . impos[ing] a one-size-fits-all approach on communities that are best positioned to make their own decisions."[238] In the absence of state guidance, one county, Prince William County, developed its own procedure. This section first discusses Prince William County's creation of the Data Center Opportunity Zone Overlay District (DCOZOD). The section then evaluates how both developers and residents responded to this novel zone.

230. Consent Judgment, *supra* note 228 (adding that Related Digital would invest a total of $14 million into preservation costs and community investment funds).

231. *See infra* Parts II.B.2.a–b.

232. *See* VA. ECON. DEV. P'SHIP, *supra* note 116.

233. *See* Glenn Youngkin, *Veto Message on H.B. 1601* (2025), https://lis.virginia.gov/bill-details/20251/HB1601/text/HB1601VG [https://perma.cc/PL5B-F5AX].

234. H.B. 1601, 2025 Gen. Assemb., Reg. Sess. (Va. 2025).

235. *Id.* The bill defined a high-energy-use facility as any project requiring 100 megawatts or more of electricity at full build-out and authorized local governments to require a comprehensive site-assessment before granting rezoning, special-use, or special-exception permits. *See id.* That assessment would evaluate the facility's potential impacts on water supply, forest and agricultural lands, parks, historic resources, and community noise levels. *See id.*

236. *See id.*

237. *See id.*

238. *See* Youngkin, *supra* note 233.

On August 4, 2015, the Board of County Supervisors of Prince William County sought to create specific regulations for data centers to cover both the infrastructure required to support them and their potential impacts on neighboring properties.[239] Unlike localities that do not expressly zone for data centers,[240] the board aimed to proactively zone for data centers to align with the county's ongoing commitment to encourage commercial and industrial growth.[241]

In response, the Prince William Planning Office (the "Planning Office"), responsible for urban planning for the county, proposed the creation of the DCOZOD, new definitions, and use classifications for data centers.[242] The Planning Office called community opposition to data centers the "understatement of the year," noting it was a significant challenge to "protect[] communities, but make sure that we're doing everything we can to protect that very important targeted industry [of data centers]."[243] The Planning Office highlighted two main areas of concern regarding the inadequacies of zoning for data centers. First, the definition for "data and computer services," was overly broad, as it treated hyperscale data centers the same as small computer facilities operating out of a home.[244] Second, more consideration was needed when siting data centers to mitigate their impact on citizens.[245]

The Planning Office stated that the proposed DCOZOD would promote development in areas where existing infrastructure adequately supports the demands of data centers,[246] while still "attract[ing] and advanc[ing] high-tech industrial development [and] limiting negative impacts to communities."[247] The board could superimpose a DCOZOD onto existing zoning districts, provided the land was close to high-voltage transmission lines suitable for the unique energy demands of data centers.[248] The board codified the DCOZOD,[249] permitting data centers by right within the DCOZOD under nine districts,[250] but prohibiting them in agricultural and residential districts.[251]

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239. *See* OFF. OF EXEC. MGMT., PRINCE WILLIAM CNTY., VA., MEMORANDUM ON ZONING TEXT AMENDMENT #DPA2016-00003, DATA CENTER OPPORTUNITY ZONE COUNTYWIDE 54 (Apr. 29, 2016), https://www.scc.virginia.gov/docketsearch/DOCS/3fnp01!.pdf [https://perma.cc/6VN6-DYRV].

240. *See infra* Part II.B.1.

241. *See* MEMORANDUM ON ZONING TEXT AMENDMENT, *supra* note 239, at 54–55.

242. *See id.*

243. PRINCE WILLIAM CNTY., VA., *Board of County Supervisors Meeting*, at 1:58:53, 2:00:24 (Prince William Cnty., May 17, 2016), https://pwcgov.granicus.com/player/clip/2163?view_id=23&redirect=true (on file with the *Fordham Law Review*).

244. *Id.* at 2:01:50.

245. *See id.* at 1:59:05 (describing feedback the commission had received from community members).

246. *See* MEMORANDUM ON ZONING TEXT AMENDMENT, *supra* note 239, at 71.

247. *Id.* at 51.

248. *See id*.

249. PRINCE WILLIAM CNTY., VA., CODE OF ORDINANCES § 32-509 (2025).

250. *Id.* § 32-509.03.

251. *Id.* § 32-509.06.

On June 18, 2019, the board amended the DCOZOD to add standards that data centers must meet in development that addressed issues like principal building facades, the screening of mechanical equipment, buffer yard requirements, and electrical substations.[252] The board set strict standards for the fencing, screening, and buffer yard requirements to ensure the data center would not be visible from any residentially zoned properties.[253]

On May 28, 2021, the board permitted the Planning Office to develop more regulations for the DCOZOD with the aid of consultants.[254] While these tasks are ongoing,[255] consultants have prepared various reports analyzing the DCOZOD. One 2021 report noted that the availability of land and the incentives for development are "becoming increasingly important to the site selection process."[256] The report also compared Prince William County to three other nearby Virginia counties, which do not have specific data center zones but, rather, permit data centers by right in a range of commercial, office, and industrial zones.[257] The report found that this broad by-right permissiveness makes development in those jurisdictions more attractive.[258]

Another report from 2022 argued that the "success of the [DCOZOD] is evident" given that the county's data center square footage was second largest in the state.[259] The report argued the primary advantage for the DCOZOD was that it offers "by-right zoning" and "fast track[s] re-zoning approvals."[260] Another advantage it identified was the design standards, which allow for a higher floor-to-area ratio, permitting larger data center developments.[261] The report forecasted that the total tax revenue from data centers in the county for 2022 would be around $87 million, up from around $53 million in 2020.[262] Yet the report noted that the negative externalities associated with data centers borne by the community "were not attempted for this [report's] analysis" because they are "difficult to quantify."[263] The

252. *Id.* § 32-509.02 (detailing the implementation of new standards).

253. *See id.*

254. PRINCE WILLIAM CNTY., VA., INITIATE A ZONING TEXT AMENDMENT FOR DATA CENTER OPPORTUNITY ZONE OVERLAY DISTRICT AND SUBSEQUENT CHANGES TO THE COMPREHENSIVE PLAN AND DESIGN AND CONSTRUCTION MANUAL—COUNTYWIDE 2 (2021), https://eservice.pwcgov.org/documents/bocs/briefs/2021/0518/res21-327.pdf [https://perma.cc/VZX4-J63U].

255. *See DPA2021-00020: Data Center Opportunity Zone Overlay District Comprehensive Review*, PRINCE WILLIAM PLAN. OFF., https://www.pwcva.gov/department/planning-office/data-center-overlay-district-comprehensive-review/ [https://perma.cc/VD28-JYD5] (last visited Jan. 22, 2026).

256. BAE URB. ECON., DATA CENTER MARKET STUDY 4 (2021), https://www.pwcva.gov/assets/2021-12/Final%20Report%20-%20Prince%20William%20County%20Data%20Center%20Market%20Study%20120121%20.pdf [https://perma.cc/E4AE-D486].

257. *See id.* at 3.

258. *See id.*

259. PFM GRP. CONSULTING LLC, PRINCE WILLIAM COUNTY, VIRGINIA DATA CENTER FISCAL IMPACT ANALYSIS 27 (2022), https://www.pwcva.gov/assets/2022-07/Data%20Center%20Fiscal%20Impact%20Analysis_6.30.22_lock.pdf [https://perma.cc/NB3D-J3DC].

260. *Id.* at 31.

261. *See id.* at 32.

262. *See id.* at 38.

263. *Id.* at 6.

report added that this was because "data centers are not homogeneous" and therefore reports for individual data centers would be more worthwhile than analyzing the industry's effects on the community as a whole.[264]

While economic analyses depicted the DCOZOD as successful, many citizens of Prince William County still expressed concern over data center development, particularly as it continued outside the DCOZOD.[265]

In 2023, a data center developer sought to rezone agricultural land to light industrial for the construction of a large conglomeration of data centers.[266] The subject site was not within the DCOZOD.[267] Upon the applicant's fifth amended submission, the Prince William County Planning Commission (the "Planning Commission") recommended denying the rezoning, in part, because the application lacked specific details and requested to develop outside the DCOZOD.[268] Citizens also expressed concerns about the development, which centered around environmental impacts, character of the neighborhood, and power and water infrastructure.[269] After the board held a public hearing in which citizens continued to express these concerns—and the Planning Commission recommended denial—the board still approved the rezoning,[270] thereby demonstrating that even a proactive data zoning plan like the DCOZOD may still result in local discontent.

On January 12, 2024, the Oak Valley Homeowners Association (OVHA) filed suit challenging the rezoning on procedural grounds.[271] In its complaint, the OVHA alleged that "the Board has put the corporate interests of the data center developers above the advice of their own professional planning staff, the Planning Commission . . . and most distressingly above the interests of county residents."[272] The OVHA further alleged that the rushed rezoning had been "shrouded under the cloak of . . . nondisclosure agreements" and that this lack of transparency undermined the function of local government.[273] On August 7, 2025, the trial court ruled in favor of OVHA, holding that the rezoning was void on purely procedural notice grounds.[274]

b. Phoenix, Arizona

Because the city of Phoenix, Arizona, lacks data center overlay districts, the mayor and city council directed staff to draft new zoning regulations for

264. *Id.* at 47.
265. Complaint at 13, Oak Valley Homeowners Ass'n v. Prince William Cnty. Bd. of Supervisors, No. CL 24-0375 (Va. Cir. Ct. Aug. 7, 2025).
266. *See id.* at 9.
267. *See id.* at 13.
268. *See id.* at 9, 11.
269. *See id.* at 11.
270. *See id.* at 9.
271. *See id.* at 9–10.
272. *Id.* at 15.
273. *Id.* at 14, 19.
274. *See* Oak Valley Homeowners Ass'n v. Prince William Cnty. Bd. of Supervisors, No. CL 24-0375-00, slip op. at 2 (Va. Cir. Ct. Aug. 7, 2025).

data centers in response to their increased development in 2025.[275] The city, through its Planning and Development Department, published a report identifying two major concerns it planned to address by adopting a data center specific ordinance: data centers' negative effects on the community and the expected increase of their development due to AI.[276]

Since the Phoenix zoning code did not define or list data centers, the report noted that past approvals of data centers were based on informal interpretation rather than objective standards.[277] The proposed ordinance sought to define data centers, create design guidelines and screening design standards, impose landscaping rules so the facilities blend in more, develop location criteria and performance standards, and permit centers only within certain zones.[278]

The planning committees for Phoenix's fifteen villages each held meetings to hear from the public on the proposed ordinance.[279] Many village committee members were fearful that the permitting process did not adequately address the significant water usage by data centers for their cooling systems.[280] For example, the Maryvale Village Planning Committee recommended approval but argued that the proposed ordinance should include additional directives on sustainable energy, solar sources, and reclaimed water.[281] Other committee members similarly expressed concern that water and energy issues were not adequately considered given Arizona's arid climate and that the noise level was not properly addressed, with some members wanting a flat decibel limit rather than a percentage.[282]

Jon Gillespie, a land use attorney and data center company representative, also attended the meetings, noting that data centers are important economic drivers and the ordinance would "rush development and possibly discourag[e] other companies from building in Phoenix."[283] He highlighted that Phoenix is an attractive area for development due to its "low regulatory environment and [] good climate," and that this ordinance would "creat[e] a roadblock," especially considering data centers have already adapted to not minimize water use.[284] He concluded that Arizona has a clear "pro-technology" stance due to its incentivizing legislation, but that the "municipality level is where control is desired."[285] Out of the fifteen villages,

275. PHX., ARIZ., PLAN. & DEV. DEP'T, STAFF REPORT: ZONING ORDINANCE TEXT AMENDMENT Z-TA-2-25-Y, at 1 (2025), https://phoenix.legistar.com/View.ashx?M=F&ID=14286602&GUID=1E6B8084-4F6C-45D0-9452-F15CCFEA2D79 [https://perma.cc/7SUC-3XSM].

276. *See id.*

277. *See id.* at 2.

278. *See id.*

279. PHX., ARIZ., VILLAGE PLANNING COMMITTEE SUMMARY RESULTS 1–2 (2025), https://phoenix.legistar.com/View.ashx?M=F&ID=14316928&GUID=63677C86-B578-42AB-9895-05865E4BD561 [https://perma.cc/V6JJ-PSPA].

280. *See, e.g.*, *id.* at 75.

281. *Id.* at 56.

282. *See, e.g.*, *id.* at 8, 18.

283. *Id.* at 45.

284. *Id.*

285. *Id.* at 54–55.

ten voted in favor of the ordinance,[286] and on July 2, 2025, Phoenix enacted it.[287]

Consequently, the amended zoning code requires all data centers to set back mechanical equipment from residentially zoned property to provide visual screening[288] and reduce noise levels.[289] It also requires data centers in certain agricultural and commercial districts to apply for a special permit for development.[290] Applicants seeking this special permit must meet additional conditions or establish site study obligations to address public health and safety concerns.[291] These may include, but are not limited to, evaluations or controls related to fire protection, water and power usage, on-site energy generation, noise, the handling of hazardous materials, and measures to reduce potential adverse impacts on surrounding uses.[292] Noncompliance with these requirements may constitute grounds for permit revocation.[293]

C. Existing State Legislation Regarding Single-Family Zoning

Regulatory barriers at the local level continue to frustrate local residents and data center developers alike. For localities that retrofit data centers into existing industrial zones, the intensive infrastructure demands of data centers face residential opposition, even though they are legally permissible.[294] The lack of prescriptive guidance results in communities and developers losing money, time, and resources to determine what is feasible, through both litigation and local administrative processes.[295] For localities that expressly zone for data centers, the requirements are clearer for developers and residents at the outset, but residents and developers experience similar frustrations in the development process.[296]

As data centers continue to grow as critical pieces of infrastructure,[297] localities will struggle when tasked with where to put them.[298] Part II.C

286. *See id.* at 1–2.

287. CITY COUNCIL, PHX., ARIZ., AGENDA 5 (2025), http://phoenix.gov/content/dam/phoenix/cityclerksite/city-council-meeting-files/2025/7-2-25%20Formal%20Agenda%20-%20Final.pdf [https://perma.cc/WG5D-5WXW] (agenda from July 2, 2025).

288. The minimum setback distance is 150 feet, and data centers must erect a thirty-foot-wide perimeter of trees to "mitigate negative visual impacts." PHX., ARIZ., ZONING ORDINANCE § 507 tab A(II)(D)(5) (2025).

289. Data center volume may not exceed fifty-five dbA during the day, and forty-five dbA at night, measured at the property line of the nearest residentially zoned property. *See* PHX., ARIZ., ZONING ORDINANCE § 647(A)(2)(kk)(3) (2025). A final certificate of occupancy will not be issued unless the data center complies with these noise limits. *See id.*

290. *See id.* § 647(A)(2)(kk).

291. *See id.*

292. *See id.*

293. *See id.*

294. *See supra* Part II.B.1.

295. *See supra* Part II.B.1.

296. *See supra* Part II.B.2.

297. *See supra* Part I.B.2.

298. *See supra* Part II.B.

discusses state legislation around another critical piece of infrastructure: affordable housing.[299] Part II.C.1 surveys how two states, California and Oregon, use a heavier preemptive approach in seeking to stimulate the production of affordable housing, mandating localities follow certain rules. Part II.C.2 reviews how two states, Montana and Nebraska, use a lighter preemptive approach in seeking to stimulate the production of affordable housing, granting more discretion to localities in implementation.

1. A Heavier State Preemptive Approach to Local Single-Family Zoning

"Heavier" state preemption laws are pieces of legislation that specifically mandate localities take some direct action, thus limiting their local discretion. Part II.C.1.a discusses California's heavier preemptive approach, and Part II.C.1.b discusses Oregon's heavier preemptive approach to create more affordable, middle housing.

a. California

In 2017, amid California's deepening housing crisis, where many localities failed to provide sufficient space for affordable housing development, Governor Jerry Brown signed S.B. 35[300] into law. This marked a turning point in the state's effort to confront chronic underproduction of housing. S.B. 35 allows qualifying multifamily housing developments to proceed via streamlined, as-of-right approval, provided they meet certain conditions.[301] One key requirement is that the site is zoned for residential or mixed residential use and that at least 75 percent of its perimeter adjoins parcels that are already developed for urban uses.[302] The statute also mandates that rental units stay affordable for fifty-five years and that ownership units stay affordable for forty-five years.[303]

A central pillar of S.B. 35 is the requirement that the development conform to "objective zoning standards," which are defined as standards "verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal."[304] Local governments may adopt these objective standards, but they must be transparent and consistent with the statute.[305]

Importantly, the statute places strict limits on local discretion, ensuring they "shall not adopt or impose any requirement . . . that applies to a project solely or partially on the basis that the project is eligible to receive

299. *See supra* note 121.
300. S.B. 35, 2017–2018 Reg. Sess. (Cal. 2017); *see also* CAL. GOV'T. CODE § 65913.4 (West 2025).
301. CAL. GOV'T CODE § 65913.4(a).
302. *See id.* § 65913.4(a)(2)(B).
303. *See id.* § 65913.4(a)(3)(A).
304. *Id.* § 65913.4(5).
305. *See id.*

[as-of-right] ministerial or streamlined approval."[306] In effect, S.B. 35 preempts local power to impose a discretionary approval process on qualifying affordable or mixed-income housing projects in localities.[307]

The local government can only deny such housing development applications if the development is inconsistent with objective guidelines, but if it fails to identify any inconsistencies, the project must proceed under streamlined approval.[308] The statute therefore constrains local government timelines and reduces opportunities for procedural delay.[309] S.B. 35 thus represents a shift in control: while local zoning, density, and use regulations remain in place, the state intervenes by mandating a new pathway to stimulate affordable housing.[310] This intervention is effectively a state-imposed override of the typical discretionary review regime that many municipalities had long applied.[311]

Municipal responses to S.B. 35 have varied. Many jurisdictions moved to adopt objective design guidelines, checklists, and public fact sheets in anticipation of streamlining reviews.[312] However, some local governments argued that S.B. 35 diminishes local land-use authority and community participation.[313] Similarly, outside commenters have framed S.B. 35 as part of a broader deregulation that limits local discretion.[314]

Empirical data indicate that S.B. 35 has had a measurable impact, particularly for multifamily affordable housing. Between 2018 and 2021, 156 projects were approved under S.B. 35 streamlining or had applications

306. *Id.* § 65913.4(i)(1).

307. *See* Moira O'Neill & Iv Wang, *How Can Procedural Reform Support Fair Share Housing Production?: Assessing the Effects of California's Senate Bill 35*, 25 CITYSCAPE 143, 144 (2023).

308. Local governments must do so within sixty days (for projects of 150 units or fewer) or ninety days (for larger projects). *See* CAL. GOV'T CODE § 65913.4(c)(1)(A)–(B) (West 2025).

309. *See id.*

310. *See id.*

311. *See* Infranca, *supra* note 40, at 659, 666–67, 674.

312. For example, the City of Morgan Hill issued a detailed fact sheet setting out the eligibility criteria and timelines under S.B. 35. *See* CITY OF MORGAN HILL, SB35 AFFORDABLE HOUSING: STREAMLINED APPROVAL PROCESS, https://www.morganhill.ca.gov/DocumentCenter/View/37603/SB35-Fact-Sheet [https://perma.cc/2SWP-MDPY]. The City of Burbank established a public applicant portal specifically for S.B. 35 applications. *SB 35 Streamlined Ministerial Approval Process*, CITY OF BURBANK PLAN. DEP'T, https://www.burbankca.gov/web/community-development/sb35 [https://perma.cc/FY84-REKF] (last visited Jan. 22, 2026).

313. For instance, the Town of Fairfax sent a letter opposing the expansion of SB 35, arguing it would allow the State to "double-down on the recent trend of the state overriding its own mandated local housing plans." Letter from Chance Cutrano, Mayor, Town of Fairfax to the Hon. Scott Wiener (Apr. 5, 2023), https://storage.googleapis.com/proudcity/fairfaxca/uploads/2023/03/Item-6-Oppose-SB-423-letter.pdf [https://perma.cc/B2KX-PHTR].

314. *See, e.g.*, Calvin Welch, *Assault on Local Control Equals Deregulation of Housing*, 48 HILLS (Sep. 28, 2017), https://48hills.org/2017/09/assault-local-control-equals-deregulation-housing/ [https://perma.cc/QV84-G7MX] ("Since local governments have absolutely no control over when a developer actually goes forward and builds a project, but only control over approving a development, requiring the development to be built to return to local control is simply a . . . gift to developers.").

pending, representing over 18,000 new units across California.[315] The 2023 report by the Terner Center for Housing Innovation, a policy and research organization, found that "most SB 35 projects are 100 percent affordable developments" and that the statute has allowed "faster and more certain" development.[316] Developers cited time savings of roughly two years in some instances due to the streamlined ministerial pathway.[317] Nevertheless, critics note that only about 7 percent of localities were on track to meet their local housing production goals as of 2023.[318]

Some opponents framed their objections to S.B. 35–enabled projects in terms of community process: one petition circulated before the bill's passage warned that the law "threatens to increase displacement of our urban communities . . . . Communities must have the ability to mitigate those impacts. S.B. 35 suppresses the right of the public to participate."[319] While S.B. 35 may reduce procedural friction, it may not erase the underlying political and social contest over housing production, affordability, and neighborhood change.

b. Oregon

In 2019, Oregon essentially abolished single-family-only zoning as a structural response to a decade of severe housing underproduction[320] with the adoption of H.B. 2001.[321] Between 2010 and 2020, Oregon's population grew by more than 400,000 people, yet its housing stock expanded by only 150,000 units.[322] Representative Julie Fahey observed that "every lot that is developed in the city that might be well-suited for . . . a duplex or a triplex [but] is instead developed . . . with a single-family home [is] a missed opportunity."[323] Similarly, then–House Speaker Tina Kotek stated, "[w]e all

315. *See* SHAZIA MANJI & RYAN FINNIGAN, TERNER CTR. FOR HOUS. INNOVATION, STREAMLINING MULTIFAMILY HOUSING PRODUCTION IN CALIFORNIA: PROGRESS IMPLEMENTING SB 35, at 7 (2023), https://ternercenter.berkeley.edu/wp-content/uploads/2023/08/Terner-Center-SB-35-Paper-August-2023-Final.pdf [https://perma.cc/Q5KA-T2Q7].

316. *Id.* at 2.

317. *See id.* at 15.

318. *See, e.g.*, *California Releases Annual Report of Localities Subject to SB 35's Streamlining Provisions*, NOSSAMAN LLP (Aug. 10, 2023), https://www.nossaman.com/newsroom-insights-california-releases-annual-report-of-localities-subject-to-sb-35s-housing-streamlining-provisions [https://perma.cc/CDF4-LZJN].

319. *See Protect Our Low-Income Communities—Oppose SB 35 Unless Amended*, CHANGE.ORG (June 22, 2017), https://www.change.org/p/protect-our-low-income-communities-oppose-sb-35-unless-amended [https://perma.cc/EB2B-R62A].

320. *See* Laurel Wamsley, *Oregon Legislature Votes to Essentially Ban Single-Family Zoning*, NPR (July 1, 2019, at 19:03 ET), https://www.npr.org/2019/07/01/737798440/oregon-legislature-votes-to-essentially-ban-single-family-zoning [https://perma.cc/6433-M684].

321. H.B. 2001, 80th Or. Legis. Assemb., 2019 Reg. Sess. (Or. 2019*); see also* OR. REV. STAT. § 197A.420 (2025).

322. *See* Owen Minott & Julia Selby, *Eliminating Single-Family Zoning and Parking Minimums in Oregon*, BIPARTISAN POL'Y CTR. (Sep. 26, 2023), https://bipartisanpolicy.org/blog/eliminating-single-family-zoning-and-parking-minimums-in-oregon/ [https://perma.cc/QA67-YFZB].

323. Wamsley, *supra* note 320.

know we have a housing crisis" and "need multiple tools . . . [o]ne of [which] is to smooth and encourage additional construction."[324]

H.B. 2001 operationalized that vision through direct preemption of local zoning authority. The statute requires cities with certain populations to allow "middle housing"[325] in all areas zoned for single-family homes.[326] H.B. 2001 thus converts what had long been a local prerogative—the power to define residential density—into a state-mandated minimum: local governments may still regulate siting and design, but only through "clear and objective" criteria that do not have the effect of excluding the required housing types.[327] These standards aim to eliminate the subjectivity that has historically been used to deny higher-density projects.[328]

To assist implementation, the Oregon Land Conservation and Development Commission (LCDC) issued a model code for middle housing in 2020.[329] The model code operates as a state-supplied fallback: if a city failed to adopt a compliant local code by the statutory deadline, the model provisions automatically applied.[330] The model code includes dimensional and design standards governing lot coverage, setbacks, and parking ratios, thereby ensuring that a developer can rely on a predictable baseline irrespective of local resistance.[331] In this sense, Oregon's preemption was even more direct than California's S.B. 35—instead of streamlining discretionary approvals, H.B. 2001 rewrote the substance of local zoning itself.[332]

Some Oregon cities embraced the reform. For example, the City of Pendleton's planning staff reported that "'[t]he main findings are good news in that the City land-use regulations are supportive of developing middle housing in many areas.'"[333] In contrast, the City of Hermiston's Planning Commission opposed the approach, stating that "the City does not agree with the method of amendment as a legislative fiat" and that "requir[ing] that all cities . . . unilaterally amend their development codes goes against the fundamental concept of home rule."[334]

But state legislators continued to frame the measure as a long-overdue modernization of Oregon's land-use system and an act of housing equity.

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324. *Id.*

325. "Middle housing" includes duplexes, triplexes, quadplexes, townhomes, cottage clusters, and townhouses. OR. REV. STAT. § 197A.420(1)(c) (2025).

326. *See id.* § 197A.420(3).

327. *Id.* § 197A.400; *see also* OR. ADMIN R. 660-046-0360(5) (2025) (detailing review criteria); OR. LAND CONSERVATION & DEV. DEP'T, DIVISION 46 MIDDLE HOUSING IN MEDIUM AND LARGE CITIES (2020) (further detailing clear and objective standards).

328. *See* Sarah J. Adams-Schoen & Edward J. Sullivan, *Reforming Restrictive Residential Zoning: Lessons from an Early Adopter*, 30 J. AFFORDABLE HOUS. & CMTY. DEV. L. 161, 180 (2021).

329. OR. LAND CONSERVATION & DEV. COMM'N, LARGE CITIES MIDDLE HOUSING MODEL CODE (2020).

330. OR. REV. STAT. § 197A.420(3).

331. *See id.*

332. *See* Adams-Schoen & Sullivan, *supra* note 328, at 182–83.

333. *Id.* at 194.

334. *Id.* at 194–95.

Governor Tina Kotek, the bill's chief sponsor at the time, argued that "this bill is about choice" and emphasized that "when we can build more kinds of homes, people have more options."[335] Representative Jack Zika echoed that sentiment: "We all have an affordable housing crisis in our areas . . . . This is not a silver bullet, but [H.B. 2001] will address some of the things that all our constituents need."[336]

Housing-advocacy organizations likewise hailed the measure, writing that "HB 2001 will play a role in making housing more affordable, neighborhoods more diverse and integrated, and equitable."[337] Supporters also noted that "cities would retain the ability to regulate building size and design, giving them leeway to ensure that change will be gradual."[338]

But many residents and local officials criticized H.B. 2001 as a one-size-fits-all state intrusion into local powers.[339] One resident argued that H.B. 2001 chokes local discretion and will result in "speculative redevelopment accompanied by increased demolitions of the most-affordable existing housing and more displacements of the most-vulnerable residents."[340] Some suburban leaders reported backlash in community meetings, with one commissioner remarking that "[p]eople are absolutely outraged" and that "[t]here were multiple people saying it needs to be repealed."[341]

2. A Lighter State Preemptive Approach to Local Single-Family Zoning

"Lighter" state preemption constitutes state legislation that mandates localities take some sort of direct action but affords them wide discretion in doing so. Part II.C.2.a discusses Montana's lighter preemptive approach, and

335. Julia Shumway, *Oregon Gov. Kotek, Housing Advocates Push for More Options, Fewer Regulations*, OR. CAPITAL CHRON. (Mar. 4, 2025, at 05:50 PT), https://oregoncapitalchronicle.com/2025/03/04/oregon-gov-kotek-housing-advocates-push-for-more-options-fewer-regulations [https://perma.cc/GF8S-GUKD].

336. Laura Bliss, *A New Oregon Law Would Make It the First State to Ban Single-Family Zoning*, PAC. STANDARD (July 3, 2019), https://psmag.com/economics/single-family-housing-is-ore-gone/ [https://perma.cc/8DGZ-N9ML].

337. *See, e.g.*, Letter from Housing Land Advocates to Speaker Tina Kotek Supporting HB 2001 (May 29, 2019) (on file with the *Fordham Law Review*).

338. *See, e.g.*, Michael Andersen, *Oregon Just Voted to Legalize Duplexes on Almost Every City Lot*, SIGHTLINE INST. (June 30, 2019), https://www.sightline.org/2019/06/30/oregon-just-voted-to-legalize-duplexes-on-almost-every-city-lot/ [https://perma.cc/LL9M-GBC7].

339. *See* Jeff Mapes, *Single-Family Zoning Bill Faces Crucial Votes in Legislature's Last Days*, OR. PUB. BROAD. (June 17, 2019), https://www.opb.org/news/article/single-family-zoning-oregon-votes/ [https://perma.cc/3D5Y-JK7X].

340. *See* WRITTEN TESTIMONY OF JACQUELINE WALTON IN OPPOSITION TO H.B. 2001, H.B. 2001, 80th Or. Legis. Assemb., 2019 Reg. Sess. (Or. 2019), https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/188921 [https://perma.cc/Q4MA-BVAA].

341. Nigel Jaquiss, *Oregon House Bill 2001 Ended Single-Family Zoning Across the State. That's Causing Some Pushback.*, WILLAMETTE WK. (Nov. 6, 2019), https://www.wweek.com/news/2019/11/06/oregon-house-bill-2001-ended-single-family-zoning-across-the-state-thats-causing-some-pushback/ [https://perma.cc/6HP4-PED6].

Part II.C.1.b discusses Nebraska's lighter preemptive approach to create more affordable, middle housing.

a. Montana

In July 2022, Governor Greg Gianforte issued an executive order establishing the Montana Housing Advisory Council to address "[the] crisis of affordable, attainable housing."[342] In the order, the governor tasked the council with providing "short- and long-term recommendations and strategies" to expand the state's housing supply.[343] In June 2023, he extended the council through June 30, 2025, reaffirming that "the availability of affordable, attainable housing is critical" to Montana's economic future.[344]

The council's recommendations catalyzed a wave of bipartisan statutory reform. In 2023, the Montana Legislature enacted seven housing bills designed to translate the council's policy framework into enforceable law.[345] S.B. 245 authorized new housing in commercially zoned areas, requiring cities to allow residential and mixed-use development by right in business corridors where only commercial use had previously been permitted.[346] S.B. 323 required local governments to permit duplexes wherever single-family homes are allowed, prohibiting stricter design or dimensional standards for duplexes.[347]

S.B. 382 adopted a moderate but structured form of state preemption.[348] It mandates that any city with more than 5,000 residents located in a county exceeding 70,000 must adopt at least five of the fourteen prohousing regulatory changes by specified deadlines.[349] This structure preserves local discretion while ensuring measurable compliance.[350] The Montana National League of Cities and Towns described S.B. 382 as "moderniz[ing] Montana's statutes [by] giv[ing] local leaders tangible tools to be responsive [and]

342. Mont. Exec. Order No. 5-2022 (July 14, 2022), https://gov.mt.gov/_docs/governor/EO-5-2022-Establishing-Housing-Advisory-Council.pdf [https://perma.cc/WX84-WFKJ].

343. *Id.* at 2.

344. Mont. Exec. Order No. 3-2023 (June 23, 2023), https://gov.mt.gov/Documents/GovernorsOffice/executiveorders/View?doc=EO_03-2023_Continuing_Housing_Advisory_Council.pdf [https://perma.cc/684Z-B3R3].

345. *See* Joseph Scholten, Comment, *State Statutes to Solve the Housing Crisis*, 94 UMKC L. REV. 191, 207 (2025).

346. S.B. 245, 2023 Mont. Laws 1409, 1409; *see also* MONT. CODE ANN. § 76-2-304 (2025).

347. S.B. 323, 2023 Mont. Laws 1272, 1272; *see also* MONT. CODE ANN. § 76-2-304.

348. *See* S.B. 382, 2023 Mont. Laws 1410, 1415, 1424; *see also* MONT. CODE ANN. §§ 76-25-105, -302 (2025).

349. Examples of pro regulatory changes include "zon[ing] for higher-density housing near transit stations," "eliminat[ing] aesthetic, material, shape, bulk, size, floor-area, and other massing requirements for multi-unit dwellings or mixed-use developments," and "allow[ing], as a permitted use, a triplex or fourplex where a single-unit dwelling is permitted." *See* MONT. CODE ANN. § 76-25-302(b), (i), (g).

350. *See* Scholten, *supra* note 345, at 207–08.

mov[ing] public participation and analysis up to the community-wide planning stages . . . so that the permitting . . . process is more efficient."[351]

The City of Helena reported that it was "on target to meet [S.B. 382's] goal[s]," emphasizing that it had adopted provisions which made the most sense for its citizens.[352] Helena's city manager explained that the city-selected reforms aligned with its infrastructure and urban-design capacity, demonstrating how S.B. 382 allows localities to adapt while still advancing statewide housing objectives.[353] The city also created a new planning commission to guide code revisions and ensure public participation as state land-use law moves forward.

Early evidence suggests that the reforms are already reshaping local planning frameworks. Governor Gianforte praised the bill as "a victory for all Montanans striving for affordable, attainable housing."[354] Most cities and large jurisdictions that began amending land-use plans to comply with the new standards are increasingly treating housing production as a core infrastructure issue.[355] In March 2025, Montana's Eighteenth Judicial District Court in Gallatin County upheld S.B. 382 and its companion bills against constitutional challenges, confirming that the statutes did not violate home-rule authority.[356] The decision signaled to both cities and developers that the legislature's framework would remain in effect during ongoing plan adoption.[357]

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351. *See* Kelly Lynch, *SB 382 Is the Fundamental Change We Need to Our Statutes*, MONT. LEAGUE OF CITIES & TOWNS (Feb. 21, 2023), https://mtleague.org/news/sb-382-is-the-fundamental-change-we-need-to-our-statutes [https://perma.cc/R656-UDCN] ("Under SB 382, local governments, developers, and community members will all know what is expected of them because they have been part of the decision-making process.").

352. *See* Jonathon Ambarian, *Helena Creates New Planning Commission as State Land-Use Law Moves Forward*, KTVH (Oct. 31, 2023, at 20:28 MT), https://www.ktvh.com/news/helena-creates-new-planning-commission-as-state-land-use-law-moves-forward [https://perma.cc/9KHE-NTW6].

353. *See id.*

354. *See* Press Release, Governor Greg Gianforte, Gov. Gianforte Statement on Pro-Housing District Court Ruling (Mar. 3, 2025), https://news.mt.gov/GovernorsOffice/Gov_Gianforte_Statement_on_Pro-Housing_District_Court_Ruling [https://perma.cc/J3GF-YKNL].

355. *See* Patricia Cummens, *Montana Zoning Atlas: Mapping Drives Bipartisan Housing Reform*, ESRI BLOG (Jan. 8, 2026), https://www.esri.com/about/newsroom/blog/montana-zoning-atlas-bipartisan-housing-reform [https://perma.cc/U7SE-PJQ7].

356. *See* Montanans Against Irresponsible Densification, LLC v. Montana, No. DV-16-2023-0001248DK, slip op. at 52–54 (Mont. 18th Jud. Dist. Ct. Mar. 5, 2025). The court's "first step [was] . . . to examine the purpose of the legislation[,] which may be explicit, or otherwise." *Id.* at 37. The court noted the Montana Legislature expressly adopted a purpose to "promote the health, safety, and welfare of the people of Montana through a system of comprehensive planning . . . [to] encourage and support . . . sufficient housing units for the state's growing population that are attainable for citizens of all income levels." *Id.* The court upheld the legislation: "Through the provisions of these laws the Legislature has enunciated its means for achieving its purposes. It is not the Court's function to second guess the prudence of the Legislature." *Id.* at 44.

357. *See id.*

b. Nebraska

In 2020, the Nebraska Legislature enacted the Municipal Density and Missing Middle Housing Act.[358] The Act declared that increasing residential density "promote[s] more efficient use of infrastructure and public services" and that municipalities "need affordable housing at all income levels" to support workforce and economic growth.[359]

Rather than preempting local zoning codes directly, the statute requires every city with a population greater than 20,000 to (1) adopt an affordable housing action plan (AHAP) establishing measurable housing goals and (2) submit biennial reports to the legislature's Urban Affairs Committee "detailing its efforts to address the availability of and incentives for affordable housing through its zoning codes."[360] Each report must identify barriers to affordable development, zoning amendments under consideration, and progress toward local housing targets.[361]

Omaha became the first major municipality to comply, approving a state-mandated AHAP, titled the Housing Affordability Action Plan, by a vote of five to two after several hours of public testimony.[362] The plan identified four primary goals—expanding supply, fostering innovation, promoting equity, and preserving affordability—and committed to revising zoning ordinances to "make it easier to build a variety of building types while, respecting existing neighborhood character."[363] The report anticipates that Omaha will need approximately 30,000 new housing units by 2030, with nearly 60 percent of those units priced below market rate.[364] The city's 2025 Affordable Housing Report, prepared under L.B. 866, cataloged existing zoning districts, the proportion of land zoned for multifamily or mixed-use development, density bonuses, and the city's accessory dwelling unit framework.[365] These documents together form Omaha's compliance package under the Act and are publicly accessible through the City of Omaha Planning Department's website.[366] Other Nebraska municipalities have followed suit.

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358. L.B. 866, 106th Leg., 2d Sess. (Neb. 2020); *see also* NEB. REV. STAT. §§ 19-5501 to 19-5506 (2025).

359. NEB. REV. STAT. § 19-5502(2), (6) (2025).

360. *See id.* §§ 19-5504, -5505.

361. *See id.* § 19-5505.

362. *See* Melissa McElroy, *City Approves Affordable Housing Action Plan*, OMAHA AREA BD. OF REALTORS (Dec. 15, 2022), https://www.omaharealtors.com/city-approves-affordable-housing-action-plan [https://perma.cc/4ZK6-PJZQ].

363. *See* CITY OF OMAHA PLAN. DEP'T, OMAHA HOUSING AFFORDABILITY ACTION PLAN 17 (2023), https://nebraskalegislature.gov/pdf/reports/committee/urban/Omaha_2023_Affordable_Housing_Action_Plan.pdf [https://perma.cc/9NA3-KF2X].

364. *See id.* at 7.

365. *See* CITY OF OMAHA PLAN. DEP'T, 2025 AFFORDABLE HOUSING REPORT 4 (2025), https://nebraskalegislature.gov/pdf/reports/committee/urban/Omaha_ 2025_Affordable_Housing_Report.pdf [https://perma.cc/NW9M-59HH].

366. *See Affordable Housing and Neighborhood Revitalization*, CITY OF OMAHA PLAN. DEP'T, https://urbanplanning.cityofomaha.org [https://perma.cc/4ZK6-PJZQ] (last visited Jan. 22, 2026).

In 2021, the City of Lincoln issued its Affordable Housing Report—noting that roughly 95 percent of residential land area allows only single- and two-family housing by right—and pledged to explore zoning adjustments that permit more diverse housing forms.[367] The City of Hastings, a mid-sized city of about 25,000 residents, published its 2023 Affordable Housing Plan, explicitly stating on the title page that it was "designed to address the requirements of LB 866—the Municipal Density and Missing Middle Housing Act."[368]

Collectively, these submissions demonstrate that L.B. 866 has achieved broad geographic reach: cities from the Omaha-Lincoln corridor to central Nebraska have begun formalizing housing-supply strategies through the state-mandated reporting process.[369] L.B. 866 compels cities to gather data, identify barriers, and set goals, but it does not dictate a uniform zoning outcome, as results depend on each city's political and administrative will.[370]

Omaha's plan, for example, commits to streamlining approvals and modernizing its parking standards, while Lincoln and Hastings have used their plans to initiate rezoning studies and small-lot pilot programs.[371] Although these actions fall short of direct zoning mandates, they represent measurable progress in integrating affordable-housing objectives into local planning law.[372]

* * *

At first glance, the comparison between state preemption of single-family housing and the emerging debate over state regulation of data center siting may appear mismatched. Housing implicates the right to shelter, a core human need, whereas data centers serve a commercial function. Yet as Part II has shown, they expose the same tension: the degree to which local zoning, conceived as a tool of neighborhood self-determination, can stall development that serves broader statewide interests.[373]

Regarding single-family zoning, local governments invoked their authority to preserve neighborhood "character," manage congestion, and protect property values.[374] These rationales, though often and fairly criticized as exclusionary, are not always facially irrational.[375] Municipal

367. *See* CITY OF LINCOLN, LB866 BIENNIAL REPORT: AFFORDABLE HOUSING, LINCOLN, NE 2 (2021), https://nebraskalegislature.gov/pdf/reports/committee/urban/Lincoln_2021_Affordable_Housing_Report.pdf [https://perma.cc/TEA2-FMUV].

368. CITY OF HASTINGS, AFFORDABLE HOUSING PLAN 1 (2023), https://nebraskalegislature.gov/pdf/reports/committee/urban/Hastings_2023_Affordable_Housing_Action_Plan.pdf [https://perma.cc/G2SH-22CF].

369. *See supra* notes 362–68 and accompanying text.

370. *See supra* notes 362–68 and accompanying text.

371. *See* CITY OF OMAHA PLAN. DEP'T, *supra* note 365, at 10; CITY OF LINCOLN, *supra* note 367; CITY OF HASTINGS, *supra* note 368.

372. CITY OF OMAHA PLAN. DEP'T, *supra* note 365, at 10; CITY OF LINCOLN, *supra* note 367; CITY OF HASTINGS, *supra* note 368.

373. *See supra* Parts I.B.2, II.A.1.

374. *See generally* HIRT, *supra* note 42.

375. *See generally id.*

officials must respond to local constituents who experience increased traffic, infrastructure strain, or loss of open space.[376] But what ultimately justifies preemption is that without it, the collective welfare of the state is undermined: California and Oregon acted when municipal veto power over multifamily housing created regional shortages so acute that the externalities outweighed the costs of reduced local autonomy.[377]

The data center context presents a parallel, though not identical, dynamic. Local governments again claim legitimate reasons for control, as increased data center construction means residents face power, water, and land[378] shortages due to their development.[379] These are not frivolous objections.[380] From a local perspective, exclusion offers prudent protection of residents rather than obstruction.[381]

Data centers, like housing, are land-use intensive: they depend on zoning categories, setbacks, and conditional-use approvals that vary across jurisdictions.[382] Part III explains how a statewide framework does not negate local externalities but rather rationalizes their management, ensuring that environmental, infrastructure, and community impacts are assessed consistently rather than opportunistically.

III. MANAGING LOCAL DATA CENTER DEVELOPMENT THROUGH A LIGHT STATE PREEMPTION FRAMEWORK

Local governments are struggling to manage the unprecedented infrastructural demands of data centers within zoning frameworks not yet designed for this scale of industrial activity.[383] These gaps have produced inconsistent outcomes,[384] community harms,[385] conflict between cities and local officials,[386] and statewide challenges.[387] Thus, the path forward requires a calibrated form of state intervention that preserves municipal discretion while providing the procedural guardrails necessary to ensure transparent, predictable standards.

Part III.A develops the concept of light preemption, drawing on the housing reforms of Nebraska and Montana to show how procedural mandates can reconcile statewide coordination with municipal discretion. Part III.B evaluates how such a framework benefits residents, state and local

376. *See* Barter, *supra* note 46, at 279.
377. *See supra* Part II.C.1.
378. *See supra* Part I.B.3.
379. *See supra* Parts II.A–B.
380. *See supra* notes 87, 101, 102, 110, 202 and accompanying text.
381. *See supra* notes 143–53, 174–76, 201–02, 207–08, 224, 272–73 and accompanying text.
382. *See supra* Part II.A.1.
383. *See supra* Part II.B.
384. *See, e.g.*, *supra* Parts II.B.1.b, II.B.2.a.
385. *See supra* notes 143–53, 174–76, 201–02, 207–08, 224, 272–74 and accompanying text.
386. *See supra* Part II.B.
387. *See, e.g.*, *supra* notes 87–89 and accompanying text.

governments, and developers by replacing discretionary conflict with transparent standards and predictable processes. Finally, Part III.C provides a legislative blueprint for implementing light preemption in the data center context, including proposals for a model act that establishes reporting requirements, objective siting metrics, and regional planning coordination without erasing local authority.

A. States Should Borrow from Nebraska and Montana's Affordable Housing Statutes

The defining feature of light preemption is its procedural scaffolding: it coordinates behavior through planning and reporting rather than direct compulsion.[388] But it bears emphasizing that light preemption is not a one-size-fits-all solution—states differ dramatically in geography, climate, resource endowments, and economic structure, factors that profoundly shape the local politics of land use.[389] A framework that works in semi-arid Montana, where industrial parcels are scarce but energy resources are abundant, may require substantial adaptation in humid coastal states. But the virtue of light preemption is its elasticity: it sets a procedural baseline while allowing each state and locality to tailor its substantive priorities.

This is why Nebraska and Montana's "light-preemption" statutes, which demonstrate that the state can set enforceable procedural floors without erasing local discretion, are desirable models for states seeking to preempt local land use policies around data centers.[390] Nebraska's Municipal Density and Missing Middle Housing Act requires qualifying municipalities to adopt an affordable-housing action plan and file biennial reports on zoning and incentive programs.[391] It compels participation in a transparent, data-driven process rather than dictating the content of zoning ordinances.[392] Montana's S.B. 382 extends the same philosophy through a menu of compliance, obliging cities above specified thresholds to adopt at least five of fourteen prohousing reforms.[393] Rather than expressly mandating development like Oregon,[394] this structure respects differences in geography and community character.

Applied to data centers, light preemption would replace reactive, project-specific approvals with proactive planning.[395] Localities have suffered from a lack of proactive planning, as data center developments continue to be green-lit just to be cancelled[396] or met with excessive

388. *See supra* Part II.C.2.
389. *See, e.g.*, *supra* notes 280–82 (expressing heightened concern for data center water use in Arizona's arid climate).
390. *See supra* Part II.C.2.
391. *See supra* notes 360–64 and accompanying text.
392. *See supra* note 370 and accompanying text.
393. *See supra* notes 349–52.
394. *See supra* notes 325–39.
395. *See infra* Part III.B; *see also* Lynch, *supra* note 351.
396. *See supra* notes 177–78 and accompanying text.

litigation.[397] Critics might argue that light preemption is too weak to overcome entrenched local resistance, as municipalities may simply comply on paper.[398] Yet, for example, the small act of mandating localities to produce reports[399] creates a public record against which advocates, legislators, investors, and residents can measure progress.[400]

B. A Blueprint for Legislative Design and Enforcement

Drawing from affordable housing statutes and local data center zoning, a light-preemptive statute for data center development must be well balanced. This section first argues that such a statute should include (1) a declaration of state purpose, (2) local planning and reporting mandates, and (3) objective standards and technical guidance.

Declaration of State Purpose. A model act would begin with a legislative finding that large-scale digital infrastructure constitutes essential state infrastructure.[401] By framing data centers as public-interest infrastructure and stressing commitment to the welfare of residents, the statute would ground preemption in the state's police power and assist courts in potential challenges to litigation.[402] States should affirm that data center development is a matter of statewide economic significance, as the industry provides major tax revenues and job growth.[403] At the same time, states must acknowledge the substantial burdens that data centers impose on local communities, including unusually high electricity demand, significant water usage, noise externalities, and large land requirements.[404]

A clear legislative purpose provision thus frames the statute as a balancing mechanism that enables the state to pursue the public benefits of data center growth while ensuring that local residents are not unduly burdened by its externalities. This framing mirrors the structure of affordable-housing politics: the land use is socially beneficial at the statewide level but triggers highly concentrated local resistance.[405] With the establishment of a state

397. *See supra* notes 226–30, 271–74 and accompanying text.

398. *See* Franzese, *supra* note 32, at 33–34 (discussing how municipalities skirted the mandated inclusionary zoning practices in the *Mount Laurel* cases).

399. *See infra* Part III.B.2.

400. *See infra* Part III.C; *see also* CITY OF BURBANK PLAN. DEP'T, *supra* note 312; CITY OF OMAHA PLAN. DEP'T, *supra* note 363.

401. *See* BD. OF CNTY. SUPERVISORS, PRINCE WILLIAM CNTY., VA., MINUTES (2016) (minutes from May 17, 2016) ("The [DCOZOD] was created for the purpose of promoting development of data centers . . . while limiting negative impacts to communities."); NEB. REV. STAT. § 19-5502(2) (2025) ("The Legislature finds and declares that . . . [t]here is a need for affordable housing in municipalities of all sizes in Nebraska . . . [because] municipal zoning codes, ordinances, and regulations in Nebraska and throughout the United States prioritized detached single-family homes.").

402. *See supra* note 356 and accompanying text ("It is not the Court's function to second guess the prudence of the Legislature.").

403. *See supra* note 76 and accompanying text; *see also supra* Part I.B.2.

404. *See supra* Part I.B.3.

405. *See* Barter, *supra* note 46, at 279.

purpose modeled on prohousing reforms, the state should next require local reporting and planning mandates.

Local Planning and Reporting Mandate. Consistent with light-preemption housing statutes in states like Montana and Nebraska, a state-level framework for data centers should impose a mandatory local planning and reporting obligation rather than a blanket override of local zoning.[406] The state should thus require each municipality to proactively produce an annual "Data Center Infrastructure Plan," cataloging available industrial parcels, as well as power and water capacity, to establish a baseline of transparency before approval;[407] this would require public documentation and reporting, rather than expressly preempting local zoning, like Nebraska's L.B. 866.[408]

Consequently, such a requirement would neither force approval of any particular project nor preclude heightened environmental scrutiny. Rather, it would establish a baseline of transparency that enables regional coordination among utilities, broadband providers, and emergency-response networks.[409] The annual requirement ensures states and localities are taking stock of the rapidly increasing technological advancements in the data center industry,[410] rather than monolithically assuming data centers are all the same.[411]

To avoid the risk of localities evading compliance,[412] state law must obligate local governments to plan affirmatively. The reports should therefore require every locality to identify land compatible with the infrastructural needs of data centers, including access to electricity, water, and transportation. Like in Prince William County, which specifically zoned for data centers,[413] this mandate would proactively push localities to develop siting plans, rather than retroactively establishing moratoria to "evaluate the effects of data centers and consider changes to the Zoning Code to protect the health, safety, and general welfare of residents," like in Saint Charles.[414] This requirement establishes a baseline of transparency, allowing "local governments, developers, and community members [to] all know what is expected of them" before development begins.[415]

406. *See supra* Part II.C.2.

407. *See supra* notes 148, 173–76, 180–81, 208, 224, 273 (detailing an overwhelming concern by residents and local government officials regarding a lack of transparency in the data center approval process due to incomplete information regarding land, water, and power use).

408. 106th Leg., 2d Sess. (Neb. 2020); *see also* NEB. REV. STAT. §§ 19-5501 to 19-5506 (2025).

409. *See supra* notes 137–41 and accompanying text.

410. *See supra* notes 99, 138 and accompanying text.

411. *See* ST. CHARLES, MO., ZONING CODE § 400.60 (2026) (classifying data centers as "storage warehouses"); *see* PECULIAR, MO., ZONING REGS. § 400.260 (2026) (classifying data centers as "computer assembly and manufacturing" buildings).

412. *See* Franzese, *supra* note 32, at 33–34.

413. *See supra* Part II.B.2.a.

414. *See supra* notes 185–87 and accompanying text.

415. *See* Lynch, *supra* note 351.

This requirement also gives teeth to the myriad pieces of state legislation that seek to attract data center development:[416] clear siting requirements can attract developers while ensuring local residents are not impacted by data centers' negative externalities.

Objective Standards and Technical Guidance. To minimize the effect of negative externalities on residents, the model statute would direct the municipalities to issue binding technical guidance similar to the preemptive framework in California's "objective zoning standards."[417] In the California method, development is permitted by right should the developer adhere to the state-created standards, thereby limiting local authority to deny affordable housing units on subjective bases.[418] This method, however, is not a scalable solution for a model statute due to the unique infrastructural demands of data centers.

Instead, the localities themselves should be mandated to create these objective standards and incorporate them into their local zoning codes, which should also ensure residents' protection from the negative externalities of data centers, such as in Prince William County[419] and Phoenix.[420] Requiring the localities to adopt these standards themselves accounts for regional variations within states. The annual mandated Data Center Infrastructure Plan would allow states to review these objective standards and ensure their implementation.[421] Objective standards are necessary because local concerns about power, water, noise, and land use reflect genuine infrastructural burdens.[422] Because these concerns are grounded in measurable impacts, states should obligate localities to acknowledge these concerns and convert them into technically grounded criteria.

While this Note does not seek to establish set quantifiable metrics, power and water infrastructure provide the clearest cases for standardization. Given objectively high electrical loads, the statute should require localities to evaluate applications using a standardized formula that adequately ensures regional power needs are protected. This would similarly apply to water usage, as the statute should require localities to evaluate applications based on industry standard metrics like water usage effectiveness.[423]

Noise externalities likewise provide a case for standardization. Mandating localities to set decibel limits at property lines assuages residents' fears of excessive noise, and states can draw on localities that have already conducted

416. *See* NAT'L CONF. OF STATE LEGISLATURES, *supra* note 13.

417. California's statute mandates adherence to standards that are "uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal." CAL. GOV'T CODE § 65913.4(a)(3)(A) (2026).

418. *See id.*

419. *See supra* notes 108, 250–53 and accompanying text.

420. *See supra* notes 289–93 and accompanying text.

421. *See supra* notes 362–68 and accompanying text.

422. *See supra* Part I.A.3.

423. *See* Hölzle, *supra* note 99 (discussing how Google is replenishing water sources and quantifying progress through the objective metric of water usage efficacy).

studies on the effects of data center noise production.[424] Importantly, mandating these objective standards does not stymie data center development but rather forces the industry to capitalize on efficiency improvements that already exist.[425] A set of objective standards that encourages industry efficiency would reduce the regulatory and permitting uncertainty in construction that developers complain about.

Finally, these objective standards must be paired with state-enforced procedural safeguards. States that successfully induced local compliance with affordable-housing mandates did so not merely by defining "objective standards," but by embedding those standards within mandatory, state-controlled procedural mechanisms.[426]

C. Light Preemption Benefits Individuals, Developers, and State and Local Governments

From the resident's perspective, the prevailing patchwork of discretionary zoning provides neither predictability nor meaningful voice.[427] Communities often learn of data center proposals only after developers have secured options on land and applied for variances.[428] Public hearings then quickly become adversarial, rather than being a collaborative planning session.[429] A state-mandated planning framework would invert this timeline. By requiring localities to meaningfully develop Data Center Infrastructure Plans, residents gain advance notice and the opportunity to actively participate before projects materialize.

The experience of Helena, Montana, demonstrates that compliance can reinforce local priorities: the city selected five prohousing reforms that "made the most sense" for its citizens and infrastructure capacity, thereby satisfying state law while tailoring policy to local needs.[430] A comparable data center statute would allow each municipality to tailor the appropriate measures described in the legislative blueprint[431] according to local environmental context.

Opponents may object, arguing that even light preemption undermines local discretion and that municipalities, not state agencies, possess the granular knowledge necessary to balance growth with quality of life.[432] But light preemption does not relocate zoning authority to the state; rather, it

424. Localities have set such a number between forty-five dbA and sixty dbA, depending on the time of day. *See supra* notes 108, 289.
425. *See supra* notes 99, 137–38 and accompanying text.
426. *See supra* notes 329–33 and accompanying text.
427. *See supra* Part II.A.2.
428. *See, e.g.*, *supra* Part II.B.1.a.
429. *See supra* notes 173–76, 207–09, 221–24, 270.
430. *See* Ambarian, *supra* note 352.
431. *See supra* Part III.B.
432. *See supra* notes 233, 313, 340 and accompanying text.

conditions the exercise of that authority on transparent planning.[433] Local authority remains intact as cities decide where, how, and under what conditions data centers may be located. The state merely ensures that those decisions are reasoned, documented, and consistent with objective criteria.

For developers and utilities, the principal obstacle in current practice is uncertainty.[434] The capital expenditure of a hyperscale data center, often exceeding $1 billion, requires years of planning predicated on reliable timelines for zoning, interconnection, and environmental permitting.[435] Yet discretionary local review introduces delay, and a single variance appeal can derail a project's financing.[436] Light preemption mitigates this risk by requiring qualifying municipalities to publish standardized siting procedures and maintain an updated inventory of eligible parcels.[437]

State economies also benefit from rationalized infrastructure planning. A statewide reporting requirement enables the synchronization of land use with power-generation and transmission planning,[438] especially where local effects are felt across the state.[439] This coordination would allow state energy regulators to forecast electricity use.[440]

CONCLUSION

Data centers now underpin core economic and technological functions, yet the zoning regimes governing their placement remain fragmented, discretionary, and procedurally vulnerable. As this Note has argued, relying on purely local control has generated opaque standards; unpredictable timelines; and intensifying conflict between residents, developers, and municipalities. This uncertainty mirrors the dynamics that once stalled affordable housing production, where local opposition and discretionary review repeatedly thwarted projects of statewide importance. Housing reforms demonstrate that states can respect local planning authority while still ensuring implementation through procedural safeguards such as objective standards, ministerial pathways, mandatory reporting, and automatic fallback codes. These mechanisms did not dictate outcomes; they prevented obstruction and provided the clarity necessary for coordinated governance.

Applying the same light-preemption model to data center siting would replace ad hoc decision-making with transparent criteria, enforceable timelines, and accountability structures that protect both community interests

433. *See, e.g.*, NEB. REV. STAT. § 19-5504(1) (2025) (mandating Nebraska localities to simply "detail[] . . . [their] efforts to address the availability of and incentives for affordable housing through its zoning codes").

434. *See supra* Part II.A.1 (noting developers' chief concerns lay in the complex state and local permitting procedures and zoning laws).

435. *See* DATA CTR. WATCH, *supra* note 203.

436. *Id.*

437. *See infra* Part III.B.

438. *See supra* notes 246–51 and accompanying text.

439. *See* Saul et al., *supra* note 87.

440. *See supra* notes 137–41 and accompanying text.

and statewide infrastructure needs. Such an approach neither compels municipalities to host unwanted facilities nor leaves them free to impose process-driven vetoes that undermine broader economic and technological goals. As AI's resource demands accelerate, the stakes of inaction grow, and a calibrated framework of objective standards and procedural enforcement offers the most workable path forward.