Data Center Development and the Rights of the Community

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Audience: Residents, advocates, legislators, county and city officials, utility regulators, and public landowners.

Purpose: Establish a public position on data center development, public subsidies, resource protection, and accountable government that communities can use when writing laws or reviewing projects.

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The position and the decisions it requires

I oppose the use of discretionary public subsidies to recruit large commercial data centers. I support prospective repeal of special data center tax preferences, subject to a lawful transition for existing obligations. Private investment must carry its own infrastructure, operating, and closure costs. A profitable business does not acquire a right to public assistance because it is large, fashionable, or described as strategic.

I support strict zoning that protects homes, productive farmland, water supplies, quiet, public safety, and the financial interests of existing residents. A data center should require a specific land-use review wherever computing is the principal business on the site. Dividing a campus into buildings, tenants, utilities, or construction phases must not divide its consequences out of the public record. Ordinary computer equipment serving a school, farm, hospital, or office should remain incidental to that use when it is genuinely subordinate.

This position can support rejection, relocation, reduced scale, or approval under binding conditions. The governing question is whether the actual proposal satisfies lawful public standards. Officials should reject a proposal that fails those standards. Residents need not accept a burden merely because a developer offers to describe it more attractively.

The accompanying Model Data Center Zoning Ordinance contains proposed operative rules. The Model State Data Center Policies and Model County and City Data Center Policies address the different powers needed to

implement this position. These are proposals for adoption, not a representation that the same law already applies in every community.

The community has a right to govern development

Local self-government includes deciding how industrial development fits among farms, homes, schools, roads, and public services. That authority has legal boundaries. States determine much of the power available to counties and cities. Federal authority, tribal sovereignty, vested rights, utility regulation, and constitutional protections can affect an individual decision. A credible policy identifies those boundaries and then exercises the authority the community actually holds.

Property rights apply to the developer and the neighbors. Owning a parcel does not create an unlimited claim on another person's quiet, water supply, tax payments, or electrical service. Neighboring owners also cannot demand a denial without the findings required by law. The public decision should state the applicable rule, the evidence, the unresolved issue, and the reason for approval or rejection.

Agricultural land deserves an affirmative protection policy. A community should map productive soils, irrigation systems, agricultural operations, conservation areas, flood hazards, recharge areas, and existing industrial sites before a developer chooses the terms of debate. The model excludes principal data centers from agricultural and residential districts and uses explicit commercial, industrial, and heavy-industrial tiers under conditional review. Additional mapped protection for important soils should be adopted expressly, with findings explaining its boundaries and purpose.

Publicly owned land requires its own decision. A public landowner should not quietly commit land through a recruitment agreement, option, utility promise, or discounted sale before the public disposition requirements are satisfied. Federal or tribal land involves a different sovereign and must be addressed through the processes that actually apply.

Public money and the full cost of recruitment

The policy should cover every form of project assistance. A government can subsidize a project through a tax exemption, credit, rebate, grant, loan, guarantee, bond arrangement, discounted land, public infrastructure, reduced connection charge, dedicated utility investment, or an agreement that shifts financial risk to the public. A financing mechanism is not automatically a subsidy. Its terms determine whether the public confers a special benefit or bears a special risk.

An economic development policy should apply the same accounting discipline across industries. Data centers require added attention because their electrical and cooling systems can impose unusually large demands relative to permanent employment. That is a reason for careful measurement, not a license to invent a universal job count or tax bill.

Claim made to the public

Evidence the public should receive

A large capital investment will benefit the community

Spending by location and year, local purchases, taxable values, depreciation assumptions, and the public obligations that accompany construction

The project will create jobs

Separate construction job-years, permanent direct positions, contract positions, wages, benefits, local hiring assumptions, and verification methods

The project will pay its way

Expected collections after every preference, public service costs, infrastructure costs, financing risks, and downside scenarios

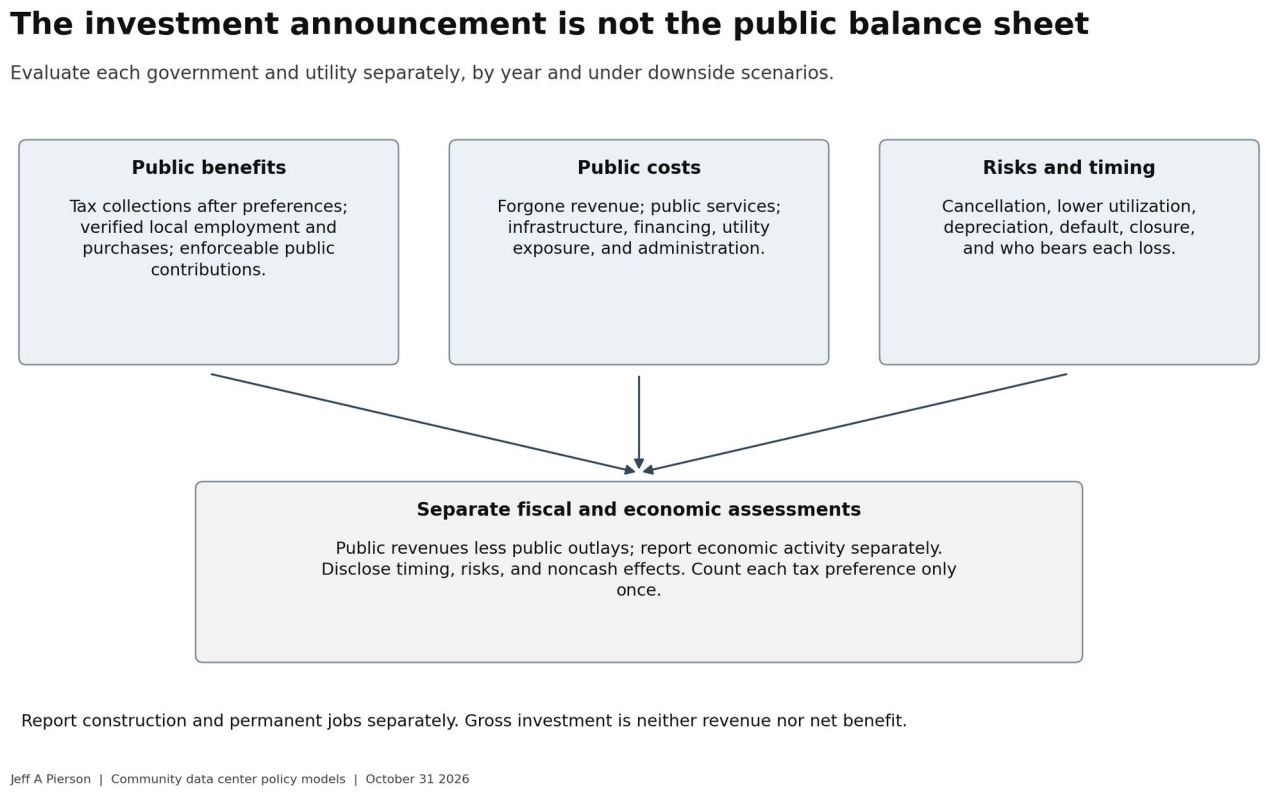
Public support is necessary

The legal authority, claimed financial need, alternatives, decision criteria, and enforceable obligations

A subsidy will be recovered if promises fail

The actual recapture clause, security, responsible entity, trigger, collection procedure, and appeal process

Virginia's legislative audit found real construction and fiscal benefits from data centers while identifying utility growth risks and neighborhood noise concerns. That evidence requires a serious fiscal assessment. It does not establish the net benefit of a project in another community (Joint Legislative Audit and Review Commission [JLARC], 2024).



How public costs and benefits must be compared

The model policy begins with no discretionary recruitment subsidy for principal commercial data centers. Where current law mandates an exemption, officials must administer that law unless it changes. A local zoning vote cannot repeal a state tax statute. Legislators should withdraw special preferences prospectively, publish transition rules, and require lawful reporting for obligations that remain.

If a public body considers an exception to its no-subsidy policy, it should require a separate public fiscal decision, independent analysis, an identified funding source, a signed performance agreement, and enforceable security. That decision should not purchase relief from zoning standards. A donation or community benefit agreement cannot excuse an otherwise unlawful permit.

Where data centers belong and what approval must require

The proposed model caps the complete related campus at 250 MW of maximum designed simultaneous operating demand. A principal facility at or below 5 MW may seek conditional approval only in a specifically designated commercial or industrial district; above 5 through 20 MW, only in a designated industrial or heavy industrial district; and above 20 through 250 MW, only in heavy industrial. Every principal facility requires the applicable conditional review and the same protective performance standards. A principal facility below 1 MW is still covered. Related phases, parcels, leases, and affiliates are measured together, and backup capacity is not counted twice as a simultaneous load.

A specific data center classification prevents an industrial campus from passing through a category written for warehouses or ordinary offices. The permit should state the maximum physical development and operating envelope. At a minimum, that means buildings, equipment, electrical demand, water withdrawal and consumption, wastewater, fuel, generator operation, battery systems, noise, light, traffic, and all planned phases.

The model proposes a 1,000-foot separation from specified sensitive uses, a 200-foot vegetated buffer, and a one-story building limit of 24 feet. These are deliberate protective land-use choices. They are not nationwide safety thresholds. A community adopting them must map their effects, identify the protected uses precisely, and establish the lawful adjustment process. Vegetation helps screen an industrial site. It does not replace an acoustic barrier or establish that noise is controlled.

The permit application must identify the applicant, owner, operator, controlling entities, and financially responsible party. Officials should know which entity can be required to correct a violation or fund closure. Beneficial ownership information relevant to lawful review should be separated from private customer communications and protected taxpayer records.

Applicants should finance independent review through a lawful fee or escrow system administered by the public body. The reviewer must answer to the agency, disclose conflicts, and place the usable findings in the public record. A developer should not select the evidence standard by choosing the consultant who will judge compliance.

Water electricity gas and the limits of efficiency claims

A cooling system can reuse water while still consuming water through evaporation or other losses. A claimed closed loop is incomplete evidence. The public needs a water balance showing source, makeup water, circulation, evaporation, discharge, peak demand, drought performance, and emergency arrangements. It also needs the relevant water authority’s determination of legal supply and the project’s effects on existing users.

An efficient facility can still place a large total demand on a constrained system. Power usage effectiveness divides total facility energy by IT equipment energy over the same defined boundary and period, with on-site generation accounted for under the adopted method. Water usage effectiveness reports water use relative to a stated computing-energy denominator and boundary. Neither ratio, by itself, establishes an acceptable total withdrawal, peak load, or public cost. The permit must regulate quantities as well as ratios.

Berkeley Lab’s 2026 report projects substantial national growth in data center electricity demand. National scenarios describe the scale of the planning problem. They cannot establish the electrical load, job count, or water requirement of a proposed local project (Smith et al., 2026).

Electric utilities and their regulators should allocate the costs and risks of large new loads through lawful rates and agreements. Minimum payment obligations, collateral, exit charges, and construction contributions can reduce exposure when a project cancels or uses less service than forecast. Their adequacy depends on the tariff, the utility system, and the customer's credit. A county or city cannot rewrite a state-regulated tariff through a zoning permit.

An off-grid project still depends on resources. Natural gas generation requires fuel supply and may need pipelines, water, air permits, and emergency services. The appropriate claim is that these burdens require examination. A claim that a specific project will increase household gas bills requires utility and rate evidence.

Noise lighting public health and emergency response

The model's proposed sound limits are 40 dBA during the day and 35 dBA at night, using a specified 15-minute source-specific measurement, together with C-weighted limits and corrections addressed in the ordinance. The model treats 7 p.m. through 7 a.m. as nighttime. Its lighting provisions propose zero uplight, a maximum 2,200 K color temperature, and no more than 0.01 foot-candle of incremental vertical illuminance at a protected boundary. The complete ordinance defines where and how these rules are measured and how actual emergencies are handled.

These limits draw on stringent selected public standards and explicit policy judgments. They do not carry a verified national ranking. Cape Vincent's enacted noise law, the Chester and Montgomery planning commissions' model guidance, Millburn's adopted lighting provisions, and DarkSky's technical guidance use different measurement rules and scopes. The comparative schedule identifies those differences. Mixing one jurisdiction's number with another jurisdiction's exceptions can produce a rule neither jurisdiction adopted.

Noise review must address the whole campus, the loudest credible operating condition, low-frequency components, tones, generator combinations, weather, and nearby sensitive locations. Commissioning tests and complaint response must be funded. A sound prediction without an enforceable operating limit gives neighbors an argument rather than protection.

Fire and emergency planning must address the actual battery chemistry, equipment arrangement, fuel storage, water supply, access, smoke, runoff, and responder capability. UL 9540 product certification, UL 9540A fire testing, and an installation code perform different functions. Passing a test does not erase the need for a site-specific emergency plan or prove that every possible fire is manageable (UL Solutions, n.d.). The adopted code edition and responsible fire authority must be identified.

Purpose privacy and the limits of government power

The public should ask what a facility does and why public support is requested. Three questions must remain distinct.

Meaning of purpose

Legitimate policy inquiry

Boundary that must be observed

Operational purpose

Enterprise computing, colocation, cloud services, AI training or inference, storage, or proof-of-work mining and their physical demands

A business label does not prove the contents of every customer's workload

Public purpose

Whether public expenditure or a tax preference is justified by verified public outcomes

Existing statutory rights and contracts cannot be erased by a policy resolution

Communicative purpose

Lawful investigations and duties assigned by the applicable law

Government should not license ideas or require planning staff to inspect private communications

I support a statewide prohibition on commercial exploitation of sensitive personal data and on indiscriminate ALPR surveillance, with precise definitions, enforcement, and any narrow emergency exception enacted openly. I oppose foreign-government or adversary control of critical facilities and sensitive data, and support targeted state and federal restrictions rather than a false promise that a county can ban all foreign commerce. Those protections belong in legislation, public procurement rules, and the laws governing the actors involved. A land-use permit should regulate the physical facility and its lawful impacts rather than invent a local censorship office.

For a facility above 5 MW, the operator's annual signed certification should identify its direct wholesale tenants and disclosed on-site subtenants, their declared physical uses, controlling parties where lawfully reportable, allocated MW, measured peak MW, annual MWh, and material changes. The operator must obtain written use declarations and change notices by contract and retain non-content records for a lawful independent audit. It must disclose whether the operator, an affiliate, a direct tenant, or a disclosed on-site subtenant conducts proof-of-work cryptocurrency mining at the premises, with the mining capacity, demand, energy, generation fuel, and hours. The officer should identify verification gaps rather than certify knowledge of every remote end user.

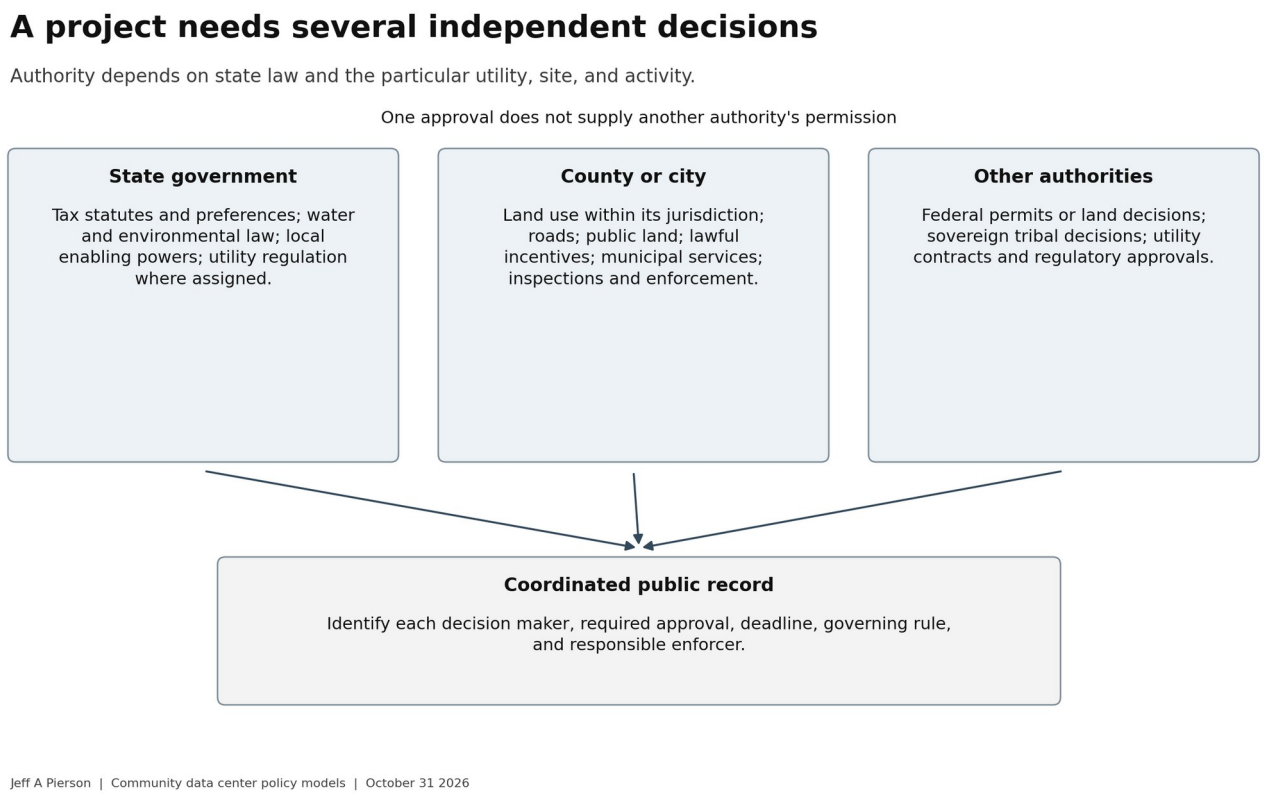
A zoning permit controls land use and physical effects. A ban based solely on a wholesale customer's lawful adult expression would turn the zoning official into a content reviewer and implicate the First Amendment (Reno v. American Civil Liberties Union, 1997). Mass data brokerage and ALPR networks can operate across many sites, so a server address alone is a poor legal and evidentiary basis for a local land-use ban. State privacy and surveillance legislation can regulate the collection, sale, retention, and use themselves; a local government can refuse to buy or deploy ALPR systems and decline discretionary public support. A blanket exclusion of every foreign commercial interest also reaches foreign commerce and national-security powers assigned principally to federal law. Targeted ownership, sanctioned-person, and sensitive-data restrictions require precise enabling law and federal coordination. These limits on zoning do not require any government to subsidize or purchase the disfavored services.

Customer verification, access controls, segmentation, contracts, and incident procedures can reduce risk. They cannot guarantee that every downstream user is known or that every encrypted workload can be classified. NIST's zero trust architecture requires attention to users, assets, authorization, and resources. It is a security approach, not a guarantee of complete visibility or a legal power to search communications (Rose et al., 2020).

Illegal conduct should be investigated under the law that defines it. Lawful adult expression, obscenity, child exploitation, nonconsensual intimate imagery, gambling, foreign ownership, and unauthorized computer access are different legal categories. A covered provider's duties under 18 U.S.C. § 2258A arise under specified

conditions; the statute does not impose a general duty to monitor users. The Stored Communications Act also restricts disclosures by covered providers. A government request does not create an exception by itself (18 U.S.C. §§ 2258A, 2702).

State county and city responsibilities



Which government makes which kind of decision

State legislators should address special tax preferences, statewide resource law, reporting authority, and the powers of local governments. Utility regulators should address service terms and the allocation of utility costs and risks within their jurisdiction. State environmental and water agencies should apply their own permitting laws and coordinate public information.

Counties should exercise the planning, zoning, road, emergency, public land, and fiscal powers assigned to them. Cities should exercise their corresponding municipal powers, including decisions about municipal water, sewer, annexation, and service contracts where authorized. Neither should promise jurisdiction it does not possess. Agreements between governments should identify responsibility instead of concealing it.

The model asks every level to disclose all assistance, coordinate timelines, avoid cumulative impacts escaping review, and preserve public participation. It also requires each decision to identify the official or agency responsible for enforcement.

Advocacy that continues after the vote

Effective opposition begins before a project application. Residents should define their objectives, organize a reliable team, obtain the operative laws and maps, identify decision makers, and establish a checked evidence record. Public education, media work, testimony, utility proceedings, legislative advocacy, negotiation, and litigation serve different purposes and have different rules.

Advocates should demand correction of unsupported claims, including their own. Accusing a project of criminal conduct without evidence weakens the public record and exposes people to avoidable harm. A forceful public argument can rest on documented capacity limits, unequal public treatment, unprotected neighbors, and costs the project has not agreed to bear.

Approval does not end the work. Someone must read monitoring reports, preserve complaints, compare construction with the permit, track ownership changes, demand correction, and check financial assurance. Denial also requires follow-up because an applicant can revise, relocate, appeal, or seek a change in the law. The Comprehensive Data Center Advocacy Manual and Advocacy Field Tools and Templates cover those tasks from organization through closure.

Conditions that justify rejection

A public body should reject a proposal when the governing law requires rejection and the record establishes that the applicant has failed the standard. Examples include a prohibited location, an inadequate water supply, unmitigated sound impacts, an unavailable emergency response capability, a missing legally required approval, or a material failure to supply evidence needed for a required finding.

A public body should also refuse a discretionary subsidy under the adopted no-subsidy policy. That fiscal decision needs its own authority and record. An applicant may satisfy zoning rules and still receive no recruitment subsidy. Conversely, a proposed fiscal benefit cannot cure a prohibited land use.

The public should not have to finance a project, tolerate its unmeasured burdens, and then pay to discover whether its promises were enforceable. Before approval, the record must identify the limits, the payer, the enforcer, and the remedy.

Glossary

Accessory computing: Computer equipment genuinely subordinate to the main lawful use of a site, such as a school’s own network room. A commercial computing business does not become accessory merely because its building is small.

Annexation: A change in municipal boundaries under state law. It can affect jurisdiction and service obligations but does not automatically resolve all permits.

Artificial intelligence: Computer-based systems that make predictions, recommendations, decisions, or generated outputs. Different systems and workloads have different uses and resource demands.

Baseline: The documented conditions used for comparison before a project operates or expands.

Beneficial ownership: The natural persons or entities that ultimately own or control a business under the definition applicable to a particular disclosure requirement.

Buffer: A defined separation area intended to protect neighboring uses. Vegetation, distance, and engineered sound control perform different functions.

Campus: Related buildings, equipment, phases, and supporting infrastructure evaluated together under the model’s aggregation rule.

Capital investment: Money spent on project assets. It is not the same as local spending, tax revenue, permanent employment, or net public benefit.

Clawback: Recovery of an incentive when an enforceable law or agreement authorizes recovery after a specified failure.

Colocation: A service supplying space, power, cooling, and related facilities for customer equipment. The building operator may not control the customer’s applications.

Color temperature: A lamp’s color characteristic expressed in kelvins. Lower values generally appear warmer. The rating alone does not measure brightness or total environmental effect.

Conditional use: A land use allowed only after the designated authority makes required findings and imposes lawful conditions. Some jurisdictions use a different name.

Consumptive water use: Water withdrawn that is not returned to the relevant source in a usable time, place, and form under the governing accounting method.

Construction job-year: One full-time-equivalent job for one year of construction. It is not a permanent position.

Controlling entity: An organization or person with defined power over the applicant or operator. The relevant legal definition must be stated.

C-weighted sound: A sound measure that retains more low-frequency energy than A-weighting. It complements other acoustic measurements.

Cumulative impacts: Effects assessed together across related phases, nearby projects, and shared systems within a defined study area and period.

dBA: Decibels measured with A-weighting. A number is incomplete without its location, averaging period, operating condition, and correction rules.

Discretionary subsidy: A public benefit an authorized body has lawful discretion to grant or refuse. It differs from a mandatory statutory exemption.

Drought plan: Binding operating steps and water-use reductions tied to defined shortage conditions and available legal supply.

Effective date: The date a law or policy begins to operate, subject to its transition provisions.

Enforcement: Lawful investigation and action to secure compliance, including the required notice, evidence, remedy, and appeal procedure.

Enterprise facility: A data center principally serving its operator’s own business rather than selling general computing or colocation services to unrelated customers.

Financial assurance: Secured funds or instruments available to perform required obligations if the responsible operator fails. Adequacy depends on amount, terms, issuer, and access.

Fiscal analysis: An assessment of public revenue, expenditure, financing, forgone revenue, risk, and timing.

Foot-candle: A unit of illuminance equal to one lumen per square foot. Boundary rules must specify the measurement plane and treatment of background light.

Generative AI: AI that produces new text, images, audio, software, or other content. Large language models are one part of this category.

Industrial district: A mapped zoning district permitting identified industrial activities under the local ordinance.

Inference: Operating a trained AI model to produce an output. Training and inference have different equipment and utilization patterns.

Islanded generation: Electrical generation operating separately from the grid under the applicable technical and regulatory definition.

Jurisdiction: The legal authority to decide or regulate an issue within a specified subject and place.

LAeq15min: The A-weighted equivalent continuous sound level over 15 minutes. It does not reveal every peak or low-frequency characteristic.

Large load: A substantial electrical demand under the relevant utility's rules. There is no single threshold governing every utility or ordinance.

Light trespass: Artificial light reaching a location beyond the site where it is intended, evaluated under a defined measurement rule.

Low-frequency sound: Sound at lower frequencies that may require octave-band or other analysis beyond an overall dBA reading.

Net public benefit: Public benefits remaining after the public costs and risks included in the analysis, with assumptions and timing disclosed.

Operating envelope: The enforceable limits on a project's authorized physical development and operation.

Permanent direct job: An ongoing position employed directly by the operator, separated from temporary construction and contractor work.

Photometric plan: A drawing and calculation showing predicted lighting levels, fixtures, orientations, and measurement locations.

Power usage effectiveness: Total facility energy divided by IT equipment energy over a stated boundary and period. Lower values do not establish low total demand.

Preemption: A legal limit on one government's ability to regulate because a superior law governs the matter.

Principal use: The main activity conducted on a site as defined by the applicable ordinance.

Proof-of-work mining: Computing used to compete for the right to validate certain blockchain transactions through computational work. It differs from other computing services.

Protected receptor: A location or use designated to receive a particular noise, light, separation, or other protection under the ordinance.

Public record: Information held by a public body that is subject to the governing disclosure law, including its exceptions and retention rules.

Recapture: Recovery of a benefit under a defined legal authority, trigger, calculation, and process.

Sensitive use: A use such as housing, a school, or a care facility designated for additional protection. The ordinance must state its actual coverage.

Setback: A minimum distance measured between specified features. It is different from a vegetated buffer or an acoustic performance limit.

Source-specific sound: Sound attributable to the regulated facility, distinguished from background through the adopted measurement method.

Special tax preference: Tax treatment more favorable than the otherwise applicable treatment for a defined recipient or activity.

Tariff: The legally applicable utility rates, terms, and conditions of service.

Training: The process of adjusting an AI model using data and computation. It does not describe every use of a data center.

Transition rule: A provision specifying how a policy treats existing contracts, approvals, applications, and protected rights.

Uplight: Light emitted above the horizontal plane under the applicable lighting measurement definition.

Vested right: A legally protected entitlement determined under the applicable law and facts, not solely by an applicant's assertion.

Water balance: An accounting of water entering, circulating within, consumed by, discharged from, and stored at a facility.

Water usage effectiveness: A water-use ratio whose denominator, source boundary, and reporting period must be disclosed before comparisons are made.

Written finding: The decision maker's stated conclusion on a required criterion and the evidence supporting it.

Zero trust: A security architecture that evaluates authorization for access to resources without assuming trust solely from network location or ownership.

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Revision block

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