

# Data Center Developments: 7 Key Considerations

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## Summary

Whether from the perspective of a developer, user or tenant, debt or equity financing provider, the government, or the broader community, the development of a data center project requires a host of considerations to assess its viability and position the project to become an operational and financial success that complements and enhances the surrounding community.

## The Upshot

The attorneys of Ballard Spahr's Data Centers team examine and explain these seven important areas of consideration for data center development projects:

- Zoning and Land Use Entitlements
- Government Affairs Strategy
- Infrastructure
- Energy Regulatory Approvals and Long-Term Capacity
- Staged Development and Scalability
- Financing Structure and Capital Stack
- User/Tenant Commitments and Creditworthiness

## The Bottom Line

A careful analysis of each of these considerations is critical when first evaluating a data center project and throughout its development lifecycle, particularly to manage key timing, regulatory, financing, infrastructure, and counter-party risks. Ballard Spahr's Data Centers team brings together the range of legal and business experience across land use, complex real estate, construction and development, finance, energy, and government affairs and public policy necessary to guide stakeholders through every stage of a data center's lifecycle.

Whether from the perspective of a developer, a user or tenant, a debt or equity provider, or the government or broader community, the development of a data center project requires a host of considerations to assess a project's viability and become an operational and financial success that complements and enhances the community in which it operates.

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## Zoning and Land Use Entitlements

Data center development almost always requires an array of zoning and land use approvals. In most cases, time-consuming local, state, and federal land use approvals are triggered. Sometimes those approvals are administrative in nature, but often they require local legislative relief, or at least significant quasi-judicial zoning approvals, *i.e.*, use variances, dimensional variances,

special exceptions, or conditional use approvals.

Much of this depends on the project's location. In large portions of the country, data centers are simply not a permitted use (or at least not contemplated) under the local zoning code. So, the threshold use regulation issue is very often paramount. And if the use is permitted, minimum parking requirements for industrially zoned properties are often designed for large industrial facilities with sizable employment. Therefore, significant parking reductions may be required to reduce unnecessary construction and stormwater improvement costs associated with large parking areas. Beyond that, environmental impact assessments, noise ordinances, and other regulatory restrictions may be triggered depending on the project's size, location, configuration, phasing, and supporting infrastructure. Developers should thoroughly understand the applicable entitlement process early on in the process and engage land use counsel to draft a critical path schedule for permits, public hearings, and any applicable community engagement.

In some instances, early and strategic outreach—such as hosting town halls and sharing traffic, noise, environmental and economic impact data—can help reduce local resistance and delays, especially when zoning use requirements or environmental review is triggered under local ordinances or laws such as NEPA or CEQA. This kind of engagement has grown more important as projects increasingly face scrutiny from neighbors concerned about water and power consumption or even the nature of the data being stored. In other instances, it may be wise to obtain “over the counter” local permits and wait until appeal periods have run before going public or pursuing any discretionary approvals. Against this backdrop, President Trump's July 23, 2025, Executive Order, aimed at accelerating federal permitting (when applicable) of data center projects, may further shape the landscape by encouraging data center developers to consider projects on federal land.

### **Government Affairs Strategy**

Early engagement with outside counsel and local and state government officials can help identify and secure valuable tax incentives, infrastructure funding, and permitting support. Many jurisdictions offer property tax abatements, sales tax exemptions, and expedited approvals—often tied to commitments such as job creation or sustainability goals. States may also provide economic development incentives, along with attention and capital planning to enhance infrastructure and services to and around the facility. Experienced counsel can help assess eligibility for federal programs that support large infrastructure projects by streamlining federal permitting, coordinating agency reviews, and applying resources to infrastructure planning for the data center. A coordinated legal and government affairs strategy is essential to building support, structuring incentives effectively, and accelerating project approvals.

### **Infrastructure**

Site selectors must factor in the availability and scalability of core infrastructure, including water, reliable power, fiber optic connectivity, and transportation access. Proximity to metropolitan areas may be a key consideration, as cities typically offer more developed infrastructure and access to a skilled labor pool essential for facility construction and operations, network maintenance, and physical security. For users and operators, infrastructure redundancy and latency are critical differentiators, while for developers and investors, scalable infrastructure helps de-risk future phases and attract long-term tenants. In jurisdictions facing scrutiny over water usage, sustainable cooling strategies may be necessary, and phased infrastructure investment may be required to align with delivery schedules and financing milestones. Many infrastructure-centric developers look for opportunities to offer infrastructure “as a service”—managing internal facility needs such as water and fiber optics, which shifts development risk away from the facility developer in exchange for “availability” payments. Similarly, state economic development and transportation or transit agencies often seek to coordinate facility construction with proximate infrastructure development that supports the local and regional economy, frequently using alternative delivery techniques to align these supporting and ancillary projects so they advance the overall development.

### **Energy Regulatory Approvals and Long-Term Capacity**

Obtaining the regulatory approvals necessary to permit the development of significant energy capacity is often the most time-consuming challenge for this asset class. Even when there is support from the local government and utility provider, significant increases to demand on the electrical grid require years of planning and investment from both public and private stakeholders. These projects can also impose substantial costs on the developer, since utility regulatory schemes generally disfavor shifting the expense of new infrastructure needed to serve large-load customers onto other ratepayers. If the operation will be powered by multiple sources (e.g., local utility, wind or solar farms, independent power producers), a staged development may be appropriate, where additional data center capacity comes online upon each incremental addition of electrical service. State and local governments, as well as individual utilities, are approaching these challenges with different proposals, providing opportunities for developers to shop for favorable jurisdictions. Project developers must carefully evaluate power and grid constraints and engage utility providers early, as energy access and permitting delays are now viewed as the primary bottlenecks in data center development, with power availability considered the single greatest concern among investors in the space.

## **Staged Development and Scalability**

Due to the high capital intensity and long lead times of utility and infrastructure buildout, data centers are frequently developed in phases. This allows owners to match capital expenditures with lease-up velocity and user demand. A well-structured phased development plan should include pre-negotiated entitlements and utility expansion agreements, ensuring that each tranche of capacity can come online without reinitiating the full regulatory approval process. Operationally, developers should also consider modular design options and scalable energy/cooling systems that can accommodate future tenant-driven upgrades or sustainability requirements.

## **Financing Structure and Capital Stack**

The capital structure of a data center project must be tailored to the unique elements and risk profile of each development in the context of the particular objectives and strategies of the project's sponsor(s). A recent CBRE survey report shows strong investor confidence, with 95 percent of major global investors planning to increase their data center investments in 2025, a record high, and 41 percent intending to allocate \$500 million or more to the sector. Equity remains widely available, for the "infrastructure as a service" effort, but also for opportunistic and build-to-suit hyperscale development, which has become the top investment strategy among institutional investors. Sponsors should be prepared to present compelling development narratives and scalability plans, as investors are increasingly willing to fund earlier-stage, higher-yielding projects. Lenders that finance data center developments must consider a range of business and legal issues when underwriting and structuring the required financing, including traditional development and construction matters, sponsor and capital-stack considerations, and tenant, service-provider, and other third-party arrangements. Many of these considerations will vary across the pre-development, development, and operational stages of a project, with particular attention to key milestones, and may require distinctly different loan structures at each stage. Potential tax-exempt bond financing options may also be available for portions of a data center's overall development costs (direct and indirect) depending on the particular purpose, scope, and structure of a given development, including supporting infrastructure, and should be thoroughly considered.

## **User/Tenant Commitments and Creditworthiness**

Obtaining long-term commitments from creditworthy tenants and users is often a prerequisite for obtaining construction financing. While a heavy-hitter hyperscaler might be the most desirable user from an underwriting perspective, the data center owner usually will have comparatively less bargaining power and, as a result, potentially less attractive deal terms. Users are often looking for firm delivery timelines with harsh penalties in the event construction is delayed, so developers need to ensure that their equity investors and lenders are committed to the project and timeline to enable punctual project development and completion.

These considerations represent some of the complex, cross-disciplinary issues that shape successful data center projects. Ballard Spahr's Data Centers team brings together the range of legal and business experience across land use, complex real estate, construction and development, finance, energy, and government affairs/public policy necessary to guide stakeholders through every stage of a data center's lifecycle. If you're planning, financing, or leasing a data center project, or considering your next move in this rapidly evolving sector, connect with our team to learn how we can help you achieve your goals.

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