Model Data Center Ordinance for Virginia Counties

Recommendations for a data center ordinance with maximum protection for surrounding communities: zoning text, commentary, standard permit conditions, and decommissioning agreement

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How to use this document

This package is a starting point for a Virginia county that wants to allow data centers only where they fit, under standards that protect neighbors, water, land, and public budgets, and that keep the developer responsible from construction through closure. It has four parts:

Part 1, the model ordinance, is written as a zoning text amendment. Each section is followed by commentary in a shaded box explaining why it is there, its legal basis in the Code of Virginia, and the alternatives other counties use.

Part 2 is a set of standard conditions a Board of Supervisors can attach to any Special Use Permit it approves.

Part 3 is a decommissioning agreement with financial assurance.

Appendix A lists local items for Augusta County. Appendix B lists sources.

Numbers in brackets, such as [1,000 feet], are recommended starting points for maximum protection. They are policy choices, not established safety thresholds. Each is explained in the commentary with the range other localities use, and each should be validated by independent specialists for local conditions before adoption.

> **Important:** This is a policy draft, not legal advice. Virginia follows the Dillon Rule: counties have only the powers the General Assembly grants. Every protection here is recommended at full strength, and each is tied to an impact of the project so it can stand on its own legal basis. A developer's signature cannot make an unlawful condition lawful: under Va. Code § 15.2-2208.1, an applicant may recover damages and attorney fees if a permit is granted with, or denied over, an unconstitutional condition. The commentary therefore rates each provision's legal footing as Strong, Moderate, or Needs attorney review, and Section 17 lists the state laws needed where present authority is uncertain. Before adoption, the county attorney should review the full text, and independent specialists (acoustics, hydrogeology, fire safety, and insurance) should validate the technical standards.

Questions, comments, and corrections are welcome

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The latest version of this draft is posted at www.thelastwindow.com/model-data-center-ordinance.html

Part 1. Model ordinance

ARTICLE [__]. DATA CENTERS

Section 1. Purpose and intent

This article governs the location, design, construction, operation, expansion, and decommissioning of data centers and associated facilities. Its purposes are to:

(a) Permit data centers only through a public, discretionary approval process and only in locations with adequate infrastructure and compatible surroundings;

(b) Protect residents, farms, schools, natural and historic resources, groundwater, surface water, air quality, and the night sky from adverse effects;

(c) Require enforceable, measurable operating standards rather than studies alone;

(d) Evaluate each project at full buildout, including all phases, related parcels, and supporting energy and water infrastructure;

(e) Ensure that the owner and operator, not the public, bear the cost of monitoring, enforcement, remediation, and decommissioning; and

(f) Provide the public with timely, complete information about each project.

> **Why:** A purpose section guides how the Board and courts interpret everything that follows. Stating that the article requires measurable standards, full-buildout review, and developer responsibility makes those principles part of the law's intent, not just staff practice. **Legal footing:** Strong. These purposes track the zoning purposes in Va. Code § 15.2-2283, including protecting against pollution and undue density and conserving natural resources and agricultural land.

Section 2. Authority

This article is adopted under Va. Code §§ 15.2-2280, 15.2-2283, 15.2-2284, 15.2-2286, 15.2-2209.5, and 15.2-2309, and the County's general police powers.

> **Why:** Naming the statutes shows the Board relied on specific grants of power, which matters under the Dillon Rule. § 15.2-2280 authorizes zoning; § 15.2-2283 lists its purposes; § 15.2-2284 lists matters to consider, including natural resources; § 15.2-2286(A)(3) authorizes special use permits with conditions; § 15.2-2209.5 (2026) requires a sound assessment for facilities of 100 MW or more and authorizes broader site assessments; § 15.2-2309(7) allows a governing body that issues special exceptions to revoke them for noncompliance after notice and hearing. **Legal footing:** Strong.

Section 3. Definitions

For this article, the following terms apply. Terms not defined here have the meanings given elsewhere in this chapter or in their ordinary usage.

Data center. A building or group of buildings, or portion of a building, used primarily to house computer servers, data storage, networking, or processing equipment, including artificial-intelligence training and inference, cloud computing, colocation, cryptocurrency mining, and similar uses, together with the cooling, power, backup power, security, and support infrastructure serving them. The term excludes (i)

server rooms that are accessory to another principal use and draw less than [1 megawatt] in total, and (ii) telecommunications facilities regulated elsewhere in this chapter.

Data center campus. Two or more data centers, or one data center and associated energy, water, or infrastructure facilities, that are part of a unified development.

Unified development. All parcels, buildings, phases, and infrastructure that are planned, financed, marketed, owned, leased, controlled, or operated together or in functional relation to one another, regardless of separate ownership, parcels, applications, tenants, meters, or timing.

Full buildout. The maximum electrical demand, building area, water use, generation, battery storage, and infrastructure of a unified development as shown on the approved master plan.

Facility electrical demand. The total peak electrical power, in megawatts, drawn by the data center from all sources, including computing, cooling, and support systems.

Non-evaporative closed-loop cooling. A cooling and heat-rejection system that recirculates a heat-transfer fluid in a sealed loop and does not consume water through evaporation, blowdown, misting, spray, or adiabatic assist for routine operation. It includes dry coolers, air-cooled chillers, and direct-to-chip or immersion liquid cooling that rejects heat through dry coolers. It excludes cooling towers, evaporative or adiabatic systems, wet-assist hybrids, and open-loop or once-through systems.

Backup generator. Any engine, turbine, or fuel cell used to supply power when utility service is interrupted.

Emergency operation. Operation of backup generators only during an interruption of utility service to the facility not caused by the operator, or when ordered by the electric utility or grid operator to prevent an imminent loss of service, and limited to the duration of that condition.

Primary on-site generation. Any generation used to supply power other than for emergency operation or for testing and maintenance, including routine self-supply, peak shaving, demand response, market participation, or bridge power before utility service is available.

Battery energy storage system (BESS). Any electrochemical energy storage on the site, including uninterruptible power supply batteries, where the total capacity on the site exceeds [600 kilowatt-hours].

Sensitive receptor. A dwelling, school, day care, health care facility, place of worship, campground, or agricultural building housing livestock. Protected lands such as forests, parks, and conservation easements are addressed in Section 5.

Qualified independent professional. A licensed engineer, hydrogeologist, acoustician (Board Certified member of the Institute of Noise Control Engineering), appraiser, or other professional selected by the County, with no financial relationship with the applicant in the preceding [three] years, whose fees are paid by the applicant through the County.

> **Why:** Definitions decide what the ordinance covers. Three choices here close common loopholes. First, the data center definition includes cryptocurrency mining and AI uses outright and exempts only small accessory server rooms, so large projects cannot be relabeled. Second, “unified development” and “full buildout” stop a developer from splitting one project into small applications to avoid review. Third, emergency operation is defined narrowly, so generators cannot be run for profit or routine supply under an “emergency” label. **Alternatives:** some counties set the small-facility exemption by floor area (for example, 10,000 square feet) instead of megawatts. **Legal footing:** Strong.

Section 4. Applicability and approval required

(a) No data center, data center campus, or expansion of either shall be established in any zoning district except upon approval of a special use permit by the Board of Supervisors under this article. Data centers are not permitted by right in any district.

(b) [Each district use table in this chapter is amended to delete data centers and similar uses (including "information processing," "computer services," and "utility facilities" where used for data processing) as by-right uses.]

(c) A new special use permit, or an amendment under Section 13, is required for any material change, including any increase in facility electrical demand, building area, water use, generation, or battery storage beyond the approved maximums.

(d) This article applies to every application not approved before its effective date. Nothing in this article affects rights vested under Va. Code § 15.2-2307; any person claiming a vested right shall document it in writing to the Zoning Administrator within [90] days of the effective date.

> **Why:** The most important protection in any data center ordinance is removing by-right approval. Without subsection (b), a developer can skip every standard by building in a district where data centers, or some generic "utility" or "computer services" use, are already allowed. Prince William, Fairfax, and Loudoun all faced this problem. The Governor's Data Center Accountability Framework (Executive Order 22, September 2026) proposes ending by-right approval statewide above 25 MW, but that is not yet law. Subsection (d) respects vested rights, which state law protects, while requiring anyone claiming them to say so promptly. **Legal footing:** Strong for (a)–(c); (d) should be reviewed by the county attorney against any pending applications.

Section 5. Location

(a) A data center may be located only on property zoned [General Industrial] and designated for industrial use in the Comprehensive Plan, or on property rezoned to a [Data Center district] following a public hearing.

(b) A data center shall not be located:

(1) In an agricultural or rural conservation area designated in the Comprehensive Plan, or on land in an Agricultural and Forestal District under Va. Code § 15.2-4300 et seq.;

(2) On land subject to a conservation easement, or within [1,000 feet] of a national or state forest, national or state park, wildlife management area, or land under conservation easement;

(3) In a floodplain, or on land where karst features (sinkholes, sinking streams, or springs) are identified within the disturbed area unless the karst assessment in Section 9(I) demonstrates they can be avoided with a [300-foot] buffer;

(4) Within [1 mile] of a designated Virginia Scenic Byway, Scenic River, or Blue Ridge Parkway or Skyline Drive overlook, or within the viewshed of a battlefield or historic district listed on the National Register, unless the visual impact assessment demonstrates the facility will not be visible from it; or

(5) Where public water and sewer service, adequate electrical transmission service, and direct access to a VDOT-classified arterial or collector road are not available or committed in writing by the provider at the time of application.

(c) The County shall not accept an applicant-initiated amendment to the Comprehensive Plan that would expand the areas where data centers may be located. Such amendments may be initiated only by the Board of Supervisors or the Planning Commission after a countywide review of data center siting.

> **Why:** Siting is where a county has the most control and where most harm is prevented. These exclusions protect what cannot be recreated: farmland, protected land, karst aquifers, and the scenic gateways that support tourism. Subsection (5) requires written commitments from utilities rather than an applicant's plans, closing the "existing or planned infrastructure" loophole. **Alternatives:** Henry County (August 2026) requires both a rezoning to a dedicated Data Center district and a special use permit, with no land pre-zoned for it. That is the strongest model, because the Board decides each site legislatively. Subsection (c) follows Fauquier County's policy, which bars applicant-sponsored plan amendments that expand areas open to data centers, so siting decisions are made countywide rather than one parcel at a time. **Legal footing:** Strong; distances should be supported by the Comprehensive Plan. Subsection (c) should be reviewed by the county attorney against the procedures for initiating plan amendments in Va. Code § 15.2-2229.

Section 6. Pre-application meeting and community notice

(a) At least [60] days before filing, the applicant shall hold a public community meeting in the magisterial district where the site is located, after mailed notice to all owners within [1 mile] of the property and notice published once a week for two successive weeks in a newspaper of general circulation in the County.

(b) The applicant shall present the master plan, full-buildout electrical demand and water use, cooling and backup power systems, and the identity of the end user or, if not yet known, the class of user.

(c) A written summary of questions and responses shall be filed with the application and posted on the County website.

(c1) The applicant shall hold a second community meeting, with the same notice, at least [14] days before the Planning Commission hearing, presenting changes made in response to public comment and the independent reviews.

(d) Notice of the Planning Commission and Board public hearings shall be mailed to all owners within [1 mile] of the property, in addition to notice required by state law.

> **Why:** Residents often learn of a data center only after land is sold and plans are set. An early meeting with a wide notice radius surfaces concerns while they can still shape the project, and a second meeting before the hearings shows residents how the project changed, as Fauquier County's policy recommends. State law sets minimum notice to adjoining owners; a county may require more. **Legal footing:** Strong for expanded county notice; Moderate for requiring a pre-application meeting, which many Virginia counties already require for major applications.

Section 7. Application requirements

An application shall not be accepted as complete until it includes the following, each prepared by qualified professionals and covering full buildout:

(1) Master plan showing all phases, buildings, parcels, equipment yards, substations, transmission routes, generators, BESS, fuel storage, roads, and buffers, with maximum facility electrical demand (MW), building area, and impervious area for each phase.

(2) Utility documentation: written statements from the electric utility identifying the service path, required transmission lines and substations (new or upgraded), interconnection timeline, and cost responsibility; and from the water and sewer provider confirming capacity.

(3) Water budget: average and peak-day water use by source and purpose, with a statement that cooling is non-evaporative and closed-loop, fill and makeup water volumes, wastewater volume and

quality, and a drought plan describing how water use will be reduced during declared drought warnings and emergencies.

(4) Hydrogeologic and karst assessment under Section 9(H) and (I).

(5) Noise study under Section 9(E), including pre-construction ambient monitoring and modeling at full buildout.

(6) Site assessment as required by Va. Code § 15.2-2209.5, which for every application shall include effects on ground and surface water, agricultural resources, parks, registered historic sites, and forestland on the site and contiguous land.

(7) Environmental assessment covering stormwater, streams and wetlands, habitat and listed species, forest and farmland loss, air emissions from generators, hazardous materials, light, and cumulative effects with other existing and approved facilities within [5 miles].

(8) Visual impact assessment with photo simulations from public roads, sensitive receptors, and scenic resources, in leaf-off and leaf-on conditions, day and night.

(9) Traffic impact analysis for construction and operation, including haul routes and pavement condition survey.

(10) Backup power plan: number, rating, fuel type, emission controls, and fuel storage of all generators; BESS chemistry and capacity; testing schedule; and the hazard mitigation analysis required by the fire code.

(11) Emergency response plan prepared with the County fire and emergency services department.

(12) Fiscal impact analysis under Section 8(b).

(13) Decommissioning plan and cost estimate under Section 15, and evidence of the environmental insurance required by Section 15A.

(13a) For any site previously developed, a Phase I environmental site assessment and, where it identifies recognized environmental conditions, a Phase II assessment, under Va. Code § 15.2-2286(A)(12), with a plan to remediate existing contamination before or during construction.

(14) Disclosure of the owner, operator, and all affiliated entities, and any agreements with the County, the Commonwealth, or utilities affecting the project. Information required by this section is a public record except as protected by the Virginia Freedom of Information Act; nondisclosure agreements shall not limit disclosure to the Board or the public of facility size, power and water use, or environmental effects.

> **Why:** A complete application lets the Board judge the real project, not a first phase. Item (6) uses the 2026 site assessment law, which requires a noise assessment for facilities of 100 MW or more and lets localities require water, agricultural, park, historic, and forestland assessment; this ordinance requires all of them for every data center. Item (14) reflects Executive Order 22, which bars new state nondisclosure agreements that hide project information. The state law requires a sound assessment covering homes and schools within 500 feet of the property line, and exempts expansions of approved sites that add less than 100 MW; this ordinance goes further. **Legal footing:** Strong to Moderate. Counties routinely require the information needed to judge a special use permit under their general zoning authority (§§ 15.2-2280 and 15.2-2286(A)(3)); the county attorney should confirm the full list. The 100-MW sound assessment is mandatory under § 15.2-2209.5; extending assessments to smaller facilities rests on general zoning authority.

Section 8. Independent review and fiscal analysis

(a) The County shall retain qualified independent professionals to review the noise, water, karst, environmental, visual, traffic, and decommissioning studies. The applicant shall pay the reasonable cost of review through a deposit held by the County before review begins.

(b) The County shall commission an independent fiscal impact analysis, paid for by the applicant, estimating over [20] years: tax revenue net of incentives, exemptions, and depreciation; public costs including emergency services, roads, and utilities; construction and permanent jobs; and effects on other industries including agriculture and tourism.

(c) Reviewers' reports shall be public and provided to the Planning Commission and Board before their hearings.

> **Why:** Applicant-prepared studies are written for the applicant. Independent review gives the Board its own expert answer, and the public sees it. The fiscal analysis prevents projected revenue from being presented as guaranteed: data center equipment depreciates quickly, and incentives reduce revenue. **Legal footing:** Moderate. § 15.2-2286(A)(6) authorizes fees to cover the costs of administering the zoning ordinance; whether that extends to applicant-funded independent consultants should be confirmed by the county attorney, who should also set the deposit structure. Where the applicant agrees, review costs can also be covered by a condition the applicant accepts.

Section 9. Development and operating standards

Every data center shall meet the following standards. The Board may impose stricter conditions where studies show they are needed. These standards may not be waived or reduced except as stated.

9(A). Size and scale

(1) The special use permit shall state maximum facility electrical demand (MW), building floor area, number of buildings, impervious area, and water use for the unified development at full buildout. These are binding limits.

(2) No unified development shall exceed [300 MW] facility electrical demand [or a lower limit set by the Board based on the utility and fiscal analyses].

(3) Minimum lot area: [50 acres]. Maximum impervious coverage: [50 percent] of the lot.

(4) Construction of each phase after the first shall not begin until the prior phase has met all operating standards for [12] months, as shown by monitoring reports.

> **Why:** The most common gap in data center ordinances is no size limit at all. A permit with binding maximums means any growth needs Board approval. The 300-MW cap is a policy choice for a rural county, not a safety threshold; the Board should set the cap from the utility, fiscal, and impact analyses. For scale, it equals roughly the continuous electricity use of 250,000 average U.S. homes (at about 10,500 kWh per home per year). Phasing tied to proven compliance prevents a developer from building everything before problems appear. **Alternatives:** some counties set no cap but require a new permit for each phase; others cap by floor area. **Legal footing:** Strong; limits on scale are core zoning powers.

9(B). Setbacks and separation

From	Data center buildings	Generators, cooling equipment, substations, BESS, fuel storage

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Property line of land not zoned industrial	[1,000 feet]	[1,500 feet]
Any dwelling, school, or other sensitive receptor	[1,500 feet]	[2,000 feet]
Property line of industrially zoned land	[200 feet]	[300 feet]
Public road right-of-way	[200 feet]	[300 feet]
Perennial stream, wetland, spring, or sinkhole	[300 feet]	[300 feet]

Setbacks are measured from the nearest point of the building or equipment. Interior lot lines within a unified development are not counted. No setback may be reduced by alternative compliance, waiver, or later subdivision. Variances may be granted only as state law requires.

> **Why:** Distance is the most reliable protection against noise, light, and visual impact because it works even when equipment fails or ages. Equipment yards get larger setbacks than buildings because they are the noise and emission sources. **Comparison:** Henry County requires 1,000 feet from non-industrial land; Fairfax requires 200 feet from residential lots, with larger distances for generators; Prince William's Planning Commission recommended 500 feet from homes and schools. These defaults are at the protective end of that range, suited to a rural county. **Legal footing:** Strong.

9(C). Height and design

(1) Maximum building height: [45 feet], including parapets. The Board may allow up to [60 feet] only if an independent visual impact analysis, paid for by the applicant, shows the added height will not be visible from sensitive receptors, scenic resources, or public roads beyond what a 45-foot building would cause. Rooftop equipment may extend [15 feet] above the roof if fully screened and set back from the building edge at least its own height.

(2) Building facades visible from public roads or sensitive receptors shall be articulated at intervals of no more than [100 feet] with changes in material, color, or plane. Colors shall be muted earth tones with a light reflectance value below [40 percent].

(3) All mechanical equipment shall be enclosed or screened on all sides by walls or acoustical enclosures at least as tall as the equipment, with solid doors or gates on any walled equipment yard.

> **Why:** Height and blank walls drive the visual impact. Fauquier County's policy holds data centers to 45 feet unless an independent visual study shows a taller building will not harm neighbors; this model follows that approach, with 60 feet as an absolute ceiling. Henry County allows 75 feet, and Augusta County's August draft allows 75 feet plus 25 feet of equipment, which totals 100 feet. **Legal footing:** Strong.

9(D). Buffers and screening

(1) A vegetated buffer at least [150 feet] wide shall be maintained along every property line adjoining land not zoned industrial, consisting of existing mature forest or, where none exists, a planted berm at least [8 feet] high with evergreen trees at [15-foot] spacing in staggered rows, sized at planting at least [8 feet] tall.

(2) The buffer shall be planted and established before building construction begins, maintained for the life of the use, and replaced within [one] planting season if dead or diseased.

(3) Existing vegetation on adjoining property shall not count toward the buffer.

> **Why:** Screening that must be in place before construction starts, and that cannot rely on a neighbor's trees, actually protects people. Many ordinances let developers claim existing vegetation on the neighbor's land, which disappears if the neighbor cuts timber. **Legal footing:** Strong.

9(E). Noise

(1) Sound from the facility, including all equipment and generator testing, shall not exceed the following one-hour equivalent levels (Leq), measured at any property line of land not zoned industrial and at any sensitive receptor:

Period	A-weighted limit	Low-frequency limit
Daytime (7:00 a.m. to 10:00 p.m.)	[50 dBA]	[60 dBC], and C-weighted level not more than [20 dB] above the A-weighted level
Nighttime (10:00 p.m. to 7:00 a.m.)	[45 dBA]	Same

(2) Tonal sound. Equipment shall not produce a clearly audible pure tone (a distinct hum, whine, buzz, or drone readily perceptible above background sound) at any property line of land not zoned industrial or at any sensitive receptor. Where measurement is needed, a prominent discrete tone shall be determined under ANSI/ASA S1.13 or ISO 1996-2 using one-third octave band analysis (IEC 61260 / ANSI S1.11 filters), and the applicable A-weighted limit is reduced by [5 dB].

(3) Measurement. Measurements shall use a Class 1 sound level meter meeting ANSI S1.4 / IEC 61672-1, with one-third octave band analysis, conducted by a qualified independent professional under the County's measurement protocol, including measurements during peak cooling demand and at any other time the Zoning Administrator requests. Noise modeling shall follow ISO 9613-2.

(4) Pre-construction ambient. The applicant shall fund at least [14] consecutive days of ambient monitoring at locations chosen by the County, including nighttime, before the application is heard.

(4a) No increase over existing conditions. In addition to the limits in item (1), with all equipment operating at full load, sound from the facility shall not raise sound levels at any property line of land not zoned industrial, or at any sensitive receptor, above the pre-construction baseline measured under item (4). The County's acoustician shall set the measurement tolerance needed to account for measurement uncertainty.

(5) Verification. Independent sound testing shall be conducted before a certificate of occupancy is issued for each phase, again at [12] months, and annually thereafter. The operator shall install continuous noise monitors at [two or more] County-selected locations, with data available to the County in real time and posted on a public website.

(6) Exceedance. Before operation of any phase, a confirmed exceedance shall be corrected before a certificate of occupancy is issued. After operation begins, the operator shall correct any confirmed exceedance within [48 hours] of notice from the County; if it is not corrected, the operator shall curtail the operations causing it until independent testing shows compliance. Continued exceedance is a violation subject to Section 12.

(7) Emergency operation of backup generators during an actual utility outage is exempt from the limits in item (1), but generator testing is not. Each emergency operation shall be reported under Section 11(4).

> **Why:** Noise is the most common complaint near data centers. JLARC (2024) found it has harmed nearby residents and is hard to fix after construction, and Loudoun County has never issued a noise violation against the Vantage campus in Sterling despite years of complaints. Three things make this standard work: limits apply at every non-industrial property line, including farms; the low-frequency (C-weighted) limit captures the hum that A-weighting discounts, using the widely used rule that a C–A difference above 20 dB signals a low-frequency problem; and verification is mandatory and continuous. **Comparison:** Henry County adopted 50 dBA at the property line, prohibits any clearly audible pure tone at residentially zoned property lines, and gives owners 48 hours to fix a violation before use may begin; this model applies the tone rule at every non-industrial line, including farms; Rockingham County (September 2025) set a 60 dBC low-frequency limit at the nearest nonparticipating property line, requires post-construction noise not to exceed the measured pre-construction baseline with all equipment at full load, and requires continuous boundary monitors; item (4a) adopts Rockingham's no-increase rule, which protects quiet rural areas where ambient sound is already well below 45 dBA; Loudoun's nighttime limit is 55 dBA; a Loudoun best-practices summary recommends 50 dBA and reducing tonal noise to background. **Legal footing:** Strong for zoning performance standards; the numeric levels should be confirmed by an acoustician hired by the County. DEQ is developing state noise regulations under Executive Order 22, and the ordinance should be reviewed when they are issued.

9(F). Lighting

(1) All exterior lighting shall be fully shielded, directed downward, with a correlated color temperature of [3,000 K] or less.

(2) Light trespass shall not exceed [0.1 foot-candle] at any property line adjoining land not zoned industrial. Lighting not needed for safety shall be dimmed or switched off between [10:00 p.m. and 6:00 a.m.], using motion sensors where practicable.

(3) Pole-mounted fixtures shall not exceed [25 feet] in height.

> **Why:** All-night lighting affects neighbors, wildlife, and dark skies, especially near national forests and rural areas. These standards follow common dark-sky practice; Henry County adopted the same 3,000 K limit and a 25-foot pole height. **Legal footing:** Strong.

9(G). Cooling and water use

(1) Cooling and heat rejection shall use non-evaporative closed-loop cooling only. Cooling towers, evaporative, adiabatic, and wet-assist systems are prohibited.

(2) Groundwater shall not be withdrawn on site for any purpose other than domestic use by on-site staff, not to exceed [5,000 gallons per day].

(3) The special use permit shall set maximum average-day and peak-day water use from all sources. The operator shall install meters on all water sources and report use monthly to the County.

(4) During a drought warning or emergency declared by the Commonwealth or the water provider, the operator shall implement its approved drought plan, including deferring non-essential water use, and shall not fill, flush, or refill cooling loops except at times the water provider approves.

(5) Waste heat. The applicant shall evaluate opportunities to supply waste heat to agricultural, industrial, or community users and report the results.

(6) Energy efficiency. The facility shall be designed for an annual power usage effectiveness (PUE) of [1.3] or lower, verified and reported annually, and shall use heat-reflective roofing.

> **Why:** Evaporative cooling consumes water continuously, with demand peaking in hot, dry months when wells and streams are lowest. Requiring closed-loop cooling largely removes that risk; Henry County and Augusta, Georgia both require it. Banning on-site groundwater withdrawal for operations protects neighbors' wells, particularly in karst. Meter data supports the 2026 state law requiring water utilities to report water supplied to data centers. Item (4)'s limit on filling and flushing cooling loops follows Albemarle County, which allows flushing and refills only at times approved by its water and sewer authorities. Item (5) aligns with HB 323 (2026) on waste heat reuse. Item (6) builds on Fauquier County's policy, which encourages a PUE of 1.5 or lower; large new facilities often report lower values, so [1.3] is proposed as a starting point, and its legal footing is Moderate. **Legal footing:** Strong to Moderate. Groundwater withdrawals are regulated by DEQ, but a county may restrict a use's water source and cooling technology as a land-use condition, and § 15.2-2209.5 expressly allows assessment of effects on ground and surface water. The county attorney should review (2) where DEQ permits apply.

9(H). Groundwater, wells, and springs

(1) Before land disturbance, the applicant shall fund baseline testing, by a qualified independent professional, of every private well and spring within [1 mile] of the site ([2 miles] in karst areas) whose owner consents. Testing shall include water level or flow and a standard water quality panel including petroleum hydrocarbons, glycols, nitrate, bacteria, and specific conductance.

(2) Follow-up testing shall occur at [6 months], [12 months], and every [two] years after operations begin, and within [10] days of any complaint.

(3) If a well or spring owner reports impairment after construction begins, the County's independent hydrogeologist shall investigate within [5] business days. If the hydrogeologist finds credible evidence that construction or operation of the facility may have contributed, the operator shall provide temporary potable water within [48 hours] and continue it until a final determination. If the final determination is that the facility caused or contributed to the impairment, the operator shall provide a permanent replacement supply at its cost within [90 days]. If the facility is found not responsible, the operator may recover its interim costs as provided by law. Either party may appeal the determination to the Board.

> **Why:** Without a baseline, no one can show a well changed, and the public record for springs in some Valley counties ends in 2019. Item (3) gives neighbors prompt help based on credible evidence, with a fair causation review and appeal, rather than leaving a family without water while experts argue. The radii and response times are starting points; the testing protocol should be designed by an independent hydrogeologist using local recharge pathways, since a fixed radius cannot by itself establish groundwater connections. **Legal footing:** Strong for baseline testing as an application requirement. Moderate for the interim water duty, which is tied directly to the project's impact; the county attorney should confirm authority, and Section 17 asks the General Assembly to make it explicit.

9(I). Karst, stormwater, and environment

(1) Karst. Where the site is underlain by carbonate rock, the applicant shall submit a karst assessment including geophysical survey, dye tracing where springs are present, and a plan to avoid sinkholes and sinking streams. Stormwater shall not be discharged into sinkholes, and infiltration practices shall not be used over karst without approval of the County's independent hydrogeologist.

(2) Stormwater. Post-development peak runoff for the 1-, 2-, 10-, and 100-year storms shall not exceed pre-development rates calculated as if the site were in good forest condition. Stormwater quality and

quantity requirements shall be met on site, and purchased nutrient credits shall not substitute for on-site treatment to the extent state law allows.

(3) Forest and habitat. Tree clearing shall avoid the [April 1 through October 14] bat roosting season where federally listed bats may be present. Forest removed shall be replaced on site or within the same watershed at [1:1] by area.

(3a) Open space. At least [20 percent] of the site shall remain natural open space, including wildlife corridors that connect to forest, streams, or protected land on adjoining property.

(4) Chemicals. A coolant and chemical management plan shall list every coolant, glycol, dielectric fluid, biocide, and fire-suppressant, with volumes, containment, leak detection, and disposal. Coolants containing PFAS are prohibited where alternatives are available.

> **Why:** In karst, surface pollution reaches groundwater quickly through sinkholes, and grading or altered drainage can create new sinkholes (Virginia Energy). Large roofs and pavement increase runoff, so the forest-condition baseline keeps streams from carrying more water than before. The bat window mirrors the October 15–March 31 clearing window used on recent Virginia data center projects. **Legal footing:** Strong for stormwater and karst siting under zoning and § 15.2-2209.5; Moderate for the PFAS clause, which should be reviewed against state and federal chemical rules. The open space and on-site stormwater provisions build on Fauquier County's policy (at least 15 percent natural open space; purchase of nutrient credits strongly discouraged). Virginia law allows nutrient credits in many cases, so the county attorney should review that clause.

9(J). Backup power and air quality

(1) All backup generators shall meet EPA Tier 4 emission standards or be equipped with controls achieving equivalent emissions, consistent with Va. Code § 10.1-1322.6.

(2) Generators shall operate only for emergency operation and for testing and maintenance. Testing shall occur only on weekdays between [9:00 a.m. and 4:00 p.m.], with no more than [two] generators tested at once, and not on days when an air quality alert is in effect.

(3) Non-emergency operation of each generator shall not exceed [50] hours per year. Generators shall not be used for peak shaving, demand response, market participation, or routine supply.

(4) Primary on-site generation is prohibited.

(5) The operator shall log every generator start, its duration, reason, and fuel used, and report the log quarterly to the County.

(5a) Each generator shall be housed in a sound-attenuating enclosure limiting sound to [70 dBA] measured [23 feet] from the generator, within an enclosed building or walled equipment yard.

(6) The applicant shall evaluate battery or other zero-emission backup power and explain any decision not to use it.

> **Why:** Diesel generators emit nitrogen oxides, fine particles, and carbon monoxide; one Northern Virginia permit allows up to 10 million gallons of diesel a year. State law now requires Tier 4-equivalent emissions for new data center air permits, but air permits do not set local operating hours, and in October 2026 DEQ said it had no authority to stop a day-long generator run in Loudoun County. Local limits on when and how often generators run fill that gap. The enclosure standard in (5a) follows Albemarle County's ordinance, which requires a Level 3 enclosure or equivalent limiting generator sound to 70 dBA at 23 feet. Item (4) prevents a data center from becoming an unreviewed power plant; a county that wants to allow on-site generation should adopt separate standards for it through its own public process. **Legal footing:** Moderate to Strong. Emission levels are DEQ's

domain, but hours and timing of operation of an accessory use are land-use conditions. The county attorney should review (3).

9(K). Battery storage, fuel, and hazardous materials

(1) BESS shall comply with NFPA 855 and the Virginia Statewide Fire Prevention Code, and shall be supported by a site-specific hazard mitigation analysis and explosion control design reviewed by the County fire official.

(2) The site shall include containment for firefighting water and runoff from any battery or fuel fire, sized by the fire official, so that contaminated water does not reach soil, streams, or groundwater.

(3) Fuel storage shall have secondary containment of at least [110 percent] of the largest tank, leak detection, and spill response equipment on site, and shall be at least [500 feet] from any off-site private well or spring.

(4) Before a certificate of occupancy is issued, the operator shall provide, at its cost, an orientation and site familiarization session for local fire and emergency services. The operator shall fund annual training and the specialized equipment identified in the emergency response plan, sized to the documented additional needs created by the facility. The emergency response plan shall be updated upon any material change and at least every [three] years.

Why: Lithium battery fires can release hydrogen fluoride and hydrogen cyanide, and EPA guidance (August 2025) calls for isolation zones of at least 330 feet and containment of runoff. Rural volunteer departments are rarely equipped for such fires. Henry County requires an applicant-paid responder orientation before occupancy and an emergency plan update at least every three years. **Legal footing:** Strong for code compliance and containment; Moderate for (4); support for responders should be sized to the documented additional needs created by the facility, and the county attorney should confirm authority.

9(L). Energy infrastructure

(1) The applicant shall disclose every new or upgraded transmission line, substation, and switching station needed to serve full buildout, with likely routes, and shall notify the County of any filing with the State Corporation Commission within [10] days.

(2) All new electric distribution lines serving the facility, on and off site, shall be underground at the applicant's cost. Where a new transmission line is required, the applicant shall request underground construction from the utility and the State Corporation Commission and bear the added cost of undergrounding if it is approved. Substations shall be screened as required for equipment yards.

(3) Accessory solar facilities are limited to rooftops, parking canopies, and [10 acres] of ground-mounted panels. Larger solar or stand-alone battery facilities require separate approval under the County's solar and storage regulations.

Why: Transmission routes are set by the State Corporation Commission, not counties, so disclosure and notice are the county's main tools. Item (2) follows Fauquier County's policy that all new electric lines be underground at the applicant's cost; transmission routing remains with the State Corporation Commission. Item (3) prevents a utility-scale solar farm from being approved as an "accessory" use without its own review. **Note:** under HB 891 / SB 443 (2026), battery storage up to the capacity of an approved utility-scale solar facility is now by right on that solar site, so solar approvals near data centers deserve close attention. **Legal footing:** Strong for (2) and (3); (1) is a disclosure requirement only.

9(M). Construction

(1) Construction activity audible beyond the property line is limited to [7:00 a.m. to 7:00 p.m.] Monday through Saturday, excluding federal holidays.

(2) Blasting requires a pre-blast survey of structures, wells, and springs within [half a mile], vibration monitoring, and advance notice to owners.

(3) The applicant shall document the condition of designated haul routes before construction and repair all damage at its cost, secured by a surety in an amount set by the County and VDOT.

> **Why:** Construction of a large campus can last years. Hours, blasting controls, and road repair obligations prevent the most common construction complaints. **Legal footing:** Strong; road bonding should be coordinated with VDOT, which controls most rural roads.

Section 10. Findings required for approval

The Board shall not approve a special use permit unless it finds, based on substantial evidence in the record, including the independent reviews, that:

(1) The facility at full buildout will meet every standard in Section 9;

(2) It will not adversely affect the use, enjoyment, or value of nearby property, agricultural operations, or tourism, considering the visual, noise, and fiscal analyses;

(3) Groundwater, surface water, and karst features will be protected, as shown by the hydrogeologic and karst assessments;

(4) Adequate public facilities, utilities, roads, and emergency services exist or will be provided at the applicant's cost before operation;

(5) The project is consistent with the Comprehensive Plan; and

(6) The net fiscal benefit to the County, after public costs and incentives, is positive under the independent fiscal analysis; and

(7) Each condition of approval addresses an impact of the project identified in the record and is roughly proportional to that impact, and the decommissioning agreement, financial assurance, and environmental insurance required by Sections 15 and 15A are in place or will be before the first building permit.

> **Why:** Required findings turn general goals into tests the Board must answer on the record. If the evidence does not support a finding, the permit should be denied, and the record will show why. Finding (7) protects both the community and the County: Va. Code § 15.2-2208.1 lets an applicant recover damages and attorney fees if a permit is granted with, or denied over, an unconstitutional condition, and an applicant's acceptance does not cure that. Conditions that are clearly tied to documented impacts and proportional to them are the ones that hold up. A denial should rest on impacts the record shows have not been addressed. **Legal footing:** Strong. Findings tied to the zoning purposes in § 15.2-2283 and the factors in § 15.2-2284 make a decision easier to defend in court.

Section 11. Monitoring, reporting, and transparency

(1) The operator shall file a public annual compliance report by [March 31] covering: actual facility electrical demand; water use by source and month; noise monitoring results; generator run log by purpose; chemical releases, spills, fires, and other incidents; well and spring testing results; complaints received and responses; and status of financial assurance.

(2) Every [two] years, a qualified independent professional selected by the County shall audit compliance with all conditions, at the operator's cost, and the audit shall be public.

(3) The operator shall maintain a 24-hour public contact line and post contact information at the site entrance and online.

(4) The operator shall notify the County and owners within [1 mile] within [24 hours] of any fire, chemical or fuel release, extended generator operation beyond [4] hours, or other incident affecting the public.

(5) The County shall post all applications, studies, independent reviews, permits, annual reports, audits, and enforcement actions on its website, subject to the Virginia Freedom of Information Act and legitimate security exemptions.

(6) Each permit shall include a compliance matrix listing every standard and condition, its metric, monitoring method, reporting frequency, responsible party, and correction deadline. Raw monitoring data shall be retained for at least [five] years and provided to the County on request.

(7) The County shall budget staff or contract capacity sufficient to review reports, conduct inspections, and respond to complaints for each approved facility, recovering costs through lawful fees.

> **Why:** Self-reported data that no one checks does not protect anyone. Public reports, independent audits, and prompt incident notice let residents and the County see problems early. **Legal footing:** Strong as permit conditions, which § 15.2-2286(A)(3) allows a county to attach as "suitable regulations and safeguards," enforced under § 15.2-2286(A)(4).

Section 12. Complaints, enforcement, and revocation

(1) The operator shall acknowledge any complaint within [24 hours] and provide a written response to the complainant and the County within [10] days.

(2) The Zoning Administrator may require independent testing in response to any complaint. The operator shall pay for testing that confirms a violation.

(3) Violations are subject to all remedies available under Va. Code §§ 15.2-2208, 15.2-2209, and 15.2-2286(A)(4) and (5), including civil penalties, criminal penalties, and injunctive relief. Each day of violation is a separate offense where state law allows.

(4) No building permit, certificate of occupancy, or approval for a new phase shall be issued while a violation on the unified development remains uncorrected, except permits needed for safety or to correct the violation.

(5) The Board may revoke the special use permit, after notice and public hearing under Va. Code § 15.2-2309(7), if the operator fails to comply with its terms or conditions. Upon revocation, the decommissioning provisions of Section 15 apply.

> **Why:** State law caps scheduled zoning civil penalties at $200 for a first summons and $500 for each additional summons (§ 15.2-2209), and civil penalties arising from the same facts are capped at $5,000 in total, which will not deter a facility of this scale. Real enforcement comes from three tools in this section: withholding further permits and phases while a violation continues, court injunctions, and revocation. § 15.2-2309(7) allows a governing body that issues special exceptions to revoke them for noncompliance after notice and hearing. **Legal footing:** Strong.

Section 13. Material changes and expansions

Any of the following requires a new special use permit or permit amendment, with Planning Commission and Board public hearings: an increase in any approved maximum in Section 9(A); a change in cooling technology; any increase in generator number, capacity, or fuel storage; any increase in BESS capacity; a new transmission line or substation on the site; or any change in the approved master plan that the Zoning Administrator determines is material.

Replacement of equipment with equipment of equal or lower capacity, noise, emissions, and water use may be approved administratively by the Zoning Administrator upon documentation from a qualified professional, with notice posted on the County website.

> **Why:** Projects change after approval. Listing the changes that trigger a new public hearing prevents a facility from growing through administrative approvals. **Legal footing:** Strong.

Section 14. Transfer of ownership or operation

The permit and all conditions run with the land. The owner shall notify the County at least [30] days before any transfer of the property, the facility, or operational control. Before the transfer, the transferee shall file a written acknowledgment of all conditions and provide replacement financial assurance and evidence of environmental insurance acceptable to the County. Operating the facility without them is a violation of the permit subject to Section 12.

> **Why:** Data centers are bought and sold, and obligations can be lost when ownership changes, especially to a thinly capitalized entity. Requiring replacement assurance and insurance before the transfer, and treating operation without them as a permit violation, protects the County. The permit cannot void a private sale or override federal bankruptcy law; its leverage is that the new owner cannot lawfully operate without meeting the conditions. **Legal footing:** Moderate. Virginia courts generally treat special use permit conditions as running with the land, and the recorded decommissioning agreement in Part 3 binds successors by its terms; the county attorney should review the transfer mechanics.

Section 15. Decommissioning and financial assurance

(1) Plan. The application shall include a decommissioning plan describing removal of all equipment, batteries, generators, tanks, fuel, coolants, and chemicals; removal of buildings and foundations to [3 feet] below grade unless the Board approves reuse; soil and groundwater testing; and restoration of the site to [agricultural or forest] use.

(2) Trigger. Decommissioning shall begin within [6] months and be completed within [18] months after the earliest of: (i) [6] consecutive months in which the facility draws less than [10 percent] of the electrical demand of the phases that have been completed and energized; (ii) revocation of the permit; or (iii) written notice by the owner that operations have ended. The Board may approve, after a public hearing, reuse of buildings for a permitted use within that period instead of removal.

(3) Cost estimate. The cost of decommissioning shall be estimated by a Virginia-licensed professional engineer approved by the County, without credit for salvage value, plus [25 percent] for contingency and County administration, and updated every [three] years, before each new phase, and upon any material change to the facility.

(4) Financial assurance. Before any building permit, the owner shall provide financial assurance equal to the cost estimate in the form of cash escrow, certified funds, or an irrevocable letter of credit or surety

bond from an institution rated [A] or better. A parent guarantee is acceptable only from an entity rated investment grade, and only for the portion of the estimate above [50 percent].

(5) Right of entry and default. The owner shall grant the County, by recorded agreement, the right to enter the property and complete decommissioning using the financial assurance if the owner fails to do so on time.

> **Why:** A data center can close or be abandoned when technology changes, leaving buildings, batteries, fuel, and coolants behind. The public should never pay for removal. This section is modeled on Virginia's solar decommissioning law, § 15.2-2241.2, which requires a written agreement, right of entry on default, financial assurance, and updates of the cost estimate every five years. It differs in three ways: no credit for salvage value (resale values for used computing and cooling equipment are uncertain), narrower forms of assurance (the solar law accepts a parent guarantee for the full amount), and more frequent updates (every three years and before each new phase). Henry County adopted a data center decommissioning requirement in August 2026 with the same core features: financial assurance before any building permit, no salvage credit, and a cost review every three years. Rockingham County (September 2025) requires surety for gross decommissioning costs before operation, treats a facility as inactive after six months, makes owner and operator jointly and severally responsible, and makes County costs above the surety a tax lien on the property. The low-utilization trigger measures only completed, energized phases, and reuse can be approved instead of demolition. The 25 percent contingency and the no-salvage rule are recommendations whose basis should be documented by the County's engineer. **Legal footing:** Moderate, with attorney review. Henry County's ordinance is an adopted Virginia precedent for data center decommissioning assurance. The solar statute applies to solar facilities, not data centers; it is a legislative model, not authority. The County should rely on its special use permit authority, with requirements tied to the documented closure costs of the project, and Section 17 asks the General Assembly to authorize data center decommissioning assurance expressly. The solar statute applies directly to any accessory solar facility.

Section 15A. Environmental insurance during operation

(1) From the start of construction until the County certifies completion of decommissioning, the owner shall maintain pollution legal liability insurance covering on-site and off-site cleanup, third-party bodily injury and property damage (including damage to private wells and springs), and emergency response costs, with limits of at least $[__] per occurrence and $[__] aggregate as set by an independent risk review.

(2) The County shall be named as an additional insured. The policy shall require [30] days' notice to the County before cancellation, nonrenewal, or material change, and shall include an extended reporting period of at least [five] years after decommissioning.

(3) Financial assurance for decommissioning and insurance under this section are separate obligations. Neither limits the owner's or operator's liability under other law.

> **Why:** A decommissioning bond pays for closure, not for a fuel spill, a contaminated well, or a battery fire during operation. Ordinary business insurance often excludes pollution. Requiring pollution liability coverage during the life of the facility gives neighbors and the County a funded source for cleanup and damages. Limits should be set by an independent insurance professional based on the facility's chemicals, fuel, batteries, and setting. **Legal footing:** Needs attorney review. Insurance tied to the facility's documented hazards is a common permit condition, but Virginia has no data-center-specific statute; Section 17 requests one.

Section 16. Review and severability

(1) The Planning Commission shall review this article [three] years after adoption, and within [one] year after the Commonwealth adopts data center noise or water regulations, and recommend amendments.

(2) If any provision of this article is held invalid, the remaining provisions shall continue in effect.

> **Why:** Data center technology and state law are changing fast. A scheduled review keeps the ordinance current, and severability keeps the rest in force if a court strikes one provision. **Legal footing:** Strong.

Section 17. State legislation the County should seek

The County requests that the General Assembly enact the following, so that every protection in this article rests on express statutory authority:

(1) Authority for localities to require decommissioning plans and financial assurance for data centers and their battery storage, on the model of § 15.2-2241.2 for solar.

(2) Authority to require applicant-funded baseline testing of nearby wells and springs and interim replacement water when a facility may have impaired a private supply.

(3) Authority to consider water consumption from public and private sources in rezoning and special use permit decisions, and to set binding water limits (a similar bill, HB 370, did not pass in 2026).

(4) Statewide data center noise standards that include low-frequency and tonal limits, with express authority for localities to adopt stricter standards.

(5) Authority to require community benefit agreements tied to a facility's impacts, as proposed in Executive Order 22.

(6) Higher civil penalties for data center zoning violations, scaled to facility size, in place of the $200 / $500 / $5,000 limits in § 15.2-2209.

(7) Authority to require pollution legal liability insurance and operating-period environmental assurance for data centers.

(8) An end to by-right approval for data centers above [25 MW] statewide, as proposed in the Governor's Data Center Accountability Framework.

> **Why:** Some of the protections in this article rest on general zoning authority and a clear tie to project impacts rather than an express statute. They are recommended at full strength, but express authority would remove doubt and reduce the County's litigation risk under § 15.2-2208.1. The 2027 General Assembly session is expected to take up data center legislation under the Governor's framework, so this list can be adopted by resolution and sent to the County's delegation.

Part 2. Standard special use permit conditions

The Board should attach these conditions to every data center special use permit, adjusting the bracketed values to the project. Each condition must be supported by findings that it addresses an impact identified in the record and is proportional to it (Section 10(7)). Conditions that cannot be supported for a particular project should be omitted rather than imposed, and the gap noted for the County's legislative requests.

1. Approved maximums. Facility electrical demand shall not exceed [__] MW; building floor area [__] square feet; buildings [__]; impervious area [__] acres; average-day water use [__] gallons; peak-day water use [__] gallons; generators [__] with total capacity [__] MW; BESS [__] MWh.

2. Master plan. Development shall be in substantial conformance with the master plan dated [__]. Phases after the first require [12] months of documented compliance by the prior phase.

3. Cooling. Only non-evaporative closed-loop cooling shall be used. No on-site groundwater withdrawal except domestic use up to [5,000] gallons per day.

4. Noise. The facility shall meet the limits in Section 9(E). Continuous noise monitors shall operate at [locations]. Independent testing before occupancy of each phase, at 12 months, and annually.

5. Generators. Tier 4 or equivalent; testing weekdays [9 a.m.–4 p.m.], no more than [two] at once, not on air quality alert days; non-emergency use no more than [50] hours per generator per year; no peak shaving, demand response, or market participation; quarterly run logs.

6. Wells and springs. Baseline and follow-up testing under Section 9(H). Investigation within [5] business days of any impairment report; temporary water within [48 hours] when the County's hydrogeologist finds credible evidence the facility may have contributed; permanent replacement within [90 days] if the facility is found responsible.

7. Water reporting and drought. Monthly metered water reports; drought plan implemented on any declared drought warning or emergency.

8. Buffers. Buffers planted and established before building construction; maintained and replaced as needed for the life of the use.

9. Lighting. Fully shielded, 3,000 K or less, 0.1 foot-candle at non-industrial property lines, dimmed 10 p.m.–6 a.m.

10. Emergency services. Annual training for local responders; equipment listed in the emergency response plan provided by [date]; firewater containment as approved by the fire official.

11. Community benefit agreement. [If offered by the applicant] A community benefit agreement providing $[__] per MW of facility electrical demand per year to a fund administered by [the County / a community foundation], used only for the facility's impacts within [5 miles]: well and spring remediation, emergency services, road repair, noise and light mitigation for neighbors, and conservation of land and water affected by the project.

12. Reporting and audits. Public annual compliance report by March 31; independent compliance audit every two years at the operator's cost; 24-hour contact line; incident notice within 24 hours.

13. Complaints. Acknowledgment within 24 hours and written response within 10 days; operator pays for testing that confirms a violation.

14. Decommissioning. Recorded decommissioning agreement and financial assurance in place before the first building permit, as required by Section 15 and Part 3.

14a. Environmental insurance. Pollution legal liability insurance under Section 15A, with the County as additional insured, maintained from construction through certified completion of decommissioning.

15. Transfers. 30 days' notice of any transfer; transferee accepts all conditions and replaces financial assurance before the transfer is effective.

16. Compliance holds and revocation. No permits for new phases while a violation remains uncorrected; the permit may be revoked after notice and hearing under § 15.2-2309(7).

> **Note on condition 11:** Under current Virginia law, a county should not require a cash payment as a condition of approval, and an applicant's agreement does not cure an unlawful condition (§ 15.2-2208.1). A community benefit agreement is therefore recommended as an offer the Board may accept, limited to the facility's own impacts. The Board must not deny a permit for refusing it. Executive Order 22 calls for community benefit agreements in data center development, and Section 17 asks the General Assembly to authorize requiring them. **Legal footing:** Needs attorney review.

Part 3. Decommissioning agreement

DATA CENTER DECOMMISSIONING AGREEMENT

This Agreement is made on [date] between the County of [__], Virginia ("County"), [Owner name] ("Owner"), the record owner of the property described in Exhibit A ("Property"), and [Operator name] ("Operator"), as a condition of Special Use Permit No. [__] ("Permit").

1. Obligation. Owner and Operator, jointly and severally, shall decommission the data center and all associated facilities on the Property in accordance with the Decommissioning Plan attached as Exhibit B and Section 15 of the County's data center ordinance.

2. Triggering events. Decommissioning shall begin within [6] months and be completed within [18] months after the earliest of: (a) [6] consecutive months of operation below [10 percent] of the electrical demand of the phases that have been completed and energized; (b) revocation or abandonment of the Permit; or (c) written notice from Owner or Operator that operations have permanently ceased.

3. Scope. Decommissioning includes removal and lawful disposal or recycling of all computing equipment, batteries, generators, fuel and fuel tanks, coolants, chemicals, transformers, and electrical equipment; removal of buildings and foundations to [3 feet] below grade unless the Board has approved reuse; testing and remediation of soil and groundwater to applicable Virginia standards; and restoration and revegetation of the Property as described in Exhibit B.

4. Cost estimate. Owner shall provide a cost estimate prepared by a Virginia-licensed professional engineer approved by the County, without credit for salvage value, plus [25 percent] for contingency and administration. The estimate shall be updated every [three] years, before each new phase, and upon any material change to the facility.

5. Financial assurance. Before issuance of the first building permit, Owner shall deliver to the County financial assurance equal to the current estimate, in the form of cash escrow, certified funds, or an irrevocable letter of credit or surety bond issued by an institution rated [A] or better, naming the County as beneficiary. A parent guarantee is acceptable only from an entity rated investment grade, and only for the portion of the estimate above [50 percent]. Within [30] days after any updated estimate, Owner shall increase the assurance to match. The assurance shall remain in effect until the County certifies completion of decommissioning.

6. Right of entry. If Owner or Operator fails to complete decommissioning on time, the County, its agents, and contractors may enter the Property without further consent and perform decommissioning, drawing on the financial assurance. Owner and Operator shall reimburse any costs exceeding the assurance, which shall be a lien on the Property to the extent permitted by law.

7. Transfer. This Agreement runs with the land and binds successors. No transfer of the Property or the facility is effective under the Permit until the transferee executes an assumption of this Agreement and provides replacement financial assurance acceptable to the County.

8. Notices and reporting. Owner shall report the status and amount of the financial assurance in each annual compliance report and notify the County within [10] days of any notice of cancellation, nonrenewal, or downgrade of the issuer.

9. Recording. This Agreement shall be recorded in the land records of the Circuit Court of the County before issuance of the first building permit.

10. Governing law. This Agreement is governed by the laws of the Commonwealth of Virginia. Venue for any action is the Circuit Court of the County.

Exhibits: A. Legal description of the Property. B. Decommissioning Plan. C. Engineer's cost estimate. D. Form of financial assurance.

> **Why:** A recorded agreement makes the decommissioning obligations enforceable as a contract and binds future owners, in addition to the permit. It is modeled on the structure the General Assembly adopted for solar facilities in § 15.2-2241.2 (written agreement, right of entry on default, financial assurance, and five-year updates), with narrower forms of assurance and no salvage credit. **Legal footing:** Moderate, with attorney review of the lien provision in item 6 and the joint obligation in item 1; Rockingham County's 2025 ordinance adopted both, making excess County costs a tax lien and the owner and operator jointly and severally responsible.

Appendix A. Augusta County local items

These items apply the model to Augusta County. They should be confirmed against the Comprehensive Plan (Guiding Augusta: Pathways to 2045) and county mapping.

1. Karst. Much of the Valley floor is underlain by limestone and dolomite with sinkholes and springs. Section 9(I)(1) karst assessments should be required for any site in the Valley, and the [2-mile] well-testing radius in Section 9(H) should apply.

2. National forest. Several possible sites border or lie near the George Washington National Forest. Section 5(b)(2) applies a [1,000-foot] separation from national forest land.

3. Visitor gateways. I-64 between Afton Mountain and Staunton and I-81 through the county are the main entries for visitors to the Shenandoah Valley wine region, the Blue Ridge Parkway, and Skyline Drive. The County should map these corridors and scenic byways and apply Section 5(b)(4).

4. Wells and springs. Many rural residents depend on private wells and springs. Publicly available DEQ spring records for the county end in 2019, so applicant-funded baseline testing under Section 9(H) is the only way to establish current conditions.

5. Emergency services. Much of the county is served by volunteer fire and rescue companies. Section 9(K)(4) training and equipment obligations should be sized to their capacity.

5a. Redevelopment sites. Former institutional or industrial properties, such as a former correctional facility, may carry existing contamination from fuel tanks, boilers, landfills, or demolition debris. The Phase I and Phase II assessments in Section 7(13a) should be completed before the application is heard.

6. Comparison with the August 27, 2026 county draft:

Topic	County draft (Aug. 27, 2026)	This model
By-right approval	SUP in General Industrial and Planned Commerce; other district tables not addressed	By-right deleted from all districts; SUP required, only in industrial or Data Center districts
Size limit	None	Binding maximums in each permit; [300 MW] cap as a policy starting point; phased approval
Noise	65 dBA day; 60 dBA night at residential lines only; testing optional	50/45 dBA at all non-industrial lines; no increase over pre-construction levels; low-frequency and tonal limits; continuous monitoring
Cooling	“Water-efficient” required; closed-loop defined but not required	Non-evaporative closed-loop only
Groundwater	No potable groundwater for routine cooling	No on-site groundwater except small domestic use; well and spring baseline and replacement
Generators	Tier 4 “may” be required; no hour limits	Tier 4 required; testing windows; 50-hour non-emergency cap
Setbacks	1,000 ft side / 500 ft rear from non-business land	1,000–2,000 ft from non-industrial boundaries and homes, depending on equipment

Topic	County draft (Aug. 27, 2026)	This model
Decommissioning	“Assumptions” only	Plan, independent estimate, financial assurance, recorded agreement
Enforcement	Annual reports to Zoning Administrator	Public reports, independent audits, compliance holds, revocation

Appendix B. Sources

- Va. Code § 15.2-2286, permitted provisions in zoning ordinances
- Va. Code § 15.2-2309, powers of boards of zoning appeals (revocation, subdivision 7)
- Va. Code § 15.2-2209.5 (HB 153, 2026 Acts ch. 567), high energy use facility site assessment
- Va. Code § 15.2-2241.2, solar decommissioning agreements and financial assurance
- Va. Code § 15.2-2209, civil penalties for zoning violations
- Va. Code § 15.2-2208.1, damages for unconstitutional conditions in approvals and permits
- Va. Code § 10.1-1322.6, Tier 4-equivalent emission limits for data center generators
- Williams Mullen, 2026 General Assembly data center bills
- Williams Mullen, Executive Order 22 and the Data Center Accountability Framework
- VACo, HB 891 / SB 443 battery storage on solar sites (2026)
- WDBJ, Henry County data center ordinance (August 2026)
- Cardinal News, Henry County data center ordinance details (August 2026)
- Fauquier County Board of Supervisors, Data Center Policy (December 14, 2023)
- Fairfax County data center zoning amendment summary
- The Energy Mag, Prince William County data center overhaul (September 2026)
- Prince William County decommissioning framework directive (June 2026)
- Loudoun County, data center pros, cons, and local best practices (noise)
- Virginia Mercury, noise rules that could reach Virginia data centers (August 2026)
- Environmental Protection, DEQ and the Loudoun generator run (October 2026)
- JLARC, Data Centers in Virginia, report summary (December 2024)
- Virginia Energy, sinkholes and karst
- Power Engineering, EPA battery storage safety guidance (August 2025)
- WDBJ, wildlife concerns over Virginia data centers (August 2026)
- Virginia Mercury, data center diesel generators (January 2026)