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2026 Co-Learning Plan

Adapting Community
Benefit Agreements for
Rural Land Use Practice
**Meeting the Demand for Data
Centers and Other Controversial
Proposals**

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Meeting the Demand for Data Centers and Other Controversial Proposals

Michigan State University

Center for Community and Economic Development

Regional Economic Innovation

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INTRODUCTION

Data centers have pushed high impact land uses, local regulatory controls, and private property rights to the forefront of Michiganders' attention. This has placed local elected officials into a difficult position wherein their decisions are caught between satisfying public demands and satisfying legal stipulations as defined in the Michigan Constitution, federal case law, and the Michigan Zoning Enabling Act. To zone data centers could mean a loss of political favor, but to deny a land use permit for these high impact uses could lead to a lawsuit. For this reason, many communities are doing nothing, preferring a wait-and-see approach.

While newer hyperscale data centers have attracted national attention, especially in rural areas where many have been proposed for development, high impact uses generally are nothing new. For this reason, this white paper uses data centers as an illustrative example of how rural municipalities across the state may choose to zone for high impact uses, or those that use a larger amount of land, energy, natural resources, create more noise, or are generally more of a nuisance than other common land uses. However, the Unconstitutional Conditions Doctrine and state law restrict municipalities from placing any and all conditions on developments they may see as unfavorable, as well as from excluding them from zoning altogether. Therefore, this paper describes the local zoning framework most of Michigan's communities operate within, the case law that defines the parameters of what can and cannot be a condition for a land use permit, and what tools local leaders can use to make a high impact use more beneficial.

The author proposes four tools that Michigan communities can utilize in order to require public input as part of the land use permitting process, place conditions to offset the effects of high impact uses, or both. For communities not wanting to take the wait-and-see approach as it pertains to data centers, their elected officials may consider a pre-application public input requirement, a stakeholder advisory committee, supporting a non-governmental Community Benefit Agreement negotiator, or building bonus allowance provisions into the zoning ordinance either through Planned Unit Development or incentive zoning. While this list is not exhaustive and the author supposes most municipalities will negotiate benefits if and when a lawsuit is filed, these options at a minimum put high impact developers in communication with community members and ensure that these impacts are offset by site mitigation strategies. Though data centers present a new land use challenge to municipal leaders, public input requirements and legally defensible conditions for approval can function as useful tools to zone for this and other contentious developments.

DEMAND IN RURAL MICHIGAN: DATA CENTERS & HIGH IMPACT USES IN THE COUNTRYSIDE

Data centers have risen to the top of mind for community stakeholders throughout Michigan. The introduction of this land use to Michigan's landscape has been met with a mixture of interest, confusion, and condemnation by members of the public due to the relatively large amount of land needed, their resource consumption, and the unclear benefits to the area's economy. Michigan has seen an abundance of data center proposals in just the year 2025. In fact, one article published by MLive in December, 2025 states, "Michigan may remember 2025 as the year of the data center" (Smolcic Larson, 2025). While some of these proposed data centers were set to be sited on former brownfield sites or on developed industrial land, the majority were slated to be built on undeveloped portions of rural Michigan. Smolcic Larson, in his December, 2025 article lists each proposal and its progress. Nearly all involved a voluntary public input session or process, with many proposals being scrapped after negative public feedback. For the purposes of this paper, it is worth noting that unless the development was proposed under a Planned Unit Development (PUD) the public input sessions were a voluntary choice by the developers. There has been a race to develop this highly profitable land use, and rural Michigan is the most economically viable place to acquire cheap land and assemble enough parcels to accommodate these large footprint facilities.

Although this paper focuses on data centers, the proposed usage of public input requirements, CBAs, and CBOs could be applicable to any high impact use, as data centers are not the first nor the last development type to use large amounts of energy. The author chose to discuss this potential best practice using data centers because they are an obvious recent example where members of the public have shown themselves to be unconvinced that these developments' contributions to the local tax base are enough to overcome their real and perceived drawbacks. In addition, this paper focuses on high impact uses in rural areas specifically. This was for three main reasons. First, most data center proposals in Michigan have been in areas outside of the urban cores on farmland or undeveloped open space. Second, the author resides in Kalkaska County, serves on the Kalkaska County Planning Commission, and is a professional regional planner for the 10-county Northwest Michigan Council of Governments. This background means research on rural land use practice was most relevant to the author's professional and civic work. Third, CBAs and CBOs have been exclusively used by larger U.S. cities. Their use in a rural context has not yet been explored in the academic literature.

CITIZEN CONTROL OF THE LAND USE PLANNING PROCESS: ANALYSIS OF KALKASKA COUNTY IN 2025

PUBLIC INPUT FOR A DATA CENTER PROPOSAL

Kalkaska County is an illustrative example of how data center development proposals played out in 2025. In late 2025, a developer contacted the Kalkaska Downtown Development Authority and the County Board of Commissioners to discuss the potential to site a hyperscale data center in the county. This development would likely need to occur on land purchased from the State of Michigan Department of Natural Resources in order to accumulate enough adjacent parcels to accommodate the facility. This news was reported in various local and state outlets. The developer never submitted a land use permit application. The County Board of Commissioners was approached by the developer and the commission signed a letter of support during a special meeting in March, 2025 to explore the concept and public opinion on the matter. The subsequent public outcry against the development was immediate and vocal.

Only two of the three planned public information sessions occurred before the developer withdrew the concept. The first meeting was held at Garfield Township Hall on November 17, 2025 where residents were able to voice their concerns into a microphone following the developer's presentation. Around 150

people were in attendance (McWhirter, 2025). The second meeting, which was held in Kalkaska Village at the Commission on Aging building two days later, did not permit public comment and featured only the presentation by the developer. The community's social media pages were replete with clear opposition to the proposed data center, with people flooding the County Board meeting to provide public comment on the matter as well.

Image: Location of proposed data center development in Kalkaska Township, MI
Source: Milligan (2025)

The following are anecdotal observations by the author, who is a professional regional planner and a citizen of Kalkaska Village. It was clear from social media posts and participation in public meetings with the data center developer that residents resoundingly did not understand the development process. They were fundamentally unaware of land use permitting processes, local zoning, the Board of Commissioners' role in the development process, the acquisition of state land, and what powers the community has to exclude certain uses. This resulted in outward dismay at the Board of Commissioners whose only action in this instance was to sign a letter of support for the developer to engage the public on the matter. For this reason, public education campaigns will be instrumental in allowing elected leaders to make decisions on high impact land uses so that they are in compliance with state legislation, as well as to reduce political backlash.

On top of the public misunderstanding of the zoning process, it was also clear that this new use, hyperscale data centers, is a new and important zoning consideration for municipalities. While data centers themselves are not new, the building footprint, acreage, and power usage of newer centers are drawing ire from residents. In addition, the developer in Kalkaska, as well as many across the state, are currently conducting public input in order to see the barriers to initiating a rezoning process. In most recent instances, if public backlash is strong, the developer simply moves on to another option. However, municipalities should understand this as a temporary manner of doing business. Saline Township is the first example of a Michigan community that faced a lawsuit for failing to include the use on their zoning map. Therefore, it is important for local officials and members of the public to understand what zoning options are available so they can make the correct, or least undesirable, allowance for high impact uses.

THE CURRENT LOCAL REGULATORY FRAMEWORK

Before describing the potential use of CBAs and CBOs for data centers and other high impact land uses, it is important to clarify the existing regulatory framework. Most communities primarily use six different zoning mechanisms to regulate uses. These include uses that are permitted by right, special uses, specific use standards, Planned Unit Development, overlay zones, and incentive zoning.

PERMITTED BY RIGHT

Uses that are permitted by right are the most expedient regarding the zoning/land use permitting process. These are often the lowest impact uses, or those that are highly appropriate for the particular zoning district in which they are allowed. For example, single family detached houses, schools, places of worship, and home occupations are typically permitted by right in a community's residential districts. In practice, this means that the application for the land use permit can be reviewed and approved by the Zoning Administrator without the need for the Planning Commission to be involved. The Zoning Administrator simply reviews the full application including the enclosed site plan, use description, and utility connections. The site plan must also show that the development adheres to all regulations described in the

General Provisions section of the zoning ordinance. This section includes, but is often not limited to, setbacks, building height, land cover, drainage, lighting, parking, and buffer requirements. A denial by the Zoning Administrator would then be appealed through the Zoning Board of Appeals. Uses permitted by right are the quickest to gain approval because they do not require a discretionary review (i.e. a review by the Planning Commission).

SPECIAL USES

Special land uses differ from uses permitted by right in that they are reviewed by the Planning Commission (or other designated body as determined by local ordinance) rather than simply approved or disapproved by the Zoning Administrator. While the applicant must still meet all requirements described in the General Provisions and zoning district standards section of the zoning ordinance, there is also a discretionary opinion given by the Planning Commission. The commission will decide if the special land use is compatible with neighboring uses, if it meets the goals described in the community master plan, and what effects the development will have on existing infrastructure, for example. In addition to this initial review, the Planning Commission also hosts a public hearing where the applicant and members of the public can provide comment on the proposed development. The commission can approve, deny, or approve with conditions. If the Planning Commission interprets the proposed application as not meeting the standards of the zoning ordinance, they can deny the application. That decision can be appealed by the applicant with the Circuit Court, or the Zoning Board of Appeals if the ordinance allows for it.

SPECIFIC USE STANDARDS

Specific use standard (also called “supplemental regulation” or “use-specific standards”) are uses that are permitted by right as long as they meet a set of standards detailed for that land use. This is a sort of hybrid between a use permitted by right and a special use, with the main differences being the ability for the Zoning Administrator to approve the land use permit and not needing a public hearing. These are typically uses that require standards are best suited as more stringent than the General Provisions and zoning district bulk requirements but are fine as long as they meet a few more requirements specific to the use. One example of this may be dog kennels. A community may want to allow dog kennels in a residential district as long as they, for example, keep the dogs indoors after 8pm, have increased setbacks from property lines than those required in the district’s bulk requirements, have additional buffering standards, and limit the number of animals that can be on-site at a given time.

Specific use standards are very helpful and wellused in communities that see frequent land use permit applications. They help to reduce the number of special use meetings and hearings by allowing the Zoning Administrator to approve the applications. Specific use standards are also often preferred by developers over special uses because the standards are spelled out clearly rather than interpreted by a commission. This also means that the community must issue a permit if all standards are met.

PLANNED UNIT DEVELOPMENT

Planned Unit Developments (PUD’s) are broadly defined district ordinances that are made more specific through negotiations between the developer and the municipality. Often, the PUD ordinance will state broad requirements like the project must be harmonious with neighboring uses, be in compliance with the goals of the master plan, or demonstrate a clear community benefit. In other ways, they can be specific at the onset; perhaps the setbacks must be the same as the district the PUD is in, or the amount of open space required is listed. Otherwise, the specifics of the development are negotiated. This may, for example, allow the developer to mix residential and commercial uses with greater density and higher building heights if the development features public space, utility improvements, certain architectural features, and a decommissioning plan (performance bond). The Planning Commission often negotiates the terms and

benefits, while the legislative body is typically tasked with approval of the PUD, especially when the municipal ordinance treats the PUD as a rezoning.

PUDs are the most flexible but also the slowest of the zoning options described in this section. They allow for the most negotiation between the developer and the municipality. However, the time it takes and the cost to the developer makes them inappropriate in many instances. However, as discussed later in this paper, PUDs are a viable option to ensure that data center developments include community benefits that are proportional to their impacts.

INCENTIVE ZONING

Incentive based standards for zoning establish a baseline allowance by right, and then allow flexibility if the developer meets pre-determined options to offset these increased allowances. In this way, PUD is more of a negotiated contract while incentive zonings acts like a restaurant menu of options. For example, a community may allow a list of commercial uses with denoted bulk requirements. Then the developer may go beyond these standards with a taller building, lesser setbacks, or greater lot coverage. The developer would then have a list of options to gain access to these bonuses, which may include public space allowances, hiring local labor, or paving a sidewalk easement. Therefore, ordinances with incentive zoning options are formulaic in how they allow something for the developer in return for something that benefits the community as long as the condition is related to the site's impact.

OVERLAY ZONES

Overlay districts, as they are aptly named, add standards on top of an existing zoning district to address specific concerns or resources, such as historic preservation areas and airport influence zones. Under the historic district example, the bulk requirements (setbacks, building height, etc.) of a community's R-1 Residential district may be well-suited for a historic area but do not include the architectural standards needed to maintain the historic aesthetic. The overlay district standards would specify these in the ordinance, and then would apply to that portion of the R-1 Residential district where the homes are historic in character. Airport overlays tend to provide additional standards to building height and densities. In summary, overlay districts add more standards to parts of an existing zoning district boundary.

NOT INCLUDED IN EXISTING ZONING: FUTURE LEGAL HURDLES

Members of the public have shown strong opposition to data center proposals over the past couple of years in Michigan. As discussed earlier regarding Kalkaska County's foray into the public input process, community members are often unaware of how land use permits are administered and what state and federal laws dictate the municipality's decisions. This can lead to confusion over how data centers and other high impact uses are allowed to develop, who makes those decisions, and how members of the public can be involved.

Similar to short-term rentals and renewable energy zoning in recent years, many rural communities in Michigan are in a wait-and-see moment. Anticipating new laws, lawsuits, and best practices are sure to emerge around data centers. Though right now, many Michigan municipalities have opted to omit data centers from of their zoning ordinance use tables, thereby outright disallowing it within its jurisdiction. This approach has certain advantages during the current surge of data center proposals because, anecdotally, developers have often preferred locating projects in jurisdictions where data centers are already permitted rather than engaging in protracted legal disputes. This helps explain why so many of the 2025 proposals were accompanied by voluntary public input processes, and there were no legal battles over data centers not being allowed by local zoning until the Saline Township example. After all, the

Michigan Zoning Enabling Act (MZEA) makes it very difficult for municipal zoning to outright prohibit a land use:

"A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government is appropriate, and the use is lawfully established in the surrounding area."

- Mich. Comp. Laws § 125.3207, 2006

In summary, data center developers in 2025 and early in 2026 seem to target a site for its infrastructure, water, and power grid availability amongst other technical considerations. Then if community pushback is pronounced and the rezoning would be a long process, the developer moves on to options B or C. While communities like Kalkaska are protected by market forces now, this is probably not a viable long-term solution. Therefore, in reviewing the zoning options from permitted by right to PUD and incentive zoning standards, it is clear that communities will need to start proactively considering how they will zone for data centers while maintaining rural character and not overloading municipal infrastructure and services.

Considering the introduction of hyperscale data centers as a new high impact use in Michigan, the question arises whether municipalities have leverage in acquiring benefits in exchange for what they are perceptually losing when a hyperscale data center is sited. The remainder of this research paper explores the use of mandatory public input processes for high impact uses, the potential for Community Benefit Ordinances and Agreements (CBOs and CBAs) to offset high impact effects, and the legal hurdles these strategies face. Historically, CBAs were negotiated by citizen-led groups and non-profits. However, municipalities across the U.S. are instituting Community Benefit Ordinances to achieve this through development processes. Detroit serves as a landmark example and is therefore important to analyze when determining if a similar model could be used in rural Michigan to balance data centers with community benefits.

DETROIT'S COMMUNITY BENEFITS ORDINANCE

Detroit's Community Benefits Ordinance (CBO) is an important case study in the ongoing movement to move the power of decision making more democratically into the hands of the citizenry. Detroit's ordinance was the first of its kind; making Detroit the first major U.S. city to include community benefit requirements by municipal ordinance, which as previously mentioned, was traditionally between private stakeholder coalitions and developers. This introduction of CBAs into the municipal sphere raises many legal questions, which are discussed in the following section; nevertheless, Detroit's CBO has yielded significant benefits. According to LaMore et al. (2024), Detroiters have negotiated "55,000 estimated construction and permanent jobs, over 4,000 new housing units, and millions of square feet in new commercial and industrial space." In a 2021 *Journal of Community Practice* article, Berglund and Butler list an array of accomplished benefits including public park developments, school scholarships, local hiring, a reduction in construction nuisances, and historic preservation, amongst many others (Berglund & Butler, 2021).

Detroit's CBO was adopted in 2016 and last amended in 2021. Various journal articles, including Berglund and Butler (2021) do well to summarize the political process that led to Detroit's CBO ordinance

adoption. The focus here is therefore on the triggers for the ordinance's usage, the process of the community's negotiation with the developer, and the legal and social issues with the ordinance.

Detroit's CBO is triggered when a development project reaches a Tier 1 status; this means that not all development projects require a community benefit process. A Tier 1 project is defined in Sec. 12-8-2 of Ordinance 2021-4 as a project valued at \$75,000,000 or more in investment for "the construction of facilities, or to begin or expand operations or renovate structures" (*Detroit Community Benefits Ordinance*, 2016) and the City is transferring property to the developer with a market value of \$1,000,000 or more, or the City is providing tax abatements or other tax breaks of \$1,000,000 for the term of the abatement.

If a development project is Tier 1 status, it is overseen by the City's Planning Department and the developer goes through a roughly three months long community input process consisting of five to six meetings depending on the size and impact of the development (City of Detroit, n.d.). The actual negotiations for community benefits occur between the developer and a Neighborhood Advisory Council (NAC). According to the City's webpage describing the process,

Eligible members must be: Residents of the impacted area (area determined by the City Planning Department); Nominated by residents of the impacted area, and at least 18 years of age.

The NAC consists of 9 members, who are selected as follows: 2 selected by residents of the impacted area, 4 selected by the City of Detroit Planning and Development Department (with preference given to residents expected to be directly impacted by the project), 2 selected by the At-Large Council Members, and 1 selected by the local District Council Member whose district contains the largest portion of the Project.

-City of Detroit, n.d.

Berglund and Butler (2021) provide one of the more robust analyses of Detroit's CBO by interviewing participants on the NAC, city officials, and developers, and by reviewing CBO documents. One of the most cited benefits of the CBO process was that it forced developers to sit with community members and hear what their concerns for the project were, as well as what they wanted to get out of the development. These conversations seemed to help developers cater certain development processes and project outcomes to directly benefit the neighborhood's residents.

However, the stakeholder interviews also described various issues with Detroit's CBO process. Berglund and Butler (2021) divide these into four categories: fairness and inclusion, representation, timeline issues, and overlapping agreements/policies. There was wide disagreement on the fairness of the CBO negotiations, which largely stemmed from the NAC having an unclear role, as well as its makeup. Some participants lacked policy knowledge and were unsure if negotiations should be construction impact related or for additional million-dollar public space investments, for example. In terms of representation, Berglund and Butler (2021) note that some NAC participants were politically connected and highly educated, which raises questions over how representative these committees are in practice.

Regarding project timelines, many NAC members thought that they had too little time to understand the project, provide feedback, and negotiate benefits. This issue connects with the fourth cited by Berglund

and Butler (2021). Not only were timelines often determined by local and state legislation, but the CBO also overlapped with other agreements and policies. For example, if a development was the result of a city Request for Proposal, most of the specifics were already determined, thereby preventing the NAC from having much effect.

While the procedural drawbacks of Detroit's landmark CBO may not provide for overwhelming citizen control of decision-making processes, it is nonetheless a powerful tool in the ongoing effort to ensure widespread benefits from high profile developments. The drawbacks are noted here so that CBOs usage in a rural context can be effectively adapted based on Detroit's efforts. What is clear is that, at the very least, Detroit's CBO puts developers and community members in the same room to discuss the neighborhood's future. Additionally, it helps to ensure that public subsidies in the form of either land transfers or tax abatements are balanced by the developer's contributions to desired outcomes as outlined by a group of neighborhood representatives.

The difficulty in replicating Detroit's CBO in a rural context is largely based on legal considerations and local assets. For example, how can a rural community legally negotiate benefits when it does not have millions of dollars of land to transfer or millions of dollars of tax abatements to offer? Detroit has sidestepped the issue of exactions in one key way: the CBO is connected to benefits, not to the acquisition or denial of a land use permit. The developer can acquire a permit to build regardless, but if they want to use public land or to gain tax benefits, the CBO process becomes a requirement. In rural communities without these incentives, it becomes much more legally difficult for municipalities to negotiate community benefits. The next section will describe the legal considerations local governments in Michigan must be aware of when implementing CBOs that are related to land use permitting.

LEGAL CONSIDERATIONS: EXACTIONS & OTHER HURDLES TO CBA'S AND CBO'S

While CBAs can be effectively negotiated by community groups in high-demand areas with strong civic engagement, rural communities often face a different reality. Anecdotally speaking, rural communities, especially those in many parts of Michigan, see sparse demand for large projects with subsequently large tax benefits. This at times creates tension between elected leaders who see the monetary benefits of high impact projects like data centers and residents who want to maintain rural character. This was the case in Kalkaska County, MI in 2025, discussed earlier in this paper. In many parts of Michigan, large-scale renewable development proposals are relatively uncommon, making the prospect of new tax revenue and economic activity particularly attractive to local governments. This can create tension between elected officials seeking economic development opportunities and residents who wish to preserve rural character, as was evident in Kalkaska County in 2025. Given these challenges, rural communities possess two potential pathways to help ensure that data center developments compensate their host communities for what they are losing in undeveloped land, energy usage, noise pollution, and the other issues stemming from high impact development projects. The first is to identify a method to get a Community Benefit Agreement in place. The second is to broaden the base of stakeholders involved in the CBA negotiation process or lending them a clearer voice during the permitting process.

However, before this paper identifies the various administrative paths that municipalities may use to negotiate community benefits, it is important to understand the case law affecting this practice. Historically, CBAs were negotiated by community action groups or non-profits and the developer. The municipal government was not involved in the legal aspects of this contractual agreement, solely showing supporting or providing guidance, though this is slowly changing as cities like Detroit bring CBA

negotiations into codified regulations. In many instances, this practice is a legal gray area. To understand the legal minefield that CBAs present, the following paragraphs describe the key case law that has shaped what is known as the “Unconstitutional Conditions Doctrine” (Library of Congress, n.d.).

NOLLAN V. CALIFORNIA COASTAL COMMISSION, 483 U.S. 825 (1987)

The Nollan case finding establishes that government cannot make requirements as a condition for a permit approval that are unrelated to the project’s impact (*Nollan v. California Coastal Commission*, 1987). This is known as the “essential nexus” test, as described by Justice Scalia in the Supreme Court ruling. In the Nollan case, the Nollan family was attempting to reconstruct a bungalow into a larger residential use. When they applied to the California Coastal Commission for a permit to build, the commission required that part of the Nollan property become an easement to provide public access that would link two public beaches. The commission’s reasoning was that the new building would block public views of the area and people would then be unaware that there were public beaches in the vicinity. The commission described this as a “psychological barrier” and that the decision was based on zoning’s purpose in advancing a legitimate public interest.

The Supreme Court ruled 5-4 in favor of the Nollan’s, stating that the California Coastal Commission, if it was concerned about public views, could have limited the buildings height, its width, or it could have prevented the redevelopment of the building totally. It may have even been possibly constitutional to require the Nollan’s build a public viewing deck if views were the concern. Therefore, because the easement was unrelated to the state’s interest, it was deemed an unconstitutional exaction.

DOLAN V. CITY OF TIGARD, 512 U.S. 374 (1994)

While the Nollan case asserted the need for a nexus between the condition and the project impact, the Dolan case established the “rough proportionality test” (*Dolan v. City of Tigard*, 1994). In this case, the property owner wanted to expand her business’ building footprint and pave her parking lot. The municipality was dealing with traffic congestion issues and the property site was adjacent to a creek, meaning the increase in impervious surface in the permit application would lead to additional runoff and flood risk. The City approved the permit with two conditions. The first was that Dolan had to dedicate part of her land for public use as a greenway. The second was to dedicate part of her land for a public pedestrian and bike pathway. The Supreme Court ruled that while the conditions imposed by the City met the essential nexus test, they were not proportional to the project’s impact. First, the court found that the undeveloped land could serve the same purpose as private land as it could as public land. Second, the court found that the City could not effectively quantify the traffic congestion relief as a result of a new non-motorized pathway. Thus, Nollan/Dolan work together to assert that conditions on permit approvals must be related (essential nexus) and roughly proportional.

KOONTZ V. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, 570 U.S. 595 (2013)

Nollan/Dolan established the base framework for the Unconstitutional Conditions Doctrine. However, subsequent cases have made the administration of these cases clearer and have ultimately strengthened private property rights in relation to local land use controls. Related to the Nollan and Dolan cases, Coy Koontz wanted to develop a portion of his Florida property which consisted of wetlands. The plaintiff offered to offset the environmental impact of this development by deeding 11 acres as a conservation easement. The St. Johns River Water Management District denied the application; the district asked for a reduction in the development’s size, a larger acreage easement, and for Koontz to pay for improvements on district property miles separated from Koontz’s property.

Upon Supreme Court review, the justices voted 5-4 in favor of Coy Koontz. This finding expanded the courts' understanding of the unconstitutional conditions doctrine in two distinct ways. First, it included permit denials in the Nollan/Dolan test, not just approvals with conditions. This means that a municipality cannot use the threat of a permit denial as a means to negotiate conditions from a developer. In regard to the district asking Koontz to improve district-owned property far from his home, the court's ruling also means that monetary exactions, not just land use conditions, must meet the nexus and proportionality principles.

SHEETZ V. COUNTY OF EL DORADO, 601 U.S. 267 (2024)

Sheetz v. County of El Dorado (2024) rounds out the key cases defining the Unconstitutional Conditions Doctrine. In Sheetz, the land owner wanted to build a manufactured home on his property in California. Upon applying for his permit, the County of El Dorado required a \$23,420 Traffic Impact Mitigation fee, which was based on the development type and location. Sheetz sued the County claiming that the fee was a Fifth Amendment violation and failed the Nollan/Dolan test. When the case reached the Supreme Court, the justices unanimously favored Sheetz. This case clarified that it does not matter if exactions are administratively enacted or legislatively enacted. Previously, local governments could enact fee schedules that applied to any developer because, as in Sheetz, they are based on location and development type, not the individual development. Sheetz v. County of El Dorado found that legislatively enacted fees must also pass the Nollan/Dolan scrutiny.

In summary, these four cases establish the following relevant to Community Benefit Agreements and Ordinances:

1. Conditions required by the permitting process must be related to the impact of the development (essential nexus).
2. The conditions must be proportional to the impact of the development (rough proportionality).
3. The Nollan/Dolan test is relevant to permits accepted with conditions as well as permit denials when the developer refuses to accept the conditions.
4. Monetary exactions and physical takings are subject to the Nollan/Dolan test.
5. The Nollan/Dolan test applies whether the conditions were prescribed by an administrator or a legislative body.

STAKEHOLDER SURVEY

In order to glean sentiments towards high impact uses and the potential use of public engagement or CBAs to address their effects, this research included a survey to key stakeholders in Northwest Lower Michigan. The survey was administered using online software with targeted respondents receiving a survey link and a brief description of the research purpose via email. The survey instrument was sent to the following key stakeholders:

The researcher for this project targeted these individuals because of their relationship to land use planning and administration, as well as their participation and governance in rural communities. The five counties targeted are all rural and represent a diverse range of geography and socioeconomics (lakeshore versus inland, for example). It is worth noting that outside the City of McBain and the City of Lake City, Missaukee County's townships are unzoned. Local leaders in Missaukee were specifically included because unzoned communities often have a higher threshold in favor of private property rights. The survey received 45 total responses, primarily from elected township officials. While not statistically significant,

these anecdotal results provide some insight on zoning and community input sentiments around data centers from land use leaders in Northwest Lower Michigan.

SURVEY RESULTS

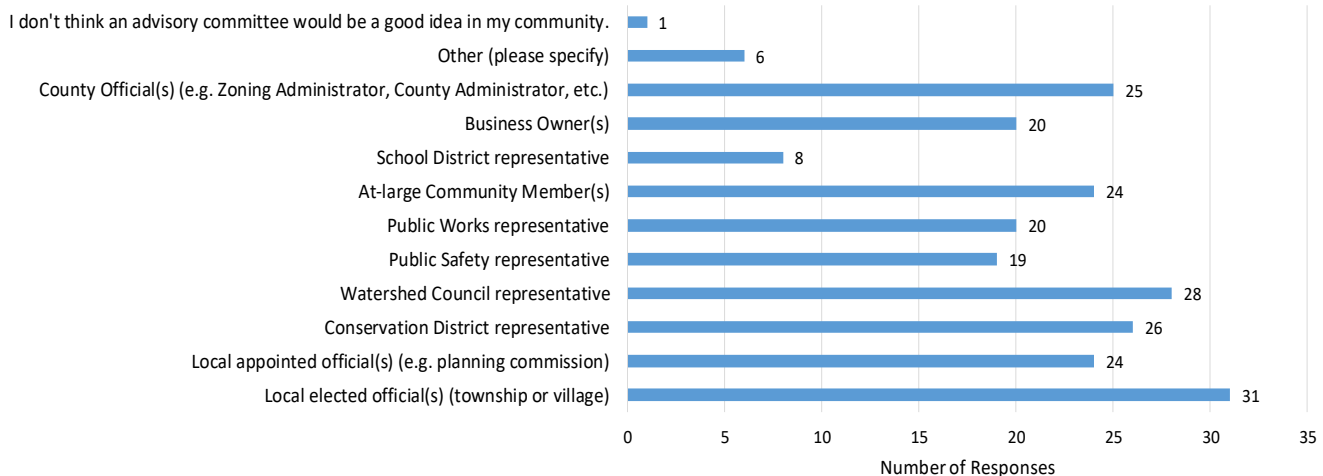
- Of the 45 respondents, 28 were elected officials in rural communities, 13 were appointed officials in rural communities, two were MSU Extension educators, and one was a regional planner in Northwest Lower Michigan (the total here is 44 despite 45 responses because the requirement to answer this question was not added to the survey until later).
- When asked, “Which of the following best describes your rural community’s citizen support, or lack thereof, for hyperscale data centers?”, 51 percent said “widespread opposition” and 41 percent said “lacking support”. Five percent said community members are interested, but waiting to see what other communities do. No one said “fully support”.
- When asked, “Do you think the majority of community members where you live or work know that the Michigan Zoning Enabling Act largely prevents municipalities from outright banning a particular use except under some limited circumstances?”, 48 percent said “probably not” and 38 percent said “definitely not.” Ten percent stated that community members might or might not know this.
- The most cited appeals of data centers, from the survey respondents’ perspective, were jobs and tax revenue.
- The most cited concerns of data centers, from the survey participants’ perspective, were water usage, electric/power usage, noise pollution, natural resource degradation (loss of trees and farmland), public health concerns, impact on adjacent properties, and incompatibility with rural character.
- Elected and appointed leaders were asked what they think is the best strategy to deal with data centers from a zoning perspective in the near term. Their options were to 1) leave it out of their zoning ordinance and wait for an application from a developer to address the use (moratorium), 2) leave it off the zoning ordinance and deal with the issue in court if the developer sues, 3) begin zoning for data centers now so the locality can control the use before an application is submitted, 4) have a zoning ordinance drafted for preparation but don’t implement it until an application is submitted, or 5) not applicable, our community wants a data center. Of the 20 elected officials who answered this question, 13 want to get ahead of it by drafting and implementing a zoning ordinance now, 4 want an ordinance drafted but not adopted, and 3 want to leave the use alone until an application is submitted.

Of the nine appointed officials who answered this question, five are in favor of getting ahead of the issue by zoning for it before an application is submitted. The remaining answers were varied across the other options.

- Both elected and appointed officials noted a need to be proactive with this land use in order to avoid legal fees and to avoid being exclusionary in their zoning.
- 30 out of 36 respondents said that a public input process should be a required part of a data center developer acquiring a land use permit. Of these, 19 stated that there should be a public input process before and after a land use permit is submitted, but with different audiences and processes. 7 said there should be an input process only during the pre-application phase, and 4 want to see public input only after a land use permit application is submitted.
- When asked about the potential use of an advisory committee to negotiate Community Benefits or to make recommendations to the elected body on zoning decisions regarding data centers and other high impact uses, respondents most often said the committee should be made up of: local elected

officials, a watershed council representative, a conservation district representative, county appointed officials, at-large community members, and local appointed officials (e.g. planning commissioners). 20 out of 31 survey participants noted that the advisory committee could be a mix of officials from around the county, but at least one should be from the affected municipality (assumes county zoning).

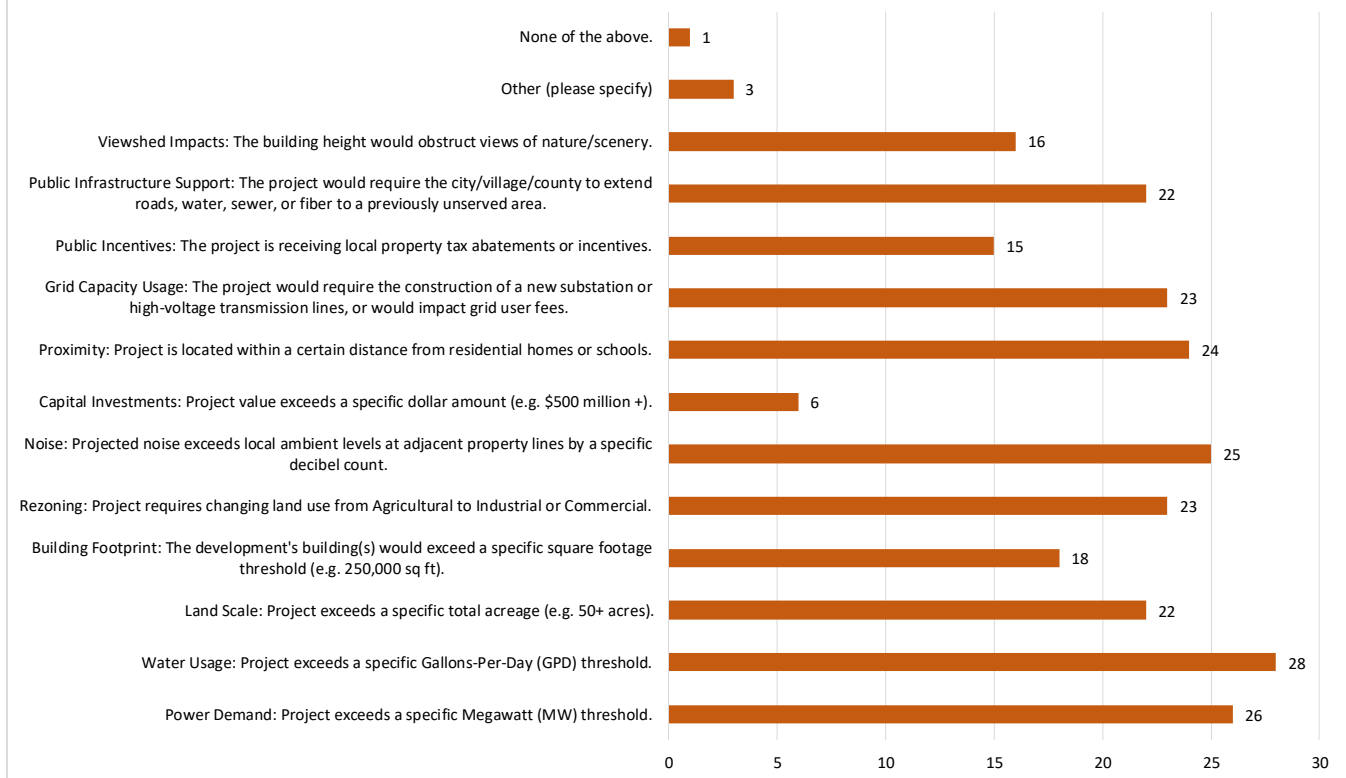
Figure 1. If your municipality decided to use [an advisory] committee during the permitting process, who do you think should be represented on it? (choose all that apply)



- When asked how at-large community members should be appointed to an advisory committee, the largest proportion (14 out of 34) said they should be appointed by the elected body. 10 out of 34 want there to be a random sample of citizens who are invited and of those who want to participate, a randomized group is chosen. 7 survey respondents would like one or more at-large members to be selected at random from a pool of applicants.
- For the Community Benefits and public input inclusion in the land use permitting process, the survey contained three questions. The first of these is in regard to what should trigger the use of a community benefit/public participation process or use. Shown in the figure on the next page, the triggers that received at least 20 votes were for water usage (88%), power demand measured by Megawatt (MW) threshold (81%), projected noise (78%), proximity to homes or schools (75%), whether the use requires a rezoning (72%), required grid upgrades to accommodate (72%), public infrastructure support from the municipality (extension of roads, water, sewer, fiber) (69%), and land scale (projects exceeds a specified acreage) (69%).
- Every single negotiable site impact mitigation option presented in the survey received resounding support of at least 64 percent of respondents. These are options that are likely allowed to be required by the municipality in order for the developer to receive a permit, though as always one should check with a land use attorney prior to implementing these requirements in a local zoning ordinance. Respondents agreed that in order to acquire a permit, a high impact development like a data center should require resource use reduction (closed loop system, on-site energy source), infrastructure expansion, public safety funding, buffering requirements, utility price protections, a decommissioning plan with surety bonds, and minimum tax revenue guarantees.
- The final question of the survey was in regard to community benefits that would be voluntarily agreed upon by the developer because they are not site related. The top five selected benefits were farm and forest preservation (developer agrees to purchase and retire the development rights of another parcel or parcels elsewhere in the county, or provide conservation easements to preserve

land for public use) (76%), updates to infrastructure outside of the affected area (70%), contributions to a general community fund (67%), funding to parks and open space improvements (67%), and an agreement to hire local contractors as a first priority for the development (61%).

Figure 2. Triggers for the Use of CBA or Public Input Requirement



COMMUNITY BENEFITS & PUBLIC INPUT FOR HIGH IMPACT USES: OPTIONS FOR IMPLEMENTATION

Community members across the state of Michigan are concerned about hyperscale data centers and the unknown impacts that they may have on the environmental, economic, and social future of their towns. As of spring, 2026, it is difficult to ascertain exactly how municipal governments can legally and politically deal with this issue at the same time. Some communities and their elected officials may welcome data centers and other high impact uses as necessary economic contributors. In this case, zoning for this use is quite easy and can be handled as a permitted by-right or special use with additional standards for setbacks, buffering, decommissioning, etc. As stated, the author of this paper is not recommending one approach over another in whether or not to make it easier for hyperscale data centers to be sited in a given area, as this is up to the individual community. This section, therefore, should be understood as a guide for communities that are uneasy about this new land use and would like to implement requirements for community input, as well as methods for garnering community benefits while still avoiding being exclusionary.

This research has intentionally excluded samples of data center zoning ordinances because of the evolving nature of how municipalities are using land use regulation for this use. As of June, 2026, the Michigan House of Representatives and the State Senate have introduced legislation calling for a statewide moratorium on large-scale data center development, while the Governor has shown active support for data centers as economic contributors to the state's economy. At the local level, results have been mixed. For example, Kochville Township in Saginaw County allows data centers by-right and special use depending

on the square footage and the zoning district in which it is located (*Regulation of Data Center Facilities*, 2026). Saline Township did not have zoning provisions that would accommodate hyperscale data centers, and when the township board denied a rezoning request by the landowner to develop a data center, the property owner filed a lawsuit. The suit was settled through an out of court agreement, which gave some community benefits to the township through negotiations including money for farmland preservation, a community investment fund, and fire services. The settlement also included noise limitations, water conservation requirements, and land preservation of around 200 acres of sensitive or undeveloped lands (Allnut, 2025). The City of Mason adopted an ordinance update in February, 2026 that created a new industrial district specifically to allow data centers by right. Public outcry over the ordinance's passing led to the City Council voting to repeal the ordinance in March 2026 (Ma, 2026).

The vast majority of local municipalities are currently leaving data centers out of their zoning to avoid political pitfalls, to wait and see what happens at the state level, and potentially to use a lawsuit or mediation as a means to acquire community benefits. At the time of this writing, it is unclear what role the State of Michigan will play in hyperscale data center regulation. In recent years, the state has shown a willingness to pre-empt local land use control, most recently regarding solar and wind land use regulation. As artificial intelligence becomes a more significant staple of industries' operations, failure to plan and zone for data centers at the local level could provide a reason for state intervention in the same way it has for cell towers, oils and gas wells, certain childcare facilities, critical dune areas, high risk erosion areas, and solar and wind farms. Therefore, while it may be an effective practice to exclude hyperscale data centers now, it is wise to look towards the future and evaluate how this and other high impact uses can be included with requirements for public input and community benefits.

TRIGGERS FOR THE USE OF CBA'S

To implement mandatory public input processes and negotiations for community benefits, there needs to be a set of triggers for this part of the zoning ordinance. The goal is not to create an arduous development process for all developments. Rather, the goal is to ensure that high impact uses that drain a locality's natural resources are matched with a proportionate amount of contributions to the area's quality of life. Therefore, the community should work through its Master Plan, public input, its Planning Commission, and Board/Council to decide on a definition of "high impact use", as well as the triggering effects they find most relevant to their community. For instance, one community may find development on prime farm soils to be most concerning, while another is concerned with water usage amounts. For this paper, the author will use hyperscale data centers as the example, but these triggers could be transferable or modified to cover many other industrial uses as well.

Communities defining the triggers for more stringent zoning options should define development characteristics that will have an outsized effect on the widely agreed upon character of the area. Broadly speaking, in a rural context residents usually define 'rural character' in terms of lower density development patterns; forest and farm preservation; protected viewsheds; large setbacks from main thoroughfares; buildings 35 feet or shorter in height; access to parks, recreation, and trails; locally owned businesses; centrally located schools; large lots with clustered development in areas with infrastructure; and dark sky protections. While the definition of rural character may vary community to community, the author's experience planning for the 10-county Northwest Lower Michigan region has seen the same defining factors repeated during many planning processes and input sessions. Therefore, a high impact use in a rural area would be one that would significantly alter a number of these aforementioned characteristics. A high impact use can more easily be defined and justified when applied to zoning when the municipality's Master Plan defines it, and that definition is supported by robust public input and well-cited data. This definition then must find its way into the zoning ordinance.

In the data center example, the following seem to be the most cited concerns based on Kalkaska's experience and the survey from this research: water usage, energy usage, noise, water quality, acreage, and the development of previous farm, forest, or open space. The survey responses from Northwest Lower Michigan officials and other leadership confirm these as variables to use as triggers, similar to the sample ordinances in communities in other parts of Michigan.

Because all communities have different values and visions for the future, the author of this paper does not propose a specific list of triggering effects. However, the first part of any land use permit process that includes CBA standards or public input would need these described similar to how Detroit defines theirs at the beginning of their CBO. Once defined, this paper proposes four options that a municipality may implement into its zoning to either require public input for high impact uses or to negotiate community benefits. These include a pre-application public input requirement, a post-application advisory committee, a non-governmental negotiator, and benefits negotiated through bonus incentives either using Planned Unit Development (PUD) or incentive zoning.

PRE-APPLICATION PUBLIC INPUT REQUIREMENT

In 2025, when the data center development boom was occurring in Michigan, most developers sought public input prior to submitting an application. The likely purpose for this strategy was for the developer to evaluate the political hurdle of acquiring a land use permit sooner rather than later. If public pushback was significant, the developer could move on to the next potential option. The question for communities is whether this pre-application public input can be codified. There are three main options for requiring public involvement in the pre-application phase. One of these is through the use of PUD's and will be discussed in that section. The other two are 1) requiring a Community Impact Report (CIR), and 2) using a set of triggers or planner/zoning administrator discretion to require public input as a pre-requisite to submitting an application for zoning.

Municipalities have broad authority through the Michigan Planning Enabling Act (MZEa) to require site plan reviews and supporting documentation as pre-requisites to submitting a land use permit application. Pre-application documentation is often required and must be defined in the zoning ordinance. Typical reports include environmental impact studies, traffic studies, and infrastructure impact studies. Because of the broad local discretion allowed by the MZEa, the municipality can also require a Community Impact Report. This report can ask the developer to cite his or her efforts utilized to garner public input. For example, the report may ask for the following:

1. Please cite the date, time, location, and number of participants for two public input sessions, and
2. Provide a matrix of all concerns cited by participants during the community input sessions, and
3. Provide detailed responses of how the developer plans to address concerns related to all physical, environmental, and aesthetic impacts in the final site plan, or if the concern cannot be addressed, a reason why not.
4. The zoning ordinance may also require that the two sessions be held at different times of the day or day of the week.

The CIR should only ask for objective information such as the example above's requirement to state the time, date, and location of the input sessions. A list of concerns by participants is also an objective measure. In addition, the developer should not have to address all concerns, only those related to land use, such as infrastructure and traffic, for example. The developer should not need to address hypothetical impacts or non-land use impacts like effects on the economy or social cohesiveness, even though these are relevant concerns from a local leadership perspective. Also, the CIR should not ask vague questions

or questions regarding the popularity, or lack thereof of the project. For example, the following should not be part of the CIR:

1. Please show evidence that the proposed development is supported by members of the community.
2. Please show evidence that the proposed development supports a strong sense of place.
3. Please show evidence that the proposed development will not affect the social cohesiveness of the surrounding area.
4. Please provide evidence that the development will be an economic benefit to the community.

Aside from the CIR, municipalities also have the ability to require public participation as part of the pre-application stage. Van Buren Charter Township is an example of a community that uses this type of process. In Van Buren, the Township's *Public Participation Plan* (n.d.-b) lists "controversial developments" as those that are, of a "[l]arge size relative to surrounding development," in close "[p]roximity to residential area" "Belleville Lake," or a "new development in an established area." In both the Public Participation Plan and the *Van Buren Charter Township Guide to Development* (n.d.-a), the development process is outlined clearly. First the developer has a pre-application meeting with Township staff, no matter if the development is by-right or special use. If the development meets one or more of the controversial development criteria, or is determined controversial at the planning director's discretion, a public engagement session is required. Following, the developer must meet with Township staff (planner) to address the concerns noted during the session.

It is critical to note that for the CIR and the public engagement session requirement, neither can act as a gatekeeper for the developer to submit an application. The process is the requirement, but the results of the process are irrelevant to whether or not a land use permit application can be submitted. For example, Van Buren Charter Township can require the developer to host a public engagement session for "controversial developments". It can also require a follow-up meeting with the Township planner to discuss public concerns noted during the session. However, the Township cannot legally deny an application submittal based on any of the content of the engagement session or the follow-up discussion. Similarly, if using a CIR, even if the developer writes that none of the concerns raised by the public can be addressed in the final site plan, the application can still be submitted. The zoning administrator can only evaluate the completeness of the document, not the content of the CIR. Therefore, if the CIR does not have evidence of a public engagement session, a list of public concerns, and a response to each land use related concern, the application can be denied as incomplete.

In effect, the CIR or input session act as requirements for a complete land use permit application and ensure that one or more public input sessions are a mandatory part of the development process. It takes what most hyperscale data center developers are voluntarily committing to and making it a codified section in the zoning ordinance. At a minimum, these methods guarantee that community members are informed that a high impact development is being considered and it places the developer in the same room as interested citizens.

POST-APPLICATION PUBLIC INPUT REQUIREMENT

Municipalities can also require public input after an application is presented. In fact, this concept is easier to navigate legally because it does not have the appearance of working to block an application from being submitted. To avoid redundancy, the author uses a stakeholder advisory committee as the public input method rather than an engagement session, though the latter is a viable option post-application as well. For high impact uses triggered in the zoning ordinance, in this example the developer's application would be submitted to a pre-determined stakeholder committee whose membership would be cited in the zoning

ordinance. Based on this paper's survey one can imagine a county-wide committee made up of the following (county-wide is considered here because various rural counties zone for local municipalities): local elected officials, local appointed officials (planning commissioners), at-large community members, a watershed council representative, a conservation district representative, and the county zoning administrator. The at-large community members could be selected using various methods, but the most supported in this research's survey was to have the elected body select them.

The advisory committee would be tasked with doing in-depth research on the proposed development's impacts, negotiating project impacts with the developer, stating concerns with the developer, and could optionally conduct its own wider public input. It is important to note that the MZEA specifies who has control of land use decisions at the local level, and delegating ultimate decision making control to an advisory committee is illegal. Therefore, the use of the advisory committee in the land use permit process as described in the zoning ordinance should be strictly defined as "advisory."

NON-GOVERNMENTAL NEGOTIATOR

From a legal perspective, the clearest and easiest way for communities to negotiate for benefits unrelated to the development site is through non-governmental entities. Non-profits and other local stakeholder coalitions can press for benefits without being concerned with affecting the actual land use permit process.

There are various drawbacks to this option. First, it is often unclear whether this coalition or entity's efforts will be broad based or overly focused on one specific perspective. For example, one non-profit negotiating a CBA may be interested in environmental impacts, while another may be entirely concerned with the use of local labor. It can also be unclear if the negotiating entity is truly interested in community benefits or benefits to its own bottom line. Second, this option only works if the community has very high levels of civic participation and can organize effectively. Without these features, a developer may not find it at all necessary to negotiate benefits, especially if it is not part of the land use permit process and therefore, an unnecessary hurdle to building.

The benefits of this option are fairly obvious after evaluating the difficulty of instituting CBAs within municipal processes. Private entities can easily navigate the legal side of contractual agreements. Most importantly, they can negotiate non-site related benefits with the developer such as downtown development, general community funds, school investments, and park improvements. Therefore, while codified processes are useful, private CBA negotiators still represent a powerful tool for communities with a civically active populace. Although these are primarily found in larger cities, their use in a rural setting could prove effective in garnering community benefits in exchange for supporting some high impact uses.

BONUS STANDARDS: TIERED APPROACHES FOR PLANNED UNIT DEVELOPMENT & SPECIAL USES

Planned Unit Development (PUD) and incentive zoning provisions for special uses may be the two methods by which municipalities can negotiate community benefits and pass the Nollan/Dolan test, while also requiring public input. At the onset, it is important to distinguish the fact that these must occur only when the community is giving something up, and even then it is a legal gray area if the benefits are non-site related (no nexus). Detroit's Community Benefit Ordinance stands up to legal challenges because it is not part of the land use permitting process, and it can only be triggered when development occurs on public land or on property that is receiving financial incentives from the City. Absent the municipality giving something that is unnecessary for the development to occur, asking for a non-site related benefit as a requirement for receiving a permit would likely be interpreted as an exaction. However, PUD and incentive zoning can still help to trade benefits for the high impacts presented by data centers.

Planned Unit Developments (PUD's) are expressly designed to give both the developer and the municipality (planning commission and elected board) flexibility to negotiate a site plan. The author includes incentive zoning here as well, as many Michigan communities who use incentive zoning do so in the PUD context. For this example, one can assume that Community A has decided on a minimum set of standards to allow a relatively low footprint hyperscale data center. Again, the MZEA does not define these standards, but only requires that in practice the zoning standards not be exclusionary when applied. If the municipality allowed data centers in a PUD district that was standalone or an overlay on part of their industrial or commercial districts, the PUD process could be used to negotiate a CBA in exchange for flexibility in those minimum standards. For example, the community could allow a larger building footprint or the development of a larger parcel in exchange for larger setbacks, more landscaping buffers, more Low Impact Development features, or increased noise level deterrents. This would be a fairly standard PUD process. It is best to describe the undesirable outcomes in the ordinance (effect on neighboring properties, infrastructure load, etc.) and have the developer note 1) if the site plan presents conflicts with these and 2) how the site plan could be modified or other benefits could be provided to offset the impacts (infrastructure upgrades, closed loop cooling system for data center, etc.). For example, “for high impact uses exceeding X acres, the applicant must demonstrate that the increased utility, natural resource, or land use demand are mitigated through infrastructure improvements, environmental measures, or other offsetting mitigation practices that are proportional to the increased impact”.

However, it is still risky for communities to list non-site related benefits within the ordinance even if they are part of a bonus provision and not required to get the base zoning approval. A bonus approval that uses more infrastructure capacity should be offset by infrastructure improvements. An increase in building size could be reasonably offset by larger setbacks and increased buffering standards. A larger parcel size allowance could probably be offset by requiring a portion of the land to be deed restricted as public open space. Even in the bonus provisions scenario, municipalities are wise to avoid the appearance of an exaction or contract zoning by using non-site or impact related conditions in exchange for zoning flexibility. The impact and condition should be related if it is tied to a land use permit.

EXAMPLE TO PONDER: ZONING HYBRID

To conclude, Breckenridge, Colorado is an interesting example of a municipality that uses a performance standard, incentive zoning, and Euclidean zoning hybrid model to allow flexibility in impact mitigation. Breckenridge's Development Code (Town of Breckenridge, n.d.) uses land use districts in a Euclidean manner similar to how most Michigan communities zone for separate uses. However, it also includes performance zoning standards that are ‘absolute’ and ‘relative’. The absolute policies are the minimum requirements for the development. These are similar to the general provisions section of most Michigan zoning codes, including elements such as noise, traffic, stormwater, lighting, signage, and buffering. However, the code also has relative standards. These use a scoring system in which the project's impacts are awarded positive or negative points based on community impacts such as density, architecture, building height, landscaping, and parking. If the proposed development has an increased density than the absolute standard, it receives a negative score based on the degree it goes beyond the absolute standard. The developer can then earn positive points in other areas of the code, such as providing employee housing, providing amenity space, or “address[ing] specific needs of the community which have been identified in the yearly goals and objectives reports...” (Town of Breckenridge, n.d., § 9-1-19-24RA3).

In this way, Breckenridge, through its menu of development impacts and mitigation strategies, gives the developer a lot of flexibility, gets something in return, and does so without the need for extensive negotiations. Because it is unclear whether or not the MZEA would allow this practice in Michigan, and because it is somewhat complex to administer, this is more of a theoretical concept than a policy

recommendation. In summary, Michigan communities may need to look elsewhere for innovative examples of how to zone to get their desired outcomes. Many Michigan municipalities use a standard Euclidean model that separates uses into various zoning districts and either approves them by-right or by special use. While this system is fairly easy to administer and works in most cases, the data center emergence has shown its limitations. Zoning in Michigan is often expedient and one size fits all, or arduous because of its ambiguity and back and forth negotiations between developer and commission. Municipalities and planners have experimented with different models such as Performance Zoning, Form Based Codes, and many more over the years. Perhaps one of the benefits of the data center concern is that communities will think more critically about their zoning model and whether or not it is truly leading to the built environment they actually want to see.

CONCLUSION

Data centers as a land use have reintroduced a classic debate in American political thought between private property rights and the government's role in promoting the public good. They bring attention to the conflicting interest the developer has in getting the highest and best use from their land and the community's interest in "maintaining its rural character." Perhaps to many rural community members' dismay, and somewhat ironically so, the courts have largely ruled in favor of private property rights in recent years. As has been shown across the state of Michigan in 2025, however, data center developers have a vested interest in agreeing to Community Benefits and avoiding litigation if and when possible. Most have shown a willingness to voluntarily speak with members of the public and to gather their feedback on contentious developments in order to negotiate a final compromise.

The author of this paper recommends a variety of strategies, all of which are best decided through a public input process and a review by the municipal attorney. First, for communities that do not find data centers controversial, they can zone these as permitted or special uses. It is important to note that the potential tax revenue from this land use is a strong driver for allowing data centers and other high impact uses, especially in places that have seen economic decline. For other communities that are unsure of what to do next or are concerned about political fallout, the wait-and-see approach is viable, and potentially the best option to get non-site related community benefits, though it also comes with its aforementioned risks. Finally, for communities wanting to zone for data centers but wanting to mitigate their effects on the economic, social, and environmental quality of the area, there are four main tools that are probably legally defensible, including apre-application public input requirement, a stakeholder advisory committee, a partnership with a non-governmental community benefits negotiator, and the practice of zoning minimal land for high impact uses and building bonus standards into the ordinance. A combination of two or more of these tools may be the most advantageous approach.

Ultimately, municipalities have virtually no legal ability to seek non-site related community benefits through the land use permitting process as established by Nollan/Dolan. However, the author here proposes that comprehensive public engagement between community members and developers may have the indirect effect of mitigating site impacts and potentially garnering community benefits outside of the land use permitting process.

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