Law & Accounting

Considerations for Colorado data centers developers

As the demand for data centers continues to increase nationwide, data center developers across the country are increasingly evaluating the Colorado market for new development.

One thing that makes Colorado appealing for data center projects is the availability of open land. According to Data Center Map, a global data center database, there are currently 49 data centers present in four different Colorado markets – namely the Fort Collins, Loveland, Denver metro and Colorado Springs areas – which is a lower number than more established data center markets like Northern Virginia or Silicon Valley. As such, both existing and new data center players are looking to expand their Colorado presence, particularly with new builds in sprawling industrial areas like the land between the Denver International Airport and Denver. Colorado also offers a relatively dry climate and a low-risk environment for many natural disasters, such as hurricanes and earthquakes.

On the other hand, the Colorado market presents some unique considerations as compared to other markets in different parts of the country. Developers should consider the following:

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- Colorado currently lacks tax incentive structures typically found in other markets. According to Sunbird and Bisnow, more than 20 states nationwide have implemented some kind of data center incentive program. These programs are often in the form of sales, use or business personal property tax reductions on the expensive tech equipment found inside the data centers. During the 2023 Colorado legislative session, Senate Bill 23-207 was proposed, but did not pass because of its fiscal note and backlog the number of bills and backlog late in the session. Perhaps 2024 will be the year.
- Some cities and counties are realizing the economic benefit of encouraging data center development and proposing local incentives. Specifically, these municipalities are finding that data centers draw other bio science and technology companies to locate nearby, bringing high-paying jobs and opportunities.
- Data centers historically have needed a lot of water for evaporative cooling. Excess water is not something Colorado has been known for. However, recent advancements in cooling technology and water efficiency have decreased the water need, putting Colorado back on the map as a potential market.

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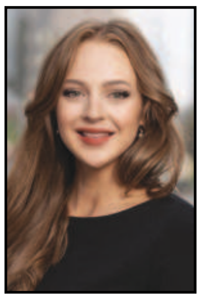
- Large data centers require significant infrastructure, something our state, cities and counties typically do not fund. Developers "pay their own way," building their streets and utilities. Because of this, metropolitan districts may be something worth exploring, a mechanism that developers new to the Colorado market may not be as familiar with. Metropolitan districts are quasi-governmental entities formed to finance, construct and/or maintain public improvements. The property owners or tenants who directly benefit from the infrastructure pay for the infrastructure through mill levies and other taxes to offset bonds issued by the metropolitan district. This could be particularly helpful for data center developers purchasing raw land and starting the infrastructure construction from scratch.



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- There are stringent energy reduction mandates in certain areas of Colorado like the city and county of Denver. For example, the Energize Denver program requires owners of buildings with a gross square footage of 25,000 or more to meet certain energy use performance requirements, which can create a significant cost burden for developers if energy requirements are not considered at the beginning of a project. And, with Colorado Air Quality Control Commission Rule 28 taking effect as of Oct. 15, statewide energy upgrades are now required for buildings over 50,000 sf.
- The soils in Colorado often have large deposits of bentonite clay soil, which is more absorbent and expansive than typical soils. This means that when the soil gets wet, it can expand to the point where building foundations crack. Developers should engage experienced geotechnical and civil engineers to analyze and mitigate the soils on project sites.
- Savvy drafting of lease agreements is also becoming particularly important for data center developers in light of the leasing trends with powerful Big Tech tenants. Historically, tenants largely control leasing agreement terms with the data center owner or operator. As such, the leases often contain harsh restrictions and penalties affecting the data center provider, like allowing the tenant to terminate if a provider does not strictly adhere to certain temperature requirements for the data center or responding within a tight timeline if anything malfunctions. For developers, these timelines are sometimes things not within their control. As more data centers come into the Colorado market, however, this may shift the power dynamic for some.

Interested developers should educate themselves about the local market and hire an experienced design and construction team to evaluate potential sites. Developers should also make it a priority to negotiate comprehensive contracts that mitigate against the specific risks posed by this type of project in Colorado. ▲

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