

Date of Meeting: September 20, 2022

13a

**BOARD OF SUPERVISORS
BUSINESS MEETING
ACTION ITEM**

SUBJECT: **TRANSPORTATION AND LAND USE COMMITTEE
REPORT: Data Center Discussion Series**

ELECTION DISTRICT(S): Countywide

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACT(S): Kate McConnell, Planning and Zoning
Joe Kroboth, Planning and Zoning
Buddy Rizer, Economic Development

PURPOSE: The purpose of this item is to present the recommendations from the three-part Transportation and Land Use Committee (TLUC) Data Center Discussion Series on targeted revisions to policies and regulations concerning data center uses throughout Loudoun County and receive Board of Supervisors (Board) direction on the recommended policy changes for a *Loudoun County 2019 General Plan (2019 GP) Comprehensive Plan Amendment (CPAM)* and regulatory approaches for inclusion in the Zoning Ordinance Rewrite (ZO Rewrite) or a separate Zoning Ordinance Amendment (ZOAM) process.

RECOMMENDATION(S):

TLUC: At the TLUC Meeting on February 16, 2022, TLUC recommended (4-0-1: Glass absent) that the Board establish, with all due haste, a zoning overlay prohibiting data centers in the Route 7 Corridor, and that staff consult with the Data Center Coalition in the development of that overlay.¹ At the TLUC Meeting on February 16, 2022, TLUC also recommended (4-0-1: Glass absent) that the Board direct staff not to evaluate legislative changes for a new data center area identified as Dulles Cloud South in the Data Center Land Study.

At the Board Business Meeting on April 5, 2022, the Board did not accept either of these TLUC recommendations, but instead opted to forward (7-2: Buffington and Umstatted opposed) the item back to TLUC for a more comprehensive discussion, as explained further in the Background section below.

At the TLUC Meeting on April 20, 2022, TLUC did not make any formal motions with recommendations; however, the Committee, by consensus, agreed to the following initial observations:

¹ [February 16, 2022, TLUC Item #4 – Data Center Land Study](#)

- Data centers should not go in the Route 7 Corridor or at the very least should be regulated by stricter design standards or other regulatory options to mitigate impacts along Route 7;
- Data centers should go where they are envisioned in the 2019 GP;
- Data centers should be protected where they currently exist or are in the process of development;
- Data centers should be allowed in the Route 28 Tax District;
- Data centers should not be allowed in the Suburban Mixed Use Place Type; and
- Data centers should not be permitted, or at least be subject to discretionary review, adjacent to existing residential neighborhoods.

TLUC also expressed interest in exploring a reduced version of the area identified as Dulles Cloud South in the Data Center Land Study, where electric power infrastructure exists.

At the TLUC Meeting on June 1, 2022,² TLUC did not make any formal motions with recommendations; however, the Committee, by consensus, made the following high-level, conceptual recommendations and requests with the knowledge that potential implementation of such recommendations would be subject to the vested rights resulting from prior legislative or administrative approvals for particular properties, and statutory protections associated with the Route 28 Tax District enabling legislation.

- Urban Employment: TLUC recommended that data centers not be permitted in zoning districts in the Urban Employment Place Type. However, if data centers are developed by-right in these areas, TLUC requested data centers are developed with high design standards.
- Urban Mixed Use: TLUC recommended that data centers not be permitted in zoning districts in the Urban Mixed Use Place Type, as these are high density residential areas.
- Urban Transit Center: TLUC recommended data centers not be permitted in zoning districts in the Urban Transit Center Place Type.
- Suburban Mixed Use: TLUC recommended that data centers not be permitted in zoning districts in the Suburban Mixed Use Place Type. However, if data centers are developed by-right in these areas, TLUC requested data centers are developed with high design standards.
- Suburban Neighborhood: TLUC recommended that data centers not be permitted in zoning districts in the Suburban Neighborhood Place Type. However, if data centers are developed by-right in these areas, TLUC requested data centers are developed with high design standards.
- Suburban Employment: TLUC recommended, if data centers are permitted in zoning districts in the Suburban Employment Place Type, that development is not permitted by-right, but allowed by special exception.
- Suburban Industrial/Mineral Extraction, Transition Light Industrial, Transition Industrial/Mineral Extraction, and Leesburg JLMA Employment: TLUC recommended data centers be permitted by-right in zoning districts in the Suburban Industrial/Mineral Extraction, Transition Light Industrial, Transition Industrial/Mineral Extraction, and Leesburg JLMA Employment Place Types.

² [June 1, 2022, TLUC Meeting Item #1](#)

- Planned Development – Town Center (PD-TC): TLUC recommended if data centers are permitted by-right in the PD-TC Zoning District, data centers are developed with high design standards.
- Planned Development – Research and Development Park (PD-RDP): TLUC recommended if data centers are permitted by-right in the PD-RDP zoning district, data centers are developed with high design standards.
- Dulles Cloud South: TLUC recommended no further discussion of the Dulles Cloud South area, for purposes of the TLUC Data Center Series discussion.
- Route 28 Tax District: TLUC recommended that data centers be permitted in the Route 28 Tax District. Chair Randall and Supervisor Glass requested, however, that data centers are developed with the highest design standards and are as environmentally friendly as possible.
- Route 28 Tax District and Suburban Mixed Use: TLUC recommended data centers not be permitted in the Route 28 Tax District if the parcel is in the Suburban Mixed Use Place Type.
- Route 28 Tax District and Route 7 and Suburban Mixed Use: TLUC recommended data centers not be permitted in the Route 28 Tax District if the parcel is also located in the Route 7 Corridor and in the Suburban Mixed Use Place Type.
- Zoning Conversion in the Route 28 Tax District (ZRTD) Process: TLUC recommended transitioning from the current ZRTD legislative process which requires Board approval, to an administrative process to incentivize Route 28 Tax District property owners to voluntarily develop their property in accordance with the current zoning regulations.

In addition to the high-level zoning recommendations, at its June 1, 2022, meeting, TLUC also discussed the financial considerations regarding data center development with Department of Finance and Budget (DFB) staff. During discussion, DFB staff reiterated that data centers generate significant real and business personal property tax revenues, in addition to low demand for county government as well as school division services, and that staff's tax policy recommendation is to bring balance to the General Fund revenue tax base through changes to the personal property tax rate, rather than outright reduction to future data center development. Staff recommended the best way to reconcile land use policy related to data center development, with financial concerns of tax revenue policy, is to focus future development on those parcels that align with the Board's vision regarding the best locations for data centers.

At the TLUC meeting on July 18, 2022,³ TLUC forwarded (3-1-1: Buffington opposed, Kershner absent) the following recommendations to the Board for direction:

1. TLUC recommended that the Board direct staff to move forward with the following Comprehensive Plan Amendments:
 - a. Revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, where data centers are not

³ [July 18, 2022, TLUC Meeting Item #3](#)

- envisioned, to ensure existing data center development is not affected by creation of a zoning district precluding data centers in these Place Types; and
- b. Remove the Urban Employment Place Type and expand the Urban Transit Center Place Type, where data centers are not envisioned, to include the vacated Urban Employment Center Place Type to address not allowing future data centers in the Urban Policy Area.
2. TLUC further recommended that the Board direct staff to move forward with a process to implement the following revisions to the Zoning Ordinance:
- a. Upon adoption of a Comprehensive Plan Amendment to revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, create a zoning district in the ZO Rewrite or as part of a separate ZOAM that precludes data centers in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types;
 - b. Include use-specific standards in the ZO Rewrite or as part of a separate ZOAM that address high-quality building design, proximity to existing or planned residential uses, and environmental sustainability that would apply to all zoning districts that allow data centers, except the Planned Development-Town Center (PD-TC) Zoning District; and
 - c. Include use-specific standards in the ZO Rewrite that further address high-quality building design that would apply to data centers in the PD-TC Zoning District.

TLUC (3-1-1: Buffington opposed, Kershner absent) also requested that this item be sent to the second Board meeting in September and that in the interim staff seek out formal input and comments from the data center community and include it as part of the item at the second September Board meeting.

In addition, TLUC (3-0-1-1: Kershner absent, Randall abstained) recommended that the Board direct staff to include Dominion Energy and Northern Virginia Electrical Cooperative (NOVEC) in the request for referrals for administrative applications for data centers and all legislative applications.

Staff: Staff concurs with the TLUC recommendations; however, additional discussion is needed on the timing of the CPAM and zoning district to implement TLUC's direction on how to address the permissibility of data centers in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types.⁴ In addition, staff has initiated the recommendation to include Dominion Energy and NOVEC in referral requests by directing Department of Planning and Zoning (DPZ) staff to send referral requests for all legislative applications and Building and Development staff to send referral requests for all administration applications for data centers to Dominion Energy and NOVEC

⁴ Implementation of these recommendations would be subject to vested rights and protections from the Route 28 Tax District enabling legislation, as applicable to the affected properties.

BACKGROUND: At the Board Business Meeting on April 5, 2022, the Board reviewed the Department of Economic Development (DED) Data Center Land Study that identified appropriate places for data center development (and areas not appropriate), based on data-driven analysis.⁵ The Board forwarded (7-2: Buffington and Umstattd opposed) the item back to TLUC for a larger land use and process discussion on targeted revisions to policies and regulations concerning data center uses throughout Loudoun County, based on the data provided in the Data Center Land Study, with a particular focus on data center uses in the Route 7 Corridor, the Suburban Mixed Use Place Type, the Route 28 Tax District, and all parcels where data centers are a “by-right” use under the Revised 1993 Loudoun County Zoning Ordinance (Revised 1993 Zoning Ordinance). The Board further directed staff to provide analysis of impacted acreage to inform future decisions on the fiscal impact of a potential CPAM and/or ZOAM.

This item is the staff report to the Board on the three-part TLUC Data Center Discussion Series. The Data Center Discussion Series is outlined and updated below:

1. April TLUC Meeting: Targeted TLUC Feedback on Data Center Land Study Map.

Outcome: Staff received guidance from TLUC on what aspects of the Data Center Land Study map to use as a guide for regulatory and/or policy changes, as outlined in the Recommendations section above.

2. June TLUC Meeting: District by District Evaluation by TLUC.

Outcome: Staff received recommendations from TLUC on Place Types in the 2019 GP and zoning districts where data centers should not be allowed, allowed by special exception, or allowed by-right, as well as recommendations for additional use-specific standards for data centers.

3. July TLUC Meeting: Finalize TLUC Recommendations on Revisions to Data Center Policies and Regulations.

Outcome:

TLUC reviewed:

- Potential regulatory approaches to data centers that are currently allowed by-right in certain areas that TLUC identified as areas where data centers should be either not allowed, allowed by special exception, or allowed with additional requirements;
- Potential policy approaches to data centers that support TLUC recommendations; and

⁵ [April 5, 2022, Board Business Meeting Item #10a – Data Center Study](#)

- High-level vested rights, legal, market, and revenue impacts of the potential regulatory approaches; and

TLUC made:

- Recommendations to the Board for policy changes for future CPAMs; and,
- Recommendations to the Board for inclusion in the ZO Rewrite or a separate ZOAM process.

ISSUES:

At the TLUC meeting on June 1, 2022, the Committee identified five Place Types where data centers should not be allowed. Attachment 1 shows the location of Place Types discussed below.

- Urban Transit Center
 - The 2019 GP states, “The Urban Transit Center areas take advantage of proximity to transit to provide opportunities for dense urban development and a host of economic, entertainment, and community activities. Each area serves as a gateway to the County from the greater region and as a major destination in its own right.”
 - Data centers are not a use anticipated in the Urban Transit Center Place Type.
- Urban Mixed Use
 - The 2019 GP states, “Urban Mixed Use areas take advantage of their fringe proximity to the Metro stations to provide opportunities for dense urban residential development with a mix of commercial uses.”
 - Data centers are not a use anticipated in the Urban Mixed Use Place Type.
- Urban Employment
 - The 2019 GP states, “Urban Employment areas provide opportunities for a broad array of employment uses within an environment that provides gathering spaces and opportunities for synergies among businesses. These offer prime locations for office and flex space uses as well as startups and established businesses.”
 - Data centers are a Core Use within the Urban Employment Place Type.⁶
- Suburban Mixed Use
 - The 2019 GP states, “Suburban Mixed Use areas provide compact, pedestrian-oriented environments with opportunities for a mix of residential, commercial, entertainment, cultural, and recreational amenities. Although this area provides for residential uses, commercial and entertainment uses are the primary draw to the mixed-use center.”
 - Data centers are not a use anticipated in the Suburban Mixed Use Place Type.
- Suburban Neighborhood (portion along Route 7)
 - The 2019 GP states, “Suburban Neighborhood areas include Loudoun’s master planned neighborhoods of predominantly residential uses arranged on medium-to-large lots.”
 - Data centers are not a use anticipated in the Suburban Neighborhood Place Type.

⁶ Core uses are the most prevalent in the place type, complementary uses support the core uses, and conditional uses are to be considered on a case-by-case basis. (2019 GP, Chapter 2, Quality Development Action 7.1.D)

TLUC indicated that if data centers could not be precluded in these Place Types, then additional use-specific standards should require high quality building design and, in some cases, environmental sustainability requirements.

TLUC identified one Place Type where data centers *should be allowed by special exception*:

- Suburban Employment
 - The 2019 GP states, “Suburban Employment areas provide opportunities for a broad array of employment uses within an environment that provides gathering spaces and opportunities for synergies among businesses. These offer prime locations for office, production, flex space, and warehousing uses as well as startups and established businesses.”
 - Data centers are a Conditional Use within the Suburban Employment Place Type.

Additionally, TLUC identified two zoning districts, PD-TC and PD-RDP, where additional use-specific standards should require high quality building design.⁷ The discussion also included addressing the proximity of data centers to residential uses.

In response, staff proposes potential policy and regulatory approaches by Place Type, as well as additional use-specific standards that could generally apply to data centers. The proposed regulatory approach incorporates draft zoning district concepts. As part of each policy and regulatory approach discussion, staff also includes the potential effect such a regulation would have on the Place Type and/or development of new data centers.

As noted above, staff concurs with the TLUC recommendations; however, additional discussion is needed on the timing of the CPAM, and zoning district regulations to implement TLUC’s direction on how to address the permissibility of data centers in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types. Incorporation into the ZO Rewrite project upon completion of a yet-to-be initiated CPAM appears unlikely as the ZO Rewrite is headed to the Board for consideration starting in early 2023 which is approaching quickly. As noted in the DPZ Work Program item, which is also scheduled for consideration on September 20, 2022, staff will be prepared to discuss timing impact of the data center proposals on other projects currently underway.

Existing Data Center Development:

The current extent of data center development has been part of TLUC’s discussion regarding how to approach new data center development in the County. At the TLUC meeting on April 20, 2022,

⁷ The recommendations regarding data center permissibility in the Suburban Industrial/Mineral Extraction, Transition Light Industrial, Transition Industrial/Mineral Extraction, and Leesburg JLMA Employment Place Types are not addressed in this item because the recommendations are consistent with the current zoning district regulations, as well as the regulations proposed in the draft new zoning ordinance.

the Committee agreed, by consensus, that data centers should be protected where they currently exist or are in the process of development. The maps provided as Attachments 2-5 show this extent of data center development, as well as zoning districts allowing data centers by-right and vacant parcels allowing data centers by-right, by Place Type.⁸ The extent of data center development is based on parcels identified by DED where data centers are existing, under development, or owned by a data center entity.⁹

Staff is aware that the data center industry is concerned about recent land acquisitions where sites were acquired by a data center investor with explicit intentions to develop a data center or data center campus and feel that the acquisition alone should qualify them for the protections stated at earlier meetings. The reason for this position is based on the valuation of the property at the time it was acquired. Property valuations were based on the highest and best use for the property and historically data centers have commanded very high acquisition values, many of which are exceeding \$2.0 million per acre. These concerns generate an element of uncertainty for the industry that could result in choices to locate elsewhere and/or diminished investment in Loudoun.

For these maps and the purposes of this analysis, DPZ staff further categorized parcels identified by DED with an approved, conditionally approved, or active site plan for a data center as not vacant and parcels with no active or approved site plan as vacant.¹⁰

- Attachment 2 shows all parcels with zoning districts that allow data centers by-right;
- Attachment 3 focuses on parcels in the Urban Transit Center and Urban Employment Place Types;
- Attachment 4 focuses on parcels in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types; and
- Attachment 5 focuses on the Suburban Employment Place Type.

DED also provided data showing the amount of land that is developed with data centers, has an approved, conditionally approved, or active site plan for a data center, or is owned by a data center entity (Data Center Land) in the County by Place Type. Table 1 shows the acres of Data Center Land by Place Type, as well as the percent of each Place Type that is data center land, and the percent of total land under data center development. Table 2 shows the acres of data center land by Place Type and by zoning district.

⁸ The companion maps do not identify parcels that have proffered rezonings or approved special exceptions that entitle the landowner to build data centers by-right. The maps are based strictly on zoning data, parcel vacancy, and DED data only. Some vacant parcels may be subject to a site plan approved after July 1, 2021, and under construction.

⁹ A parcel would not be entitled to vested rights protection, which is based on legal requirements prescribed in the Virginia Code, simply because it is owned by a data center developer or operator.

¹⁰ The maps are current as of August 11, 2022. The DED parcels are largely the same as the purple parcels shown on the Data Center Land Use Study Map 1A included at Attachment 6 in the [April 20, 2022, TLUC Data Center Discussion Series item](#), but have been updated.

Table 1. Acres of Data Center Development by Place Type*

| Place type | Total Acres in Place Type** | Acres of Data Center Land in Place Type | Percent of Place Type that is Data Center Land | Percent of Total Data Center Land |
|--|-----------------------------|---|--|-----------------------------------|
| Suburban Employment | 4,933 | 1,985 | 40.2% | 38.6% |
| Suburban Industrial/Mineral Extraction | 4,450 | 1,049 | 23.6% | 20.4% |
| Suburban Mixed Use | 7,438 | 686 | 9.2% | 13.3% |
| Urban Employment | 478 | 443 | 92.6% | 8.6% |
| Transition Light Industrial | 540 | 361 | 66.9% | 7.0% |
| Leesburg JLMA Employment | 1,925 | 361 | 18.8% | 7.0% |
| Urban Transit Center | 1,361 | 167 | 12.3% | 3.2% |
| Suburban Commercial | 246 | 52 | 21.0% | 1.0% |
| Suburban Neighborhood | 29,347 | 41 | 0.1% | 0.8% |
| Suburban Compact Neighborhood | 2,181 | 0 | 0% | 0% |
| Total (rounded to nearest whole number) | 52,899 | 5,146 | -- | 100% |

*Data centers existing or in the process of development identified in previous work supporting the Data Center Discussion Series, including land owned by a data center entity as of August 11, 2022.

**The calculation of data center land acres by place type is based on the predominant place type for each parcel identified using GIS analysis. The calculation does not account for parcels having multiple place types. Additionally, Transition Light Industrial had one parcel with a significant amount of land in the Transition Industrial/Mineral Extraction Place Type.

Table 2. Acres of Data Center Land* by Place Type by Zoning District**

| Place Type | Zoning | Acres | Number of Parcels | Percent of Data Center Land |
|--|--------|--------------|-------------------|-----------------------------|
| Leesburg JLMA Employment | PD-IP | 361 | 2 | 7.0% |
| Suburban Commercial | CLI | 52 | 3 | 1.0% |
| Suburban Employment | A3 | 20 | 2 | 0.4% |
| | PD-GI | 31 | 2 | 0.6% |
| | PD-H4 | 35 | 1 | 0.7% |
| | PD-IP | 1,483 | 83 | 28.8% |
| | PD-OP | 417 | 20 | 8.1% |
| Suburban Industrial/Mineral Extraction | PD-GI | 933 | 23 | 18.1% |
| | PD-IP | 106 | 5 | 2.1% |
| | PD-OP | 10 | 1 | 0.2% |
| Suburban Mixed Use | PD-H3 | 58 | 1 | 1.1% |
| | PD-IP | 417 | 29 | 8.1% |
| | PD-MUB | 40 | 1 | 0.8% |
| | PD-OP | 171 | 2 | 3.3% |
| | R-4 | 1 | 1 | 0.0% |
| Suburban Neighborhood | PD-IP | 41 | 1 | 0.8% |
| Transition Light Industrial | PD-GI | 119 | 1 | 2.3% |
| | PD-IP | 145 | 1 | 2.8% |
| | PD-OP | 97 | 1 | 1.9% |
| Urban Employment | PD-IP | 28 | 3 | 0.6% |
| | PD-OP | 318 | 8 | 6.2% |
| | PD-RDP | 97 | 1 | 1.9% |
| Urban Transit Center | PD-IP | 36 | 4 | 0.7% |
| | PD-OP | 131 | 5 | 2.6% |
| Suburban Compact Neighborhood | N/A | 0 | 0 | 0.0% |
| Total (rounded to nearest whole number) | -- | 5,146 | 201 | 100% |

*Data centers existing or in the process of development identified in previous work supporting the Data Center Discussion Series, including land owned by a data center entity as of August 11, 2022.

**Zoning districts not allowing data centers are included for several reasons such as inclusion of split zoned or remnant parcels owned by a data center entity, having a small parcel adjacent to a data center building that is owned by the data center company, location in the Route 28 Tax District where data center is allowed to develop as an office use, location in the Route 28 Overlay Districts for Corridor Business (CB) and Corridor Industrial (CI), or the PD-H “administered as” zoning district.

Note: Some parcels are split between multiple zoning districts. The calculation of data center land acres by Place Type is based on the predominant Place Type for each parcel identified using GIS analysis. The calculation does not account for parcels having multiple Place Types. Additionally, some parcels are associated with special exceptions that allow data center development in a zoning district that currently does not allow data centers by-right.

Potential for New Regulatory Approaches to Affect Vacant Properties in the Urban Transit Center, Urban Mixed Use, Urban Employment, Suburban Mixed Use, Suburban Employment, and Suburban Neighborhood Place Types:

To evaluate whether new regulatory approaches recommended by TLUC would affect properties in the Urban Transit Center, Urban Mixed Use, Urban Employment, Suburban Mixed Use, Suburban Employment, and Suburban Neighborhood Place Types, staff conducted a general high-level analysis of properties identified as vacant for the purposes of tracking development potential in the Planned Development – Office Park (PD-OP), PD-RDP, Planned Development – Industrial Park (PD-IP), Planned Development – General Industry (PD-GI), and PD-TC Zoning Districts in each of these Place Types. The high-level of analysis was necessary for several reasons:

- The vast number of properties to evaluate during the short time frame between the June 1, 2022, and July 18, 2022, TLUC meetings, as well as between the July 18, 2022, TLUC meeting and the September 20, 2022, Board Business Meeting necessitated narrowing the research parameters;
- The multitude of complex commitments and the status thereof, related to approved rezonings;
- The current and evolving level of development of a parcel or project;
- The variety of scenarios for new regulations identified by TLUC;
- The protections of properties located in the Route 28 Tax District; and
- The parcel-specific, multi-pronged analysis necessary to assess vested rights, which is based on legal requirements prescribed in the Virginia Code.¹¹

The vacant property analysis evaluated whether, upon adoption of new regulations that would preclude data centers from a zoning district, data centers may (continue to) be allowed, may not be allowed (because the new use regulation may apply), more research is needed to determine if the regulation would apply, or the parcel is not developable.¹² Generally, properties were categorized as 1, 2, 3, or 4 below based on the criteria following each category.

1. Data Center May (Continue to) Be Allowed¹³
 - a. Property has an approved rezoning with data center expressly allowed.
 - b. Data center allowed by-right, but no legislative rezoning. Property has an approved site plan for data center.
 - c. Property is in the Route 28 Tax District and administered under the 1972 Zoning Ordinance and is in a district the County interprets as allowing a data center.

¹¹ Research is provided in a general form to avoid any perception or misconception that the staff analysis results in an unintentional vesting determination for any particular properties.

¹² The parcel data staff analyzed is current as of August 11, 2022.

¹³ An existing legislative or administrative approval allowing data center development is the first element of vested rights analysis. Properties with such approvals may be allowed to develop with data centers if the other legal requirements for vested rights are satisfied.

2. Data Center May Not Be Allowed (New use regulations would apply)
 - a. Data center currently allowed by-right, no legislative rezoning. Property has no approved site plan for data center.
 - b. Approved rezoning with data centers explicitly not allowed or excluded.
 - c. Approved rezoning to a zoning district that allows data centers; however, the approved rezoning lists specific uses allowed and does not include data center in the list.
3. Additional Research Needed
 - a. Approved rezoning to a district that allows data center use, but proffers and concept development plan (CDP) do not specify data center development.
 - b. Any property in the Route 28 Tax District with an approved rezoning (Zoning Map Amendment (ZMAP), Zoning Concept Plan Amendment (ZCPA), or (ZRTD) or that has administratively converted from the 1972 Ordinance to the 1993 Ordinance or Revised 1993 Ordinance.¹⁴
4. Parcel Not Developable
 - a. Parcel entirely or almost entirely located in Floodplain Overlay District (FOD), a conservation easement, or designated as a cemetery.
 - b. Parcel oddly shaped, small, or otherwise clearly not developable (e.g., section of private road or leftover parcel after road realignment).

To further explain the analysis methodology, staff first identified all vacant parcels. For each vacant parcel, staff evaluated whether the parcel is developable based on the criteria under category #4 above. If the vacant parcel is not developable, then the parcel was categorized under category #4. If the parcel is developable, staff identified whether the parcel is in the Route 28 Tax District and is subject to an approved rezoning. If the parcel met these criteria, it was categorized under category #3 above. If the vacant parcel is subject to an approved rezoning and not in the Route 28 Tax District, staff reviewed the proffer and CDP to determine how uses are allowed. If the vacant parcel is subject to a rezoning that specifically states that data centers are not allowed, then staff categorized the parcel under #2. If the vacant parcel is subject to a rezoning that specifically states that data centers are allowed, then staff categorized the parcel under #1. If the vacant parcel is subject to a rezoning that does not address uses allowed, then staff categorized the parcel under #3 because more parcel-specific research would be needed to determine if the use would be allowed upon a change in regulation. Other scenarios were also considered as listed under categories #1 and #2 based on the status of the approvals for the parcel.

The vacant parcel analysis is summarized in Tables 3 and 4. Table 3 summarizes the analysis by parcel count and Table 4 summarizes the analysis by acreage. As an example, Table 3 shows that the Suburban Mixed Use Place Type has 558 parcels with zoning that allows a data center by-

¹⁴ Analysis of properties within the Route 28 Tax District involves multiple layers of complexity due to protections from the Route 28 Tax District Enabling Legislation, the County's prior practice in administering and interpreting rezoning approvals for such properties, and prior administrative conversions for Route 28 property owners, among other factors. As such, parcel-by-parcel analysis is necessary to determine whether and how new regulations may affect properties within the Route 28 Tax District with a prior legislative approval or administrative conversion.

right. Of those 558 parcels, 75 are vacant. Of the 75 vacant parcels, six parcels may still be allowed to develop a data center if the regulations are changed to preclude data centers; 13 parcels may not be allowed to develop a data center if new regulations are instituted to preclude data centers; additional research would be needed to determine how the new regulations would affect 43 parcels; and 13 parcels are vacant because they are not developable. Table 4 shows similar information, but in acres rather than parcels. For additional reference, Attachment 6 includes Tables 5 and 6, which show the number and acreage of parcels and vacant parcels by Place Type in the Route 28 Tax District and outside of the Route 28 Tax District.

Table 3. Vacant Parcels* Allowing Data Centers By-Right** with Potential Effect of New Regulation Precluding Data Centers by Place Type as of August 11, 2022***

| Place Type | Parcels with Zoning Allowing Data Center By-Right | Vacant Parcels with Zoning Allowing Data Center By-Right | Vacant Parcels/ Data Centers May Be Allowed (Category 1) | Vacant Parcels/ Data Centers May Not Be Allowed (Category 2) | Vacant Parcels/ Additional Research Needed (Category 3) | Vacant Parcels/ Not Developable (Category 4) |
|-------------------------------|---|--|--|--|---|--|
| Urban Transit Center | 63 | 16 | 0 | 1 | 11 | 4 |
| Urban Mixed Use | 0 | 0 | 0 | 0 | 0 | 0 |
| Urban Employment | 15 | 0 | 0 | 0 | 0 | 0 |
| Suburban Mixed Use | 558 | 75 | 6 | 13 | 43 | 13 |
| Suburban Employment | 325 | 48 | 4 | 7 | 27 | 10 |
| Suburban Neighborhood | 33 | 10 | 6 | 1 | 2 | 1 |
| Suburban Compact Neighborhood | 36 | 2 | 1 | 0 | 0 | 1 |
| Total | 1,030 | 151 | 17 | 22 | 83 | 29 |

* Excludes properties with data centers under construction or with approved, conditionally approved, or active site plans for data centers. “Data center” includes associated infrastructure, such as electrical substations.

** Includes properties in the following zoning districts: PD-OP, PD-RDP, PD-IP, PD-GI, and PD-TC.

*** Parcels may be in more than one Place Type. In this analysis, the parcel is included in each Place Type.

Table 4. Vacant Acres* Allowing Data Centers By-Right** with Potential Effect of New Regulation Precluding Data Centers by Place Type as of August 11, 2022***

| Place Type | Acres with Zoning Allowing Data Center By-Right | Vacant Acres with Zoning Allowing Data Center By-Right | Vacant Acres/ Data Centers May Be Allowed (Category 1) | Vacant Acres/ Data Centers May Not Be Allowed (Category 2) | Vacant Acres/ Additional Research Needed (Category 3) | Vacant Acres/ Not Developable (Category 4) |
|-------------------------------|---|--|--|--|---|--|
| Urban Transit Center | 914.05 | 126.04 | 0 | 22.79 | 93.0 | 10.31 |
| Urban Mixed Use | 0 | 0 | 0 | 0 | 0 | 0 |
| Urban Employment | 510.49 | 0 | 0 | 0 | 0 | 0 |
| Suburban Mixed Use | 3,145.29 | 881.80 | 87.94 | 212.26 | 466.06 | 115.54 |
| Suburban Employment | 3752.29 | 476.84 | 105.44 | 95.97 | 185.13 | 90.30 |
| Suburban Neighborhood | 1,410.06 | 137.79 | 121.79 | 1.80 | 13.12 | 0.99 |
| Suburban Compact Neighborhood | 195.98 | 28.05 | 6.54 | 0 | 0 | 21.51 |
| Total | 9,928.16 | 1,650.51 | 321.71 | 332.82 | 757.40 | 238.65 |

* Excludes properties with data centers under construction or with approved, conditionally approved, or active site plans for data centers. “Data center” includes associated infrastructure, such as electrical substations.

** Includes properties in the following zoning districts: PD-OP, PD-RDP, PD-IP, PD-GI, and PD-TC.

*** Parcels may be in more than one Place Type. In this analysis, the parcel is included in each Place Type.

Upon completion of the high-level vacant parcel analysis, staff identified the following notable factors related to the applicability of new regulations applying to data centers:

1. Urban Mixed Use Place Type: There are no zoning districts in the Urban Mixed Use Place Type that would currently allow a data center by-right. Therefore, staff is eliminating further discussion or evaluation of this Place Type from this item.
2. Urban Employment Place Type: There are no remaining vacant parcels in the Urban Employment Place Type. All but three of the parcels in this Place Type either have an

existing or under-construction data center; an approved, conditionally approved, or active site plan for a data center¹⁵; or are developed with or approved for associated data center infrastructure. The three parcels developed with non-data center uses are also located in the Route 28 Tax District.

3. In general, there are a limited number of vacant parcels in the PD-OP, PD-RDP, PD-IP, PD-GI, and PD-TC Zoning Districts: 150 parcels, or approximately 15 percent, of the 1,030 parcels allowing data centers by-right in the Place Types evaluated.
4. Suburban Mixed Use Place Type: The most vacant parcels are in the Suburban Mixed Use Place Type; which is the area of TLUC's primary focus. Of the 75 vacant parcels/882 vacant acres in the Suburban Mixed Use Place Type, additional research would be needed to determine the effect of new regulations on 43 vacant parcels comprising over half of the vacant acreage primarily because these properties are in the Route 28 Tax District (see footnote 11). Any new regulations in this Place Type related to data centers may affect 13 vacant parcels comprising approximately 25 percent of the vacant acreage because they do not have any approvals for data center development.
5. Suburban Employment Place Type: The second greatest number of vacant parcels (48) are in the Suburban Employment Place Type. Approximately half of the vacant parcels (27) require additional research to determine the effect of new regulations primarily because these properties are in the Route 28 Tax District (see footnote 11). While more than 50 percent of the vacant parcels require additional research, new data center regulations may apply to nearly 96, or 37 percent, of the 500 vacant acres in this Place Type.
6. Suburban Compact Neighborhood: Staff identified one vacant parcel in the Suburban Compact Neighborhood Place Type, where data centers are not envisioned in the 2019 General Plan,¹⁶ and categorized it as "Data Center May (Continue to) be Allowed." Therefore, staff is including the analysis and discussion of this Place Type in the item and associating it with the regulatory approach to the Suburban Mixed Use and Suburban Neighborhood Place Types discussed below.

In addition to the analysis of vacant parcels, staff notes there are other scenarios that may result in the application of new regulations pertaining to data centers on properties in the Place Types evaluated. For instance, properties that rezone after approval of new regulations would be subject to the revisions. Also, the current development of a parcel does not necessarily result in a parcel being vested in previous, less restrictive regulations because this development may not meet the vested rights criteria in the Virginia Code. This determination is made on a case-by-case basis, and a property that chooses to redevelop with a data center use may be subject to some or all new regulations that may be adopted. Additionally, should the Board pursue an administrative approach to incentivize Route 28 Tax District property owners to voluntarily develop their property in

¹⁵ An active site plan application that is not yet approved would not result in vested rights protection. However, staff reasonably anticipates that any site plan that is active and pending at this time would be approved prior to adoption of the ZO Rewrite.

¹⁶ The 2019 GP states, "Suburban Compact Neighborhood areas provide opportunities to develop neighborhoods that can take advantage of small infill parcels near traditional suburban neighborhoods or high-density walkable urban neighborhoods, depending on the context of their location." Data centers are not a use anticipated in the Suburban Compact Neighborhood Place Type.

accordance with the current zoning regulations, property owners that are not permitted to develop data centers by-right under their current zoning could elect to develop under the new regulations that would allow data centers, or they could elect to develop under the existing regulations applicable to their property.¹⁷

Effect of New Regulations Precluding Data Centers:

- **Nonconforming Uses** – Should the Board adopt zoning regulations that preclude data centers as a use in a zoning district where data centers were previously allowed and currently exist, these existing data centers would become legal nonconforming uses, and would be protected by the nonconforming use regulations. Currently, the nonconforming use regulations are contained in Section 1-400 of the Revised 1993 Zoning Ordinance.¹⁸ A nonconforming use status indicates a use was legally established by receiving all applicable approvals and permits at the time the use or structure was commenced and/or constructed, as applicable. A nonconforming use may continue to operate lawfully provided the use is not discontinued or abandoned for a continuous period of more than two years (Section 1-402(B)). Should a property owner wish to expand a nonconforming use, approval of a special exception to remove the nonconforming status and allow the expansion would be necessary (Section 1-405(A)). The Planning Commission (Commission) and Board are directed to consider certain improvements that could be required as a condition of the special exception approval. For example, the Commission and Board could consider imposing a condition that would limit expansion of a nonconforming use to no more than 50% of the floor area that the use or structure occupied on the date the use became nonconforming (Section 1-405(C)(5)).

As part of the ZO Rewrite, similar draft nonconforming use regulations are currently proposed. Staff notes that additional nonconforming provisions that would be applicable to data centers could be incorporated into the ZO Rewrite. For instance, the Board could incorporate an allowance for a certain amount of expansion or changes to a site that address environmental sustainability without a special exception approval.

- **Vested Rights** – Should the Board adopt zoning regulations that preclude data centers as a use in a zoning district where data centers were previously allowed and a data center has not been constructed, the ability to develop the property with a data center will be

¹⁷ As an example, under the 1972 Zoning Ordinance, property in the PD-IP zoning district is allowed a data center as office by special exception. If a new zoning district (i.e., under the ZO Rewrite) precluded data center development entirely, a property owner with PD-IP zoning under the 1972 Zoning Ordinance could apply for a special exception for office as data center. Properties not permitted to develop data centers by-right in the Route 28 Tax District is discussed in depth starting on page 10 of the [June 1, 2022, TLUC item](#). Staff also notes that some properties zoned PD-IP in the Route 28 Tax District have received a “blanket” special exception for office and are permitted to develop data centers as office pursuant to Zoning Determination #2000-052.

¹⁸ The Revised 1993 Zoning Ordinance defines as nonconforming use as, “Any use lawfully being made of any land, building or structure, other than a sign, on the effective date of this Ordinance, or any amendment to it rendering such use nonconforming which does not comply with all of the regulations of this ordinance, or any amendment hereto, governing use for the zoning district in which such land, building or structure is located.”

dependent on the property owner's vested rights. Vested rights protections would not be triggered solely by ownership of property by a data center developer/operator. A vested rights analysis is a parcel-specific, multi-pronged analysis based on legal requirements prescribed in the Virginia Code, with the first element of vested right analysis being an existing legislative or administrative land use or development approval. Properties with existing approvals may be allowed to develop with data centers depending on the specifics of the particular approval if the other legal requirements for vested rights are satisfied.

While nonconforming use status is the regulatory protection provided by the Zoning Ordinance for existing uses that are no longer permitted in a zoning district and vested rights could provide protections for properties with a not-yet-constructed data center, DED has identified data center industry concerns about changing the permissibility of data centers in a zoning district. These concerns include the impact to the property value¹⁹, impact for the use to seek out additional financing given the limitations on expanding and therefore future revenue growth, and most importantly the impact to land that has already partially developed a data center campus as allowed by the zoning at the time of purchase but has not been fully developed. The impact of changing the permissibility of data centers could create an environment where an existing user would leave the Loudoun market because they cannot continue to expand their business use on their current property by constructing new buildings to accommodate the growth this industry is still experiencing. Many of the County's data centers purchased land at data center values for the express purpose of building out a campus as the demand from its customers became apparent. The value of the land and of the business is diminished because of the potential for further buildout cannot be completed once the use is restricted for the remainder of the property. Additionally, a common requirement for the industry is to add smaller, ancillary buildings to accommodate the needs of specific users or expansions within the data center - these may be precluded if the new subject regulations are instituted. Two examples of common expansions that do not include net new data centers buildings include:

- Adding Sensitive Compartmented Information Facility (SCIF) buildings for single users who require this specialized space.
- Continued development to support the capacity of the equipment housed within the data center, which often means a need for additional auxiliary facilities like generator pads²⁰ or yards or separate small office or security buildings. This means that as a data center adds additional equipment or has specialized needs for the clients in the existing building, they need to be able to accommodate those needs by adding additional facilities or infrastructure associated with the original use.

Limiting the amount of existing data center property through potential new regulations, as recommended here, will contribute to a potential reduction or loss of existing data center

¹⁹ Property purchased at data center prices that can no longer develop or expand a data center use will see a reduction in its value and its marketability as no other commercial use has the same return on investment.

²⁰ Additional research is needed with industry feedback to determine the extent to which additions of mechanical equipment would be affected by nonconforming use regulations, but often there are small ancillary facilities also associated with this common expansion need.

investment and tax revenue. Furthermore, the potential new regulations may also contribute to the loss of future growth of the data center industry in the County.

Proposed CPAMs and Regulatory Changes to Address Permissibility of Data Centers:

1. Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types: TLUC recommended that data centers not be allowed in the Suburban Mixed Use Place Type, as well as a portion of the Suburban Neighborhood Place Type along Route 7. Staff recommends including the entire Suburban Neighborhood Place Type for consistency, as well as the Suburban Compact Neighborhood Place Type, which also does not envision data centers, since staff identified some parcels in the latter place type that allow data centers by-right. The 2019 GP supports this preclusion as data centers are not a use anticipated as Core, Complimentary, or Conditional in these Place Types.

TLUC also indicated their intent to protect existing data center development as part of this process. As shown on Attachment 4, there are several areas where data center development exists in the Suburban Mixed Use and Suburban Neighborhood Place Types. Therefore, staff recommends a two-step process to address the TLUC recommendation, which is described below.

- a. Initiate a CPAM to evaluate and revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types to remove areas of existing data center development and other land suitable for data center development from those place types, as appropriate.

The maps included as Figures 1 and 2 demonstrate conceptually how the revision of the Suburban Mixed Use Place Type limits could occur. The map included as Figure 1 shows the current area of the Suburban Mixed Use Place Type overlaid with parcels identified by DED as having data center development. The map included as Figure 2 shows the potential revised limits of the Suburban Mixed Use Place Type, which would exclude parcels identified by DED as having data center development.

- b. Upon adoption of the CPAM, create a zoning district that would apply within the revised limits of the Suburban Mixed Use, Suburban Neighborhood, Suburban Compact Neighborhood Place Types that precludes data centers. This zoning district would *likely* be a consolidation of existing PD-OP, PD-RDP, and PD-IP zoning districts that are within the limits of these Place Types.

Should the Board direct staff to proceed with this two-step process, staff will need to evaluate the impacts of this process on the ZO Rewrite timeline.

Effect of Zoning Change. As noted above, although a new zoning district would preclude data centers from property currently zoned PD-OP, PD-RDP, or PD-IP in the revised limits

of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, it is possible that data centers may still be allowed to develop on vacant or redeveloped parcels due to potential vested rights and/or location in the Route 28 Tax District (see Tables 3 and 4). If any existing data centers (i.e., already constructed) remain within the revised Place Types and, therefore, the new district boundaries, they would be allowed to continue as a nonconforming use and could expand upon approval of a special exception.

Data centers would continue to be allowed to develop by-right in the PD-TC and PD-GI Zoning Districts in the revised limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, since these districts would not be consolidated into the proposed new zoning district. Should the Board approve use-specific standards, based on TLUC's recommendations that would affect the PD-TC or PD-GI Zoning Districts, as discussed below, then these use standards may apply to data center development.

Figure 1: Conceptual CPAM Recommendation with Suburban Mixed Use Place Type and Data Center Development as of August 11, 2022

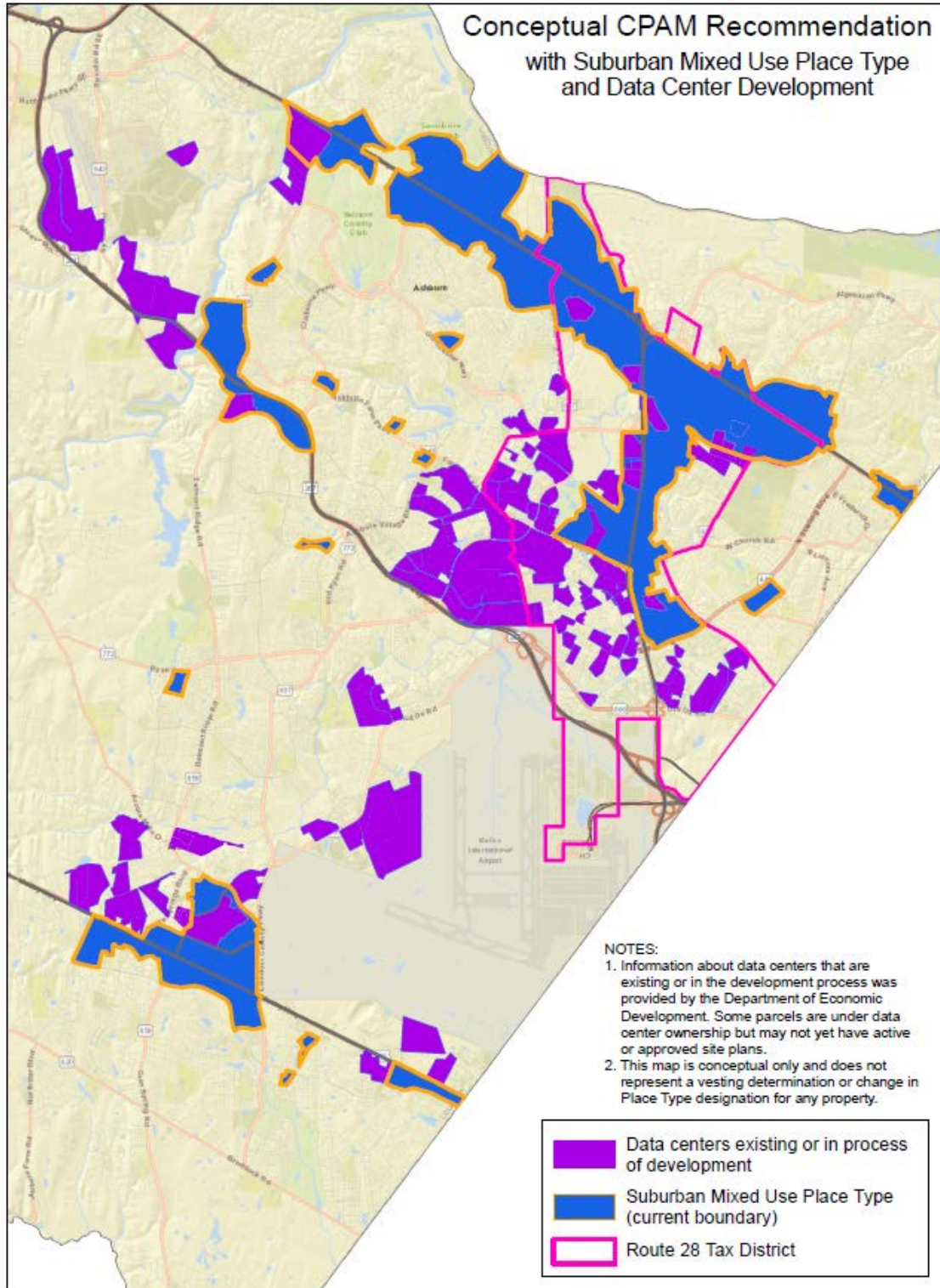
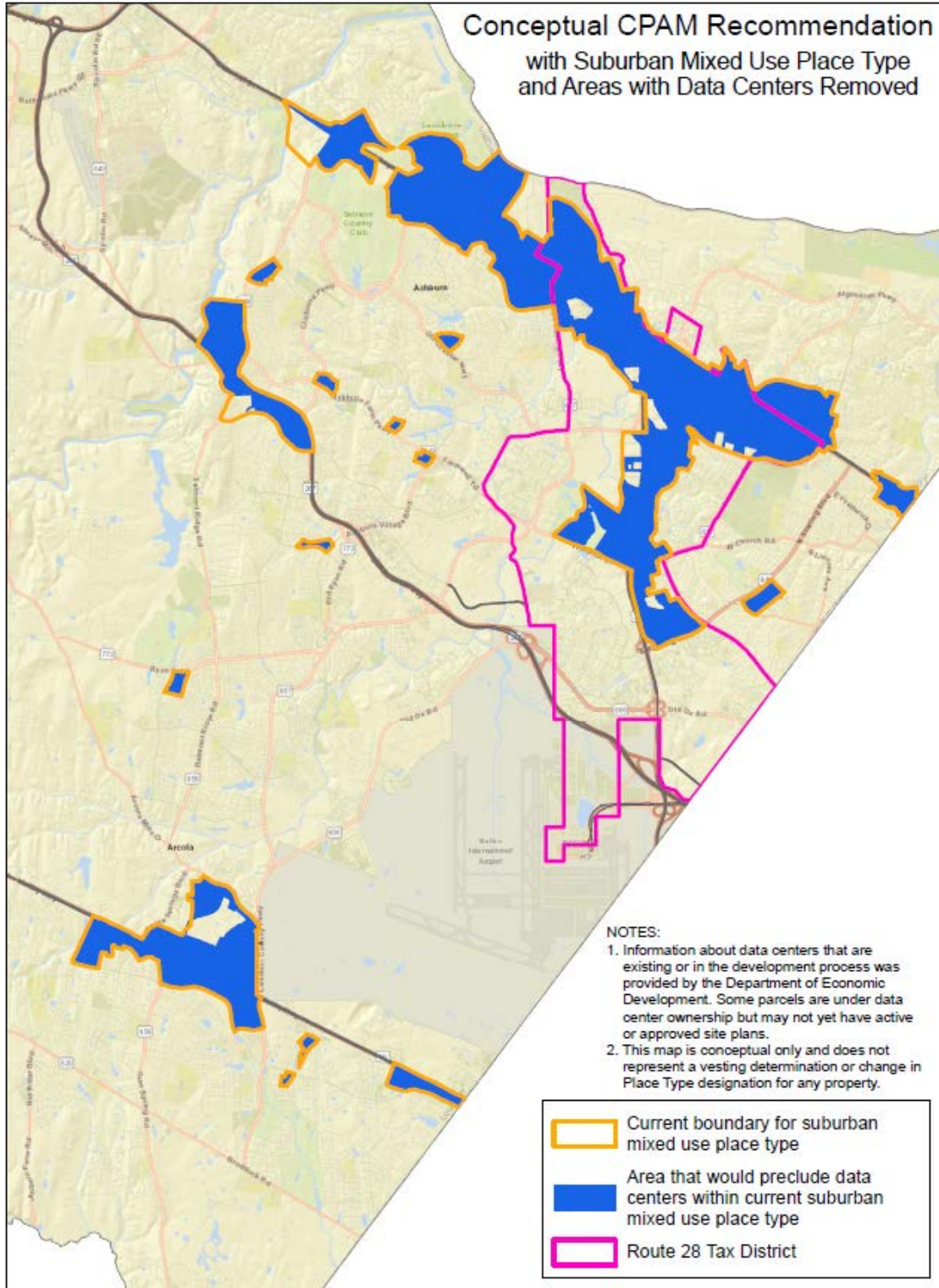


Figure 2: Conceptual CPAM Recommendation with Suburban Mixed Use Place Type and Areas with Data Centers Removed as of August 11, 2022



2. Suburban Employment Place Type: TLUC recommended that data centers should be allowed by special exception in the Suburban Employment Place Type. As the map in Attachment 5 shows, land in the Suburban Employment Place Type is dominated by data center development. Requiring special exception approval for a data center would apply to a nominal number of parcels in the Suburban Employment Place Type. Due to this existing condition, staff recommends that conditions for a data center use be addressed through additional use-specific standards. The 2019 GP supports applying additional conditions to by-right data centers since data centers are identified as a conditional use in this Place Type.

Effect of Zoning Change. It is possible that new or expanded data centers may still be allowed to develop without having to meet the use specific standards. This is due to potential vested rights and/or location in the Route 28 Tax District.

3. Urban Transit Center Place Type: TLUC recommended that data centers should not be allowed in the Urban Transit Center Place Type. The zoning district, Planned Development-Transit Related Center (PD-TRC), consistent with this Place Type would not allow data centers. Therefore, any future rezoning request should be to the PD-TRC Zoning District. However, large portions of this Place Type are currently zoned with districts that allow data centers by-right or have existing data center development. The map included as Attachment 3 shows the existing zoning districts and data center development.

Since zoning districts allowing data centers already exists in this Place Type, staff recommends the interim alternative of applying additional use-specific standards to data center development. The conditions of parcels allowing data centers in the Urban Transit Center Place Type can be best understood by their proximity to the Ashburn Metro and Innovation Metro Stations.

- a. Ashburn Station – The only vacant parcels that currently allow data centers by-right are relatively small (less than 2.5 acres) and not proximate to the existing data centers in this portion of the Place Type. Should these parcels be proposed for data center development, use-specific standards, particularly those related to proximity to residential development and building design could address TLUC’s concerns about data centers in this Place Type. Moreover, applying use-specific standards would avoid creating nonconforming uses (i.e., for existing data centers located in the Place Type).
- b. Innovation Station – Currently, no parcels in the Urban Transit Center Place Type in proximity to Innovation Station have been developed with data centers or have site plans approved for data centers. However, this portion of the Place Type is also entirely located in the Route 28 Tax District. Therefore, it is possible that new or

expanded data centers may still be allowed to develop without having to meet the use specific standards.²¹

Effect of Zoning Change. It is possible that new or expanded data centers may still be allowed to develop without having to meet the use specific standards. This is due to potential vested rights and/or location in the Route 28 Tax District.

4. Urban Employment Place Type: TLUC recommended that data centers should not be allowed in the Urban Employment Place Type. Staff notes that nearly all parcels in the Urban Employment Place Type either have some type of data center-related development or are undevelopable due to location in the FOD. Three parcels in this Place Type are developed with non-data center uses and are in the Route 28 Tax District (Attachment 3). In addition, the Urban Employment Place Type of the 2019 GP envisions data centers as a Core use.

Considering the existing conditions and TLUC's recommendation to not allow data centers in the Urban Employment Place Type, staff recommends a CPAM that would address the future development condition by removing the Urban Employment Place Type from the 2019 GP. Since the Urban Employment Place Type was created to allow data centers in this area, removing the data center use from this Place Type would make it largely obsolete. Therefore, the Urban Transit Center Place Type could be expanded to include the area of the former Urban Employment Place Type. The PD-TRC Zoning District would be the appropriate district to apply to future rezoning requests in the Urban Transit Center Place Type, and the Airport Impact Overlay District (AIOD) noise contours would regulate where residential uses are allowed in the enlarged Place Type (Attachment 7).²²

Since zoning districts allowing data centers and data center development already dominate this Place Type, staff recommends the interim alternative of applying additional use-specific standards for data center development. Moreover, applying use-specific standards would avoid creating nonconforming uses for existing data centers.

Effect of Zoning Change. It is possible that new or expanded data centers may still be allowed to develop without having to meet the use specific standards This is due to potential vested rights and/or location in the Route 28 Tax District.

²¹ Staff also notes that several vacant parcels in the R-1 zoning district along the Fairfax County line are currently allowed to opt into the Commercial Business portion of the Route 28 Corridor Overlay District through an administrative process. Upon opting in, these parcels would be permitted to develop data centers by-right (Section 4-2800, Table 1). The Route 28 Corridor Overlay District is proposed to be retired with adoption of the new zoning ordinance.

²² This CPAM does not need to be adopted to make a revision to the existing zoning districts in this Place Type because the CPAM would only implement the anticipated zoning district for future rezoning requests. The CPAM could occur simultaneously with the aforementioned CPAM or after adoption of the new zoning ordinance.

Data Center Use-Specific Standards: TLUC recommended developing additional use-specific standards that would apply to the PD-TC and PD-RDP Zoning Districts, in the Route 28 Tax District, and in the Suburban Mixed Use Place Type if data centers could not be precluded from the Place Type. Currently, data centers in the PD-OP, PD-RDP, and PD-IP Zoning Districts must meet the additional standards of Section 5-664 of the Revised 1993 Zoning Ordinance.²³

1. PD-TC Zoning District: The PD-TC Zoning District is proposed to become a Legacy Zoning District with the ZO Rewrite. This district would be allowed to continue where it exists, but not expand. To date, a data center has not been approved in the PD-TC Zoning District. Currently, Section 4-809(F), Additional Regulations apply to data centers in the PD-TC Zoning District. These regulations require buildings that contain data centers to be a minimum of three stories, and that the 1) architectural details, 2) materials, scale, height, mass, fenestration, and 3) pedestrian and vehicular circulation be consistent with adjacent buildings, among other regulations. Consistent with the TLUC recommendation, staff supports identifying additional data center building design standards to ensure that high-quality design and the intent of a pedestrian oriented development is achieved.

Effect of Zoning Change. Any revisions to this district have the potential to affect most of the seven PD-TC projects approved in the County, subject to any vested rights resulting from the existing approvals.

2. PD-RDP Zoning District: As discussed above, staff is proposing to consolidate PD-RDP into a larger zoning district; therefore, staff does not recommend pursuing use-specific standards for this district.
3. Route 28 Tax District: In addition to the Suburban Mixed Use, Suburban Compact Neighborhood, Suburban Employment, and Urban Transit Center Place Types, the Suburban Industrial/Mineral Extraction is also partially located in the Route 28 Tax District. Considering the variety of Place Types in the tax district, staff supports applying additional use-specific standards to zoning districts allowing data centers in these Place Types. Moreover, to achieve a consistent application of use-specific standards to data centers in the County, staff also supports applying additional use-specific standards to other zoning districts allowing data centers proposed with the ZO Rewrite, except the PD-TC Zoning District. These use specific standards would address:
 - High-Quality Building Design
 - Proximity to Existing or Planned Residential Development
 - Environmental Sustainability

²³ The standards are also summarized on page 7 of the [June 1, 2022, TLUC item 1.](#)

Effect of Zoning Change. It is possible that new or expanded data centers may still be allowed to develop without having to meet the use specific standards This is due to potential vested rights and/or location in the Route 28 Tax District.

Data Center Industry Feedback on TLUC’s Recommendation: The Data Center Coalition (DCC) provided written feedback on the TLUC recommendations (Attachment 8). DCC stressed the importance of regulatory predictability and certainty as a critical driver of Loudoun’s success across all industries. DCC highlighted that TLUC’s discussions and recommendations caused substantial uncertainty related to property rights and statutory protections associated with individual projects and parcels, complexity regarding the application of the Route 28 Tax District, and significant unknowns related to short-term and longer-term competitiveness and growth opportunities.

DCC committed to collaborating with staff to work through all future steps, to help understand and address impacts and seek to mitigate uncertainty to the extent feasible. Specifically, DCC has pledged to work with staff on the following:

- Further discussion on the demarcation of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types to recognize existing data center providers and sites (as was directed by TLUC). This includes existing sites, those under construction, and those purchased in reliance of by-right data center use properties.
- Further discussion to ensure the proposed expansion of the Urban Transit Center Place Type to subsume the Urban Employment areas strikes the right balance in protecting billions of dollars in investment from existing data centers who have been collaborative partners with the County while concurrently creating a balanced approach for investing, enhancing, expanding, and improving the essential data center infrastructure within the UTC, subject to additional review and approval by the Board.
- To assist in the development of additional design standards - based on extensive, national industry experience - to promulgate and embrace standards that are particularly sensitive to surrounding homes and residential communities, as well as attentive to the environmental sustainability goals shared by the industry and the county.

Electrical Transmission, Substation, and Distribution System Infrastructure: On June 28, 2022, staff from County Administration were invited to participate in a meeting with Dominion Energy to receive a briefing regarding ongoing planning work to increase the electrical service reliability of existing data centers. Dominion Energy reported they are contemplating system upgrades across the county including new/upgraded substations, distribution lines, and potentially transmission lines. Although the meeting was held with Dominion Energy representatives; it was suggested that the NOVEC will need to implement similar improvements to satisfy the reliability issues for the customers they serve as well. Discussions were held regarding identifying opportunities to maximize the placement of electrical infrastructure underground where practical. Given the early stage of the planning process, Dominion Energy acknowledged the request but was unable to offer any commitments given the lack of a detailed design. Staff will continue to

coordinate with the electric service providers and provide status reports to the Board when additional information becomes available.

In late July 2022, Dominion Energy began notifying data center companies that all new electrical connections in Eastern Loudoun would cease immediately and that new power delivery would be severely limited through at least January 2026 pending the construction of new transmission facilities. While the impact is limited to the eastern part of the county it does impact two-thirds of Loudoun's substations and most of the projected data center growth in Loudoun. While Dominion Energy and the data center industry continue to work to understand the impact of this new restriction, early projections indicate most of the current construction and planned data center development will receive a significantly reduced allocation of the anticipated power through January of 2026. Staff has been actively engaged in conversations with the data center industry and Dominion Energy since this issue first came to light.

The TLUC recommendations from July do not consider the power limitation announcement recently made by Dominion Energy.

Process Change for Zoning Conversion in the Route 28 Tax District (ZRTD): As part of the ZO Rewrite, staff is exploring process improvements to incentivize property owners in the Route 28 Tax District to voluntarily develop their property in accordance with the latest zoning regulations without the need to file a legislative Zoning Conversion in the Route 28 Tax District (ZRTD). At the June 1, 2022, meeting, TLUC directed staff to pursue transitioning from the current ZRTD legislative process, which requires Board approval, to an administrative process to incentivize Route 28 Tax District property owners to voluntarily develop their property in accordance with the current zoning regulations.

Including Dominion Energy and NOVEC as Referral Agents:

At the TLUC meeting held on July 18, 2022, TLUC made a recommendation to direct staff to include Dominion Energy and NOVEC in the request for referrals for administrative applications for data centers and all legislative applications. On August 19, 2022, under the administrative authority of the County Administrator, staff within DPZ and the Department of Building and Development were directed to begin sending such referral request, implementing the TLUC recommendation.

FISCAL IMPACT: Future data center development, along with other nonresidential uses, were important for achieving fiscal balance under the 2019 GP. When comparing the data center forecasts used for the fiscal modeling used to support the 2019 GP and the square footage already built, rezoned, or actively under development as data centers, it does appear that this sector will achieve and even exceed the forecasts that supported the 2019 GP, barring no disruption to the existing industry. However, should the Board implement policy and/or regulatory changes that are perceived as adverse to future development of by-right or currently entitled data center uses, staff has identified a risk to existing data centers as well.

From a revenue perspective, the real and personal property taxes generated from data centers have supported growth in the County and Loudoun County Public Schools' operating budgets over the last decade. As staff has discussed previously, because computer equipment is assessed on a depreciating schedule, maintaining the base means that refreshing of existing computer equipment and the addition of new equipment is needed. While staff still encourages the Board to make land use policy decisions separate from tax policy decisions, as stated during the TLUC meeting on June 1, 2022, land use decisions should be made while in consideration of the perceived risk to existing data centers and those in the pipeline.

Should the Board proceed with the recommended CPAMs and regulatory changes mentioned throughout this item, additional and more specific fiscal analysis will be part of those processes.

ALTERNATIVES:

1. The Board may endorse TLUC's recommendations and direct staff to pursue the following CPAMs to amend the 2019 GP by:
 - a. Revising the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, where data centers are not envisioned, to ensure existing data center development is not affected by creation of a zoning district precluding data centers in these Place Types; and
 - b. Consolidate the Urban Employment Place Type into the Urban Transit Center Place Type, where data centers are not envisioned, to address not allowing future data centers in the Urban Transit Center Place Type.
2. The Board may endorse TLUC's recommendations and direct staff to pursue the following regulations to apply to data centers:
 - a. Upon adoption of a CPAM to revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, create a zoning district in the ZO Rewrite or as part of a separate ZOAM that precludes data centers in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types;
 - b. Inclusion of use-specific standards in the ZO Rewrite that address high-quality building design, proximity to existing or planned residential uses, and environmental sustainability that would apply to all zoning districts that allow data centers, except the PD-TC Zoning District; and
 - c. Inclusion of use-specific standards in the ZO Rewrite that further address high-quality building design that would apply to data centers in the PD-TC Zoning District.
3. The Board may direct staff to undertake other recommended CPAMs or changes to the zoning ordinance that address the permissibility of data centers, such as evaluating the Dulles Cloud South alternative. or some portion, thereof, through initiation of a CPAM.

4. The Board may not direct staff to undertake any CPAMs or changes to the zoning ordinance that address data centers allowed by-right.

DRAFT MOTIONS:

1. I move that the Board of Supervisors direct staff to move forward with the following Comprehensive Plan Amendments:
 - a. Revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, where data centers are not envisioned, to ensure existing data center development is not affected by creation of a zoning district precluding data centers in these Place Types; and
 - b. Remove the Urban Employment Place Type and expand the Urban Transit Center Place Type, where data centers are not envisioned, to include the vacated Urban Employment Center Place Type.

I further move that the Board of Supervisors direct staff to move forward with a process to implement the following revisions to the Zoning Ordinance:

- a. Upon adoption of a Comprehensive Plan Amendment to revise the limits of the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types, create a zoning district in the Zoning Ordinance Rewrite or as part of a separate Zoning Ordinance Amendment that precludes data centers in the Suburban Mixed Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types;
- b. Include use-specific standards in the Zoning Ordinance Rewrite that address high-quality building design, proximity to existing or planned residential uses, and environmental sustainability that would apply to all zoning districts that allow data centers, except the Planned Development-Town Center (PD-TC) Zoning District; and
- c. Include use-specific standards in the Zoning Ordinance Rewrite that further address high-quality building design that would apply to data centers in the Planned Development-Town Center (PD-TC) Zoning District.

I further move that the Board of Supervisors direct staff to move forward with developing an administrative process to incentivize Route 28 Tax District property owners to voluntarily develop their property in accordance with the current zoning regulations that would replace the legislative Zoning Conversion in the Route 28 Tax District (ZRTD) legislative application process as part of the Zoning Ordinance Rewrite.

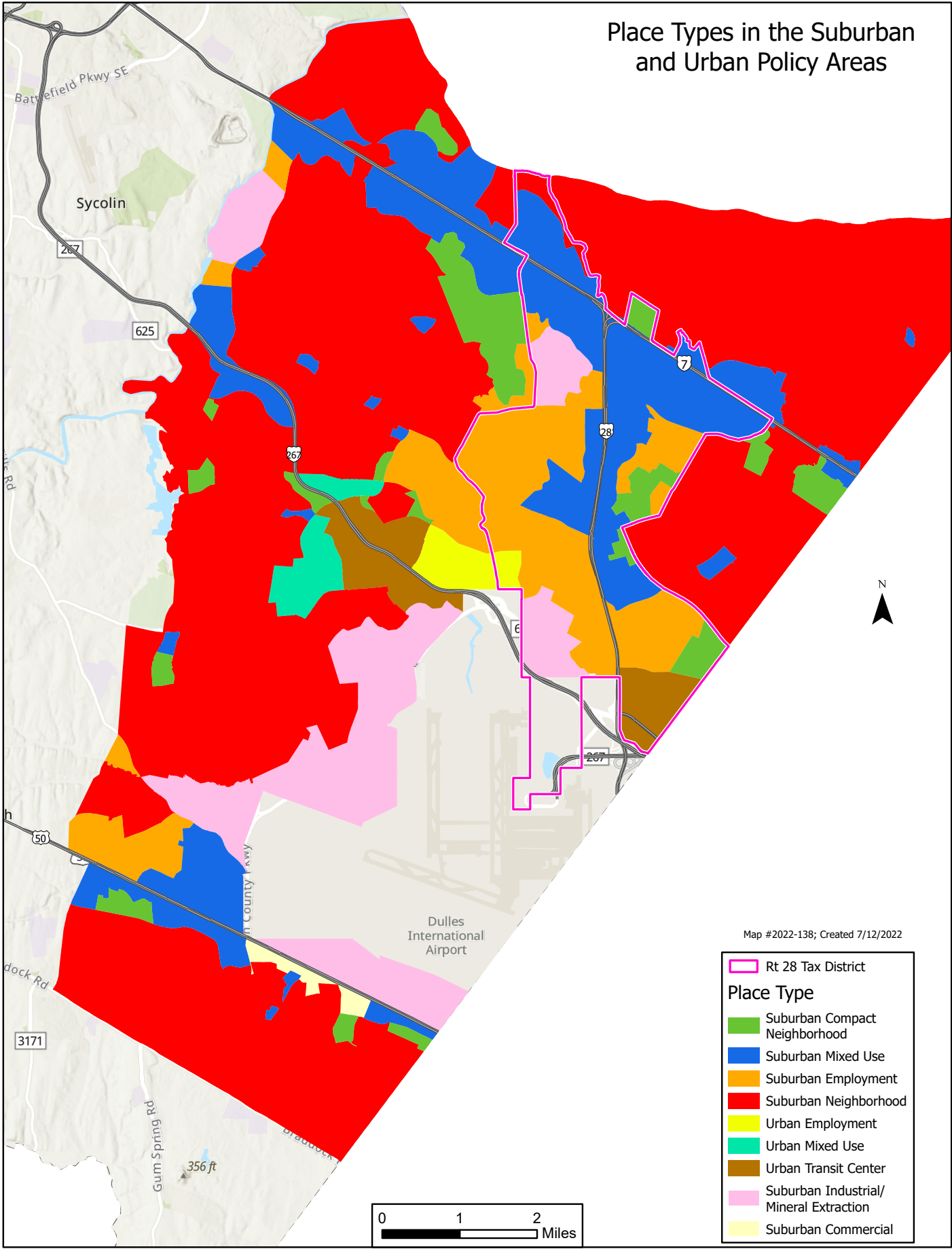
OR

2. I move an alternate motion.

ATTACHMENT(S):

1. Map of Place Types in the Urban, Suburban, Transition, and Leesburg JLMA Policy Areas
2. Map of Parcels with Zoning Districts Allowing Data Centers By-Right in Multiple Place Types Showing Vacant Parcels and Parcels with Data Center Development
3. Map of Parcels with Zoning Districts Allowing Data Centers By-Right in the Urban Transit Center and Urban Employment Place Types Showing Vacant Parcels and Parcels with Data Center Development
4. Map of Parcels with Zoning Districts Allowing Data Centers By-Right in the Suburban Compact Neighborhood, Suburban Neighborhood, and Suburban Mixed Use Place Types Showing Vacant Parcels and Parcels with Data Center Development
5. Map of Parcels with Zoning Districts Allowing Data Centers By-Right in the Suburban Employment Place Type Showing Vacant Parcels and Parcels with Data Center Development
6. Additional Analysis of Parcels Allowing Data Center By-Right within and outside of the Route 28 Tax District
7. Map of Parcels with Zoning Districts Allowing Data Centers By-Right in the Urban Transit Center and Urban Employment Place Types Showing Vacant Parcels and Parcels with Data Center Development with Airport Impact Overlay District
8. Feedback from Data Center Coalition on TLUC Recommendations to the Board of Supervisors

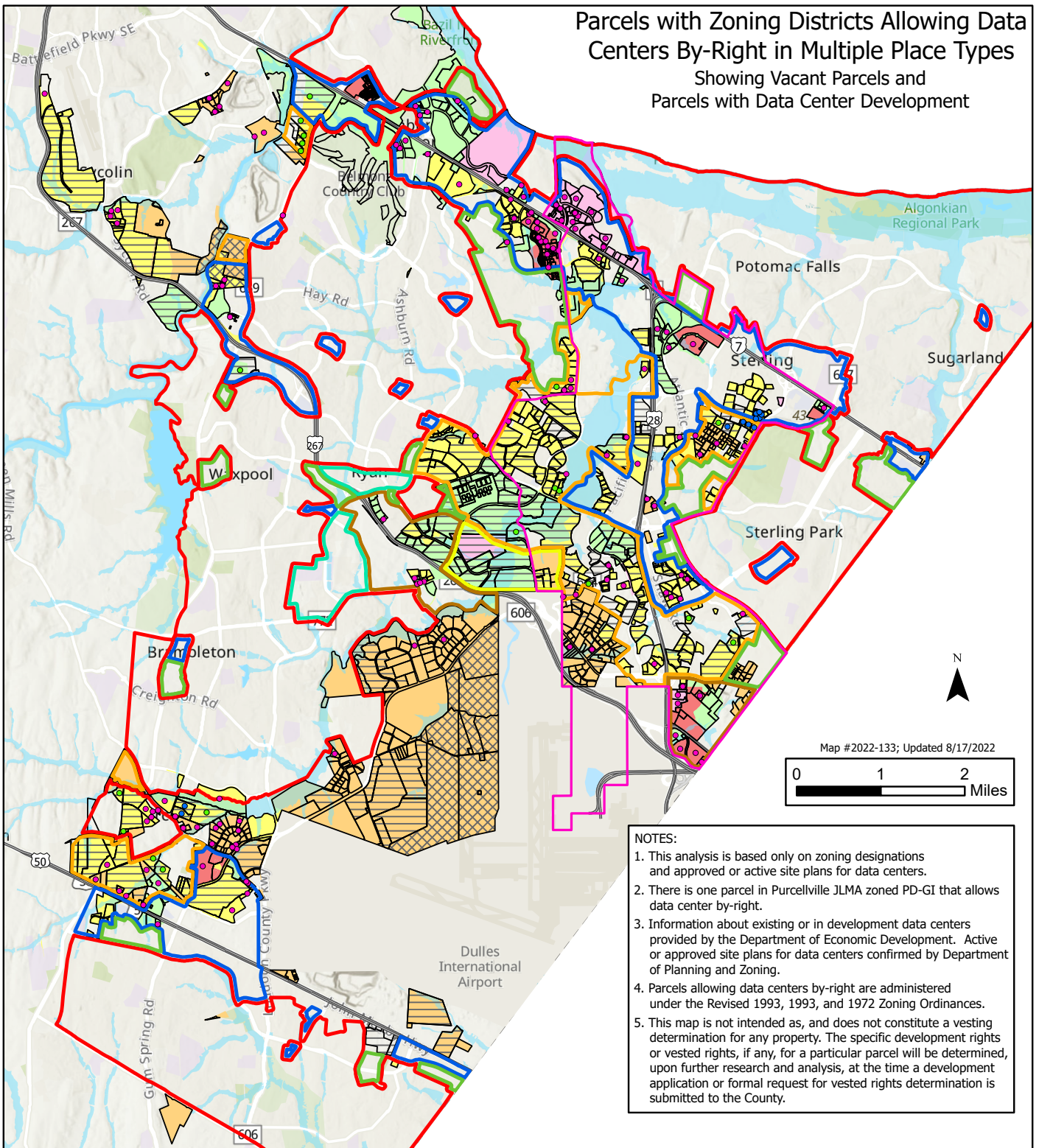
Place Types in the Suburban and Urban Policy Areas



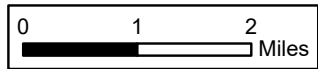
Attachment 1

Parcels with Zoning Districts Allowing Data Centers By-Right in Multiple Place Types

Showing Vacant Parcels and Parcels with Data Center Development



Map #2022-133; Updated 8/17/2022

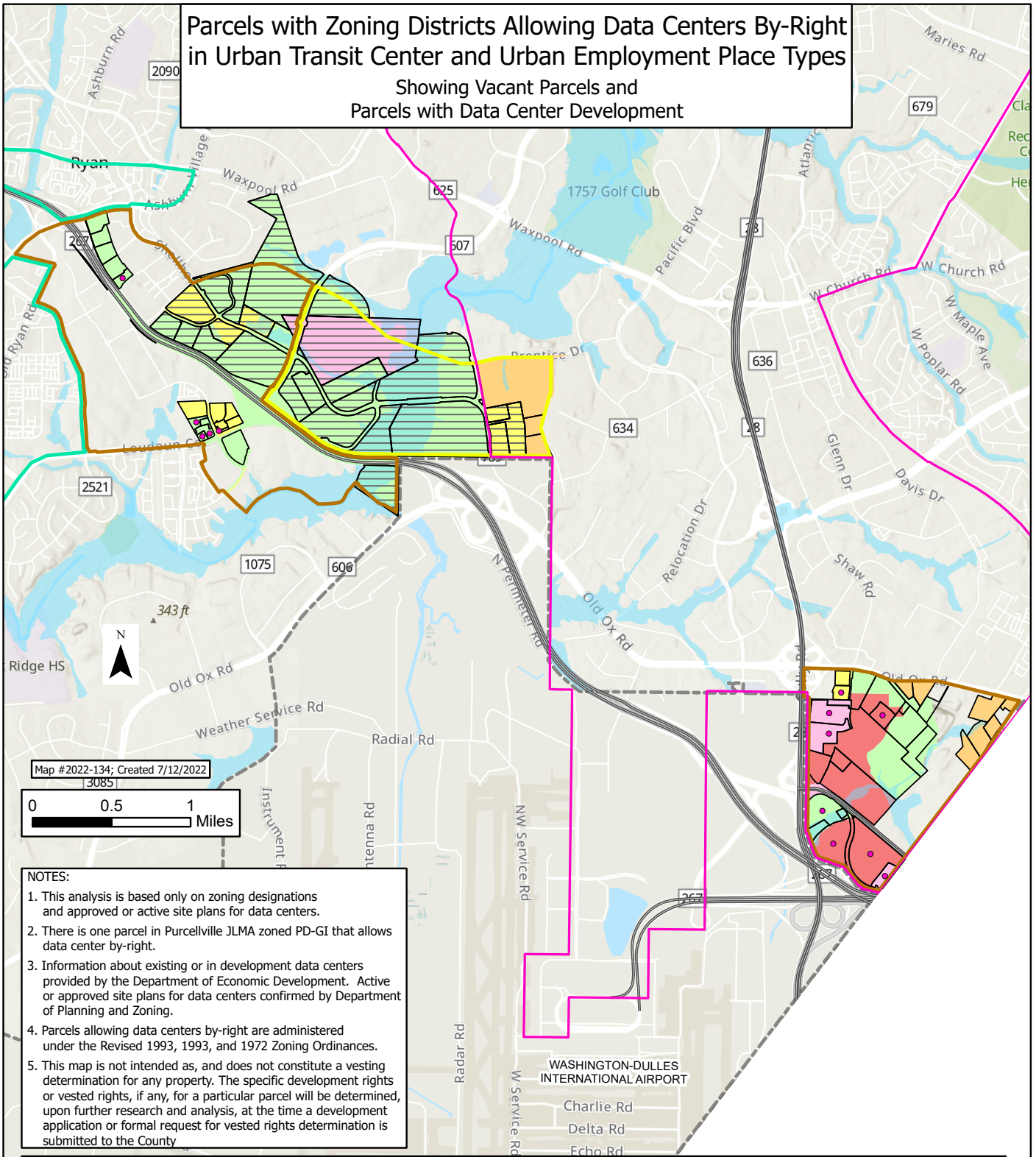


- NOTES:**
1. This analysis is based only on zoning designations and approved or active site plans for data centers.
 2. There is one parcel in Purcellville JLMA zoned PD-GI that allows data center by-right.
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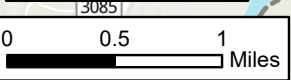
| | | |
|---|---|--|
| <ul style="list-style-type: none"> • Data Center Ownership, Not Vacant, No Active or Approved Site Plan * • Data Center Ownership, No Active or Approved Site Plan* • Vacant Parcels Allowing Data Centers By-Right as of July 1, 2021 □ Rt 28 Tax District □ Parcels Allowing Data Centers By-Right ▨ Land Owned by Dulles Airport or Loudoun Water ▨ Data Centers Existing Or In Development* ▨ Floodplain Overlay District (FOD) | <p>Zoning Districts Allowing Data Centers By-Right</p> <ul style="list-style-type: none"> □ PDGI □ PDIP □ PDOP □ PDRDP □ PDTC | <p>Place Types</p> <ul style="list-style-type: none"> □ Suburban Mixed Use □ Suburban Neighborhood □ Suburban Compact Neighborhood □ Suburban Employment □ Urban Employment □ Urban Mixed Use □ Urban Transit Center |
|---|---|--|

* data center site plan as of August 11th, 2022

**Parcels with Zoning Districts Allowing Data Centers By-Right
in Urban Transit Center and Urban Employment Place Types**
Showing Vacant Parcels and
Parcels with Data Center Development



Map #2022-134; Created 7/12/2022



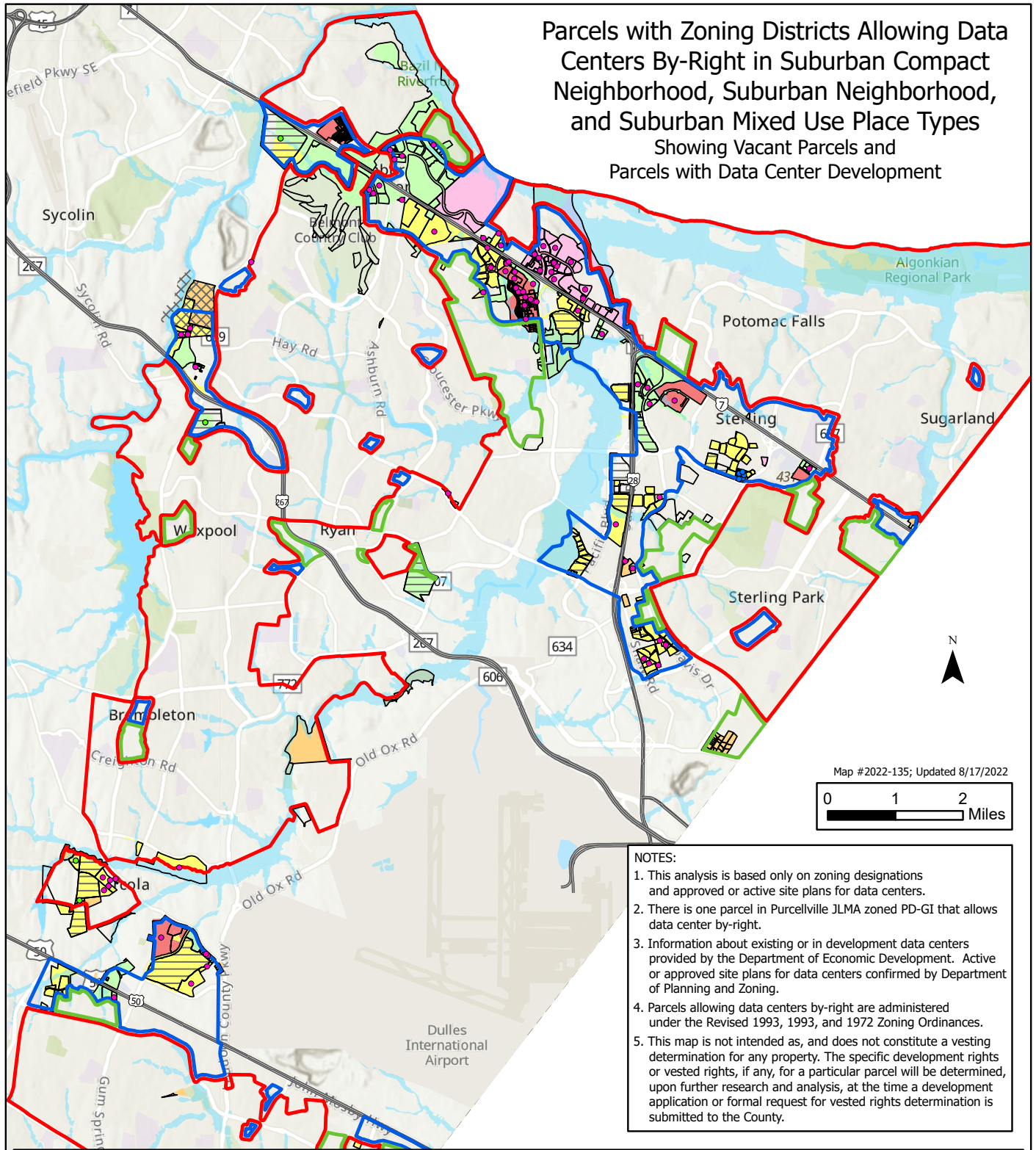
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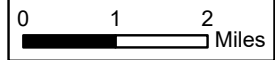
| | | |
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|--|--|---|

Parcels with Zoning Districts Allowing Data Centers By-Right in Suburban Compact Neighborhood, Suburban Neighborhood, and Suburban Mixed Use Place Types

Showing Vacant Parcels and Parcels with Data Center Development



Map #2022-135; Updated 8/17/2022



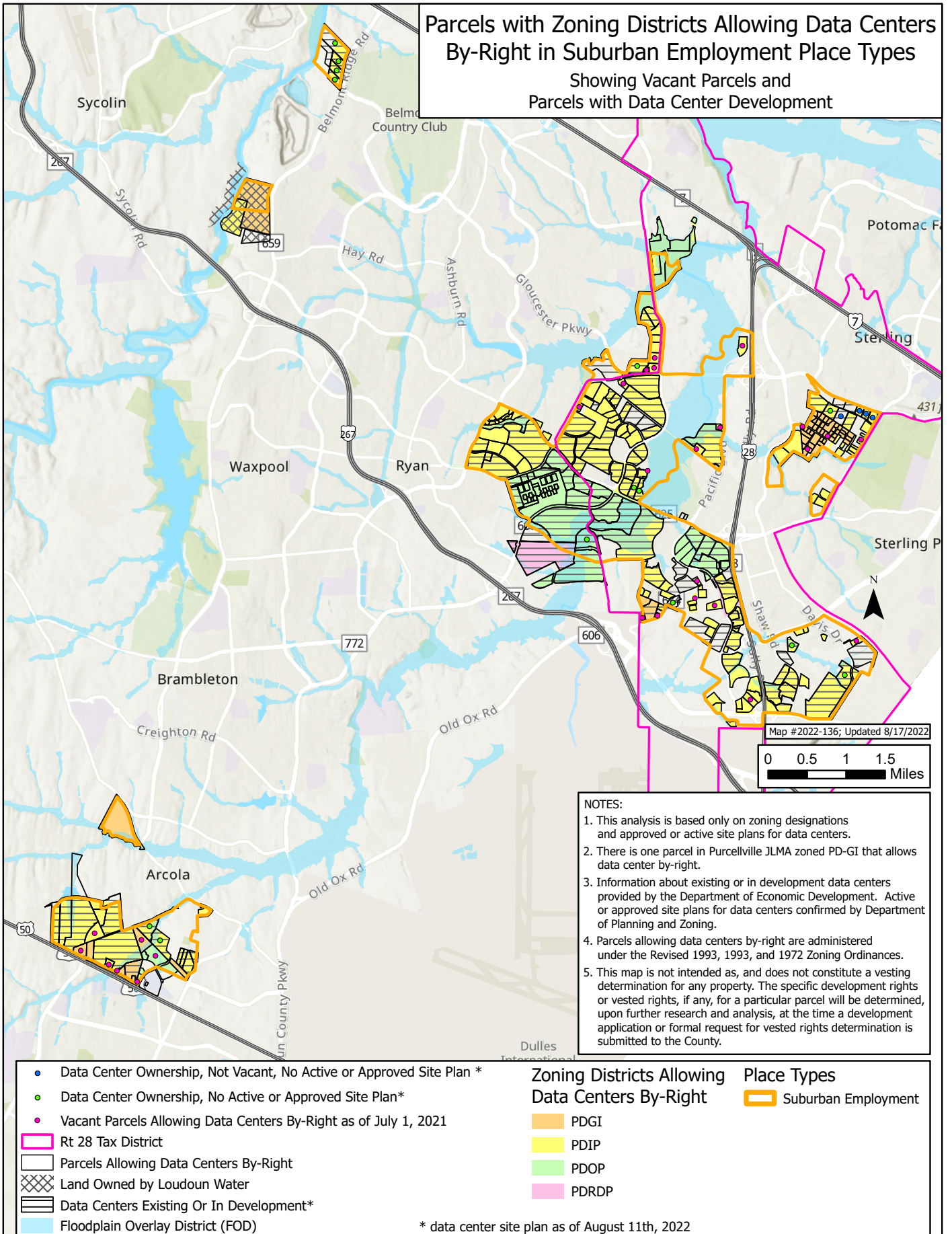
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|---|---|--|
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|---|---|--|

* data center site plan as of August 11th, 2022

Parcels with Zoning Districts Allowing Data Centers By-Right in Suburban Employment Place Types

Showing Vacant Parcels and Parcels with Data Center Development



Attachment 6. Analysis of Parcels Allowing Data Center By-Right within and outside of the Route 28 Tax District

Table 4. Parcels* Allowing Data Centers By-Right in the Route 28 Tax District by Place Type as of August 11, 2022 **

| Place Type | Parcels with Zoning Allowing Data Center By-Right | Vacant*** Parcels with Zoning Allowing Data Center By-Right | Parcels Not in Route 28 Tax District | Vacant*** Parcels Not in Route 28 Tax District | Parcels in Route 28 Tax District | Vacant*** Parcels in Route 28 Tax District |
|-------------------------------|---|---|--------------------------------------|--|----------------------------------|--|
| Urban Transit Center | 63 | 16 | 33 | 5 | 30 | 11 |
| Urban Mixed Use | 0 | 0 | 0 | 0 | 0 | 0 |
| Urban Employment | 15 | 0 | 9 | 0 | 6 | 0 |
| Suburban Mixed Use | 558 | 75 | 419 | 43 | 139 | 32 |
| Suburban Employment | 325 | 48 | 140 | 24 | 184 | 24 |
| Suburban Neighborhood | 33 | 10 | 32 | 10 | 1 | 0 |
| Suburban Compact Neighborhood | 36 | 2 | 13 | 2 | 23 | 0 |
| Total | 1,030 | 151 | 646 | 84 | 383 | 67 |

*Zoning districts include PD-OP, PD-RDP, PD-IP, PD-GI, and PD-TC.

**Parcels may be in more than one Place Type. In this analysis, the parcel is included in each Place Type.

***Excludes properties with data centers under construction or with approved or conditionally approved site plans for data centers. “Data center” includes associated infrastructure, such as electrical substations.

Table 5. Acres* Allowing Data Centers By-Right in the Route 28 Tax District by Place Type as of August 11, 2022**

| Place Type | Total Acres with Zoning Allowing Data Center By-Right | Vacant*** Acres with Zoning Allowing Data Center By-Right | Acres Not in Route 28 Tax District | Vacant*** Acres Not in Route 28 Tax District | Acres in Route 28 Tax District | Vacant*** Acres in Route 28 Tax District |
|-------------------------------|---|---|------------------------------------|--|--------------------------------|--|
| Urban Transit Center | 914.05 | 126.04 | 591.36 | 8.35 | 322.69 | 117.69 |
| Urban Mixed Use | 0 | 0 | 0 | 0 | 0 | 0 |
| Urban Employment | 510.49 | 0 | 414.27 | 0 | 96.22 | 0 |
| Suburban Mixed Use | 3,145.29 | 881.80 | 2,019.07 | 520.09 | 1,126.22 | 361.71 |
| Suburban Employment | 3,752.29 | 476.84 | 2,206.44 | 338.12 | 1,545.85 | 138.72 |
| Suburban Neighborhood | 1,410.06 | 137.79 | 1,277.81 | 137.79 | 132.25 | 0 |
| Suburban Compact Neighborhood | 195.98 | 28.05 | 139.23 | 28.05 | 56.75 | 0 |
| Total | 9,928.16 | 1,650.51 | 6,614.93 | 1,088.76 | 3,279.98 | 618.12 |

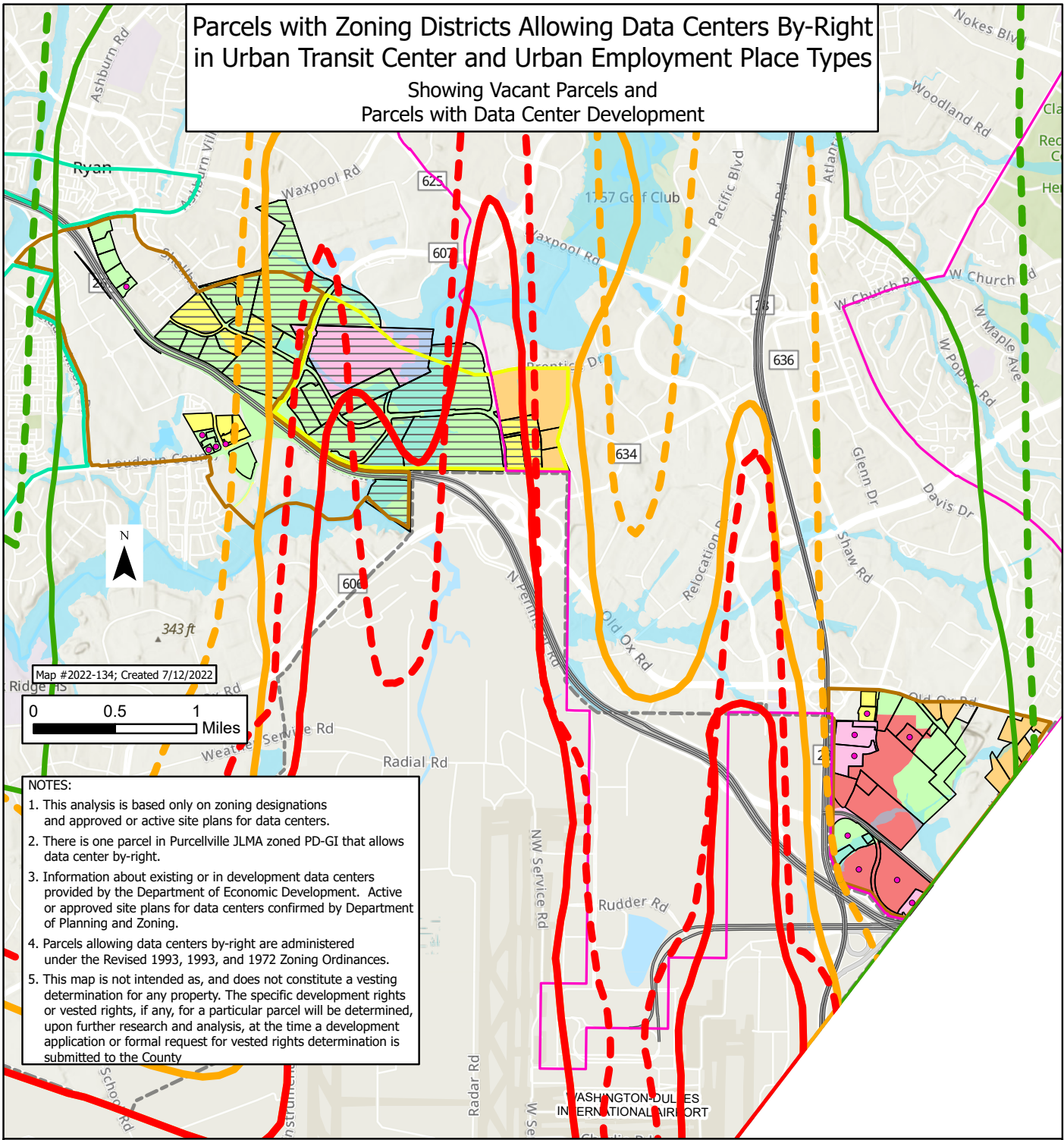
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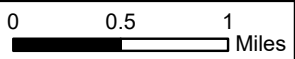
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Parcels with Zoning Districts Allowing Data Centers By-Right in Urban Transit Center and Urban Employment Place Types

Showing Vacant Parcels and
Parcels with Data Center Development



Map #2022-134; Created 7/12/2022



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|--|---|--|



September 13, 2022

Phyllis J. Randall, Chair At-Large
Michael R. Turner, Chair, Transportation and Land Use Committee
Members, Loudoun County Board of Supervisors
1 Harrison Street, SE, 5th Floor
Leesburg, VA 20175

Dear Chair Randall, Chair Turner, and Members of the Board,

I am writing on behalf of the Data Center Coalition (DCC), a membership organization including many of the county's leading data center owners and operators, to provide feedback regarding the Transportation and Land Use Committee's (TLUC) recommendations to the Board regarding use and process considerations for data center development in the County. The data center industry is grateful for our collaborative partnership with the Board of Supervisors, your professional staff, and the County's accomplished Economic Development Department. We value the time and effort TLUC members devote to these important issues.

We appreciate that TLUC members and County staff requested preliminary feedback from DCC on June 30, 2022. We would like to reiterate some of our initial feedback as the full Board reviews TLUC's recommendations:

- Regulatory predictability is a critical driver of Loudoun's historic success – essential to maintaining the strength of the County's data center sector moving forward, particularly given the size, magnitude, and long-term nature of siting decisions for both existing and future data center investment.
- Certainty and consistency - We are encouraged by comments from TLUC members regarding the importance of ensuring Loudoun maintains a positive business climate that continues to provide certainty and consistency for data centers invested in Loudoun. The need for long term, sustainable predictability around land use and other policies that govern the County's data centers was also noted in the May 12, 2022 memo from County staff indicating "the importance of maintaining a stable and predictable business environment for this valuable sector including promoting the necessary conditions needed for their continued investment in computer equipment and refreshment of it."
- Loudoun's key influence – Given the County's essential role as the largest data center market globally, Loudoun's policies and actions are followed by the industry

at every level, including by company executives, Boards of Directors, investors and partners, and they influence private sector choices about investment, real estate, infrastructure and jobs.

- TLUC deliberations - The issues raised in TLUC discussions are extremely important to the industry and present substantial complexity. While we have been surprised by the speed of TLUC discussions, these meetings helped raise and define key County concerns, priorities, and objectives. The TLUC deliberations have provided our industry with additional insight about the County's concerns and highlighted key priorities shared by TLUC members and the data center industry.
- TLUC topics – TLUC discussed important considerations related to data center siting, County revenues and budgets, the need for continuing improvements in aesthetics and building design, vested property rights and statutory protections, siting of power infrastructure, the industry's aggressive sustainability goals and the importance of access to clean energy, impacts related to the introduction of new land use and zoning regulations, building/permitting timelines and the importance of speed-to-market, and impacts on Loudoun's overall business climate and regulatory certainty. These are shared priorities. We are invested in Loudoun; our teams live and work here.
- Economic partnership with Loudoun - We are proud of our robust tax revenue contributions to the County that help address school funding, social services, affordable housing, and many other critical priorities. County staff indicated in the May 12, 2022 memo shared with TLUC members that:
 - Data centers are an extremely efficient use of land from a financial standpoint.
 - While existing data center development represents less than 1.5% of total land area in the County, the industry will contribute an estimated \$575 million in FY2022 General Fund revenues, equating to 31% of the FY 2022 budget for the General Fund.
 - Data centers account for almost half of Loudoun's healthy commercial property portfolio, generating an estimated \$105.5 million in County real estate taxes.
 - Data centers are paying more in real property taxes than any alternative type of development.
- Loudoun is our home too - We are grateful that TLUC members recognized during meetings that data centers are strong community partners. The growth of Loudoun's data center sector has provided investments and contributions far beyond the beneficial revenue impact on the County budget. Many of our team members call Loudoun home, and our contributions to Loudoun's schools, community groups, and charitable organizations are an essential element of our industry's culture.

We are mindful that TLUC's discussions and recommendations were overlaid with substantial uncertainty related to property rights and statutory protections associated with individual projects and parcels, complexity regarding the application of the Route 28 Tax District, and significant unknowns related to short-term and longer-term economic development,

competitiveness, and tax revenue impacts. News of Loudoun's utility transmission constraints following the conclusion of the last TLUC meeting has substantially increased uncertainty for the industry, for individual property owners, and for the County.

If the Board approves TLUC's recommendations, the Data Center Coalition is committed to collaborating with your professional and accomplished staff to work through details, help understand and address impacts, and seek to mitigate uncertainty to the extent feasible. We held an initial meeting with County staff on August 30th to begin this process.

Consistent with our discussion with staff, we support revisiting the demarcation of the Suburban Mixed-Use, Suburban Neighborhood, and Suburban Compact Neighborhood Place Types to recognize (as was directed by TLUC) existing data center providers and sites – that is existing, under construction, and purchased in reliance on by-right data center use properties within Loudoun.

We also appreciated discussion with staff regarding the proposed expansion of the Urban Transit Center Place Type to subsume the Urban Employment areas. As the Board and staff are aware, there are a significant number of existing and entitled data centers in the current "Urban Transit Center" and "Urban Employment" Place Types.

Given that UTC does not recommend data centers as a use, that would severely restrict these many existing data centers - billions of dollars in investment, most of which have been permitted "by right" under their existing districts, typically PD-IP and PD-OP.

We view it as vital that data centers on these sites have the option to respond to market conditions and expand beyond the current by-right FAR limits of their underlying zoning or their existing configuration. Older style buildings might one day seek to expand to include additional stories with a much more office-styled data center appearance. The flexibility to allow for such an evolution is important to the data center owner, the appearance of the facility, and the tax returns to the County. The existing Zoning Ordinance regulations for PD-IP and PD-OP contain Special Exception provisions for additional FAR, for example. However, if the current proposal from TLUC were to be adopted, any such zoning entitlement request would engender outstanding and unresolvable issues with Community Planning's review of the UTC Place Type land use recommendations.

We reviewed with staff some intriguing options for striking the right balance of protecting billions of dollars in investment from existing data centers who have been collaborative partners with the County while concurrently creating a balanced approach for investing, enhancing, expanding, and improving the essential data center infrastructure within the UTC, subject to additional review and approval by Loudoun County.

We respectfully request that the Board support an approach where staff is directed to work with industry stakeholders to grant existing data centers in the UTC flexibility to respond to market conditions via the processing options they currently enjoy under the Zoning Ordinance, without running afoul of the Place Type designation in any Special Exception or Zoning Concept Plan Amendment application. One approach we've suggested to staff would be to imbue such

flexibility into the UTC Place Type language, with additional protections that might include making it clear that it is limited to existing data centers (again, of which there are many in the UTC, including in Urban Employment Place Type that is proposed to be added to the UTC), or applying additional design standards in such cases.

We appreciate the Board's consideration of a balanced mechanism to (1) reasonably protect the data center providers with optionality of reinvestment and improvement, that (2) concurrently ensures a meaningful County role in future expansion of data center sites within UTC.

We have already started efforts to identify and map parcels that are owned by data center companies with developed or planned data center projects, so that we can work with staff to minimize or avoid non-conforming status and other potential conflicts, per TLUC's direction. This includes parcels identified by 15 of the County's data center companies to date, in addition to parcels already identified by County staff. Moreover, we are assisting in the development of additional design standards - based on extensive, national industry experience - to try and promulgate and embrace standards that are particularly sensitive to surrounding homes and residential communities, as well as attentive to our shared environmental sustainability goals.

Thank you for providing us the opportunity to offer stakeholder feedback to the Loudoun Board. We are grateful to the Board, the County, and the citizens of Loudoun for our enduring and mutually beneficial partnership.

Respectfully submitted,

Sincerely,

A handwritten signature in black ink that reads "Josh Levi". The signature is written in a cursive, slightly slanted style.

Josh Levi
President
Data Center Coalition
(703) 946-0314
josh@datacentercoalition.org
<https://www.datacentercoalition.org>