

6 KEY TAKEAWAYS

Land Use, Resource Demand, and Infrastructure Pressure: Public Sentiment and Regulatory Practice of Data Center Development

Kilpatrick’s [John Livingston](#) recently joined a panel of fellow thought leaders to discuss “**Land Use, Resource Demand, and Infrastructure Pressure: Public Sentiment and Regulatory Practice of Data Center Development**” at the **2026 Appalachian Clean Energy Regulatory and Policy CLE Workshop**. The discussion provided attorneys, policy professionals, and energy practitioners with an overview of the ever-evolving legal, regulatory, and policy developments impacting North Carolina’s energy landscape.

John’s key takeaways from the discussion include:

1

Data Center Construction Is Booming, Particularly in the South and Mid-Atlantic.

Census Bureau data show private data center construction at a seasonally adjusted annual rate of \$84.95 billion in August 2026, up about 73.2% from \$49.05 billion a year earlier. CBRE reports record primary-market supply (10,903 MW), record-low vacancy (1.4%), and a record 7,481.1 MW under construction in the first half of 2026, driven mainly by AI (approximately 40% of demand growth), cloud and SaaS adoption, and digitalization. Northern Virginia (4,900+ MW) remains the world’s largest market, but Atlanta was expected to lead construction in the first half of 2026 and Texas is projected to be the largest U.S. market by 2030. North Carolina had over 100 data centers as of late 2025 and was among four states with more than \$10 billion in new data center starts through August 2026.

2

Public Perception Shapes the Land Use Process.

Community concerns about data centers are increasingly arising in local land use proceedings. Where a data center is not a use of right, developers must comply with local ordinances and typically seek a special use permit (formerly known as a conditional use permit) or, more commonly now, conditional zoning. Each path provides an opportunity for public input, so early community engagement is an essential aspect of project planning.

3

Special Use Permits Require a Quasi-Judicial Hearing.

A special use permit is a quasi-judicial proceeding in which the applicant must meet specific standards, most commonly that the use (i) will not materially endanger public health or safety, (ii) meets all required conditions and specifications, (iii) will not substantially injure the value of adjoining property unless the use is a public necessity, and (iv) will be in harmony with the area and in general conformity with the comprehensive plan.

4

Conditional Zoning Offers Flexibility but Carries Its Own Risks.

Under N.C.G.S. 160D-703, a conditional district is a legislative rezoning with site-specific conditions and no uses of right, so requirements of quasi-judicial proceedings such as sworn testimony or findings of fact are not required; however, a plan consistency statement is required under N.C.G.S. 160D-605. Conditions must be agreed to in writing by both the petitioner and the local government and generally must be within the local government’s authority unless the landowner consents. For data centers, developers can negotiate conditions on water use, noise and generators, setbacks, screening, and utility upgrades. Applicants may communicate with officials ex parte, but neighbors may also comment without evidentiary limits. If a rezoning is approved, the conditions run with the land (and generally require a new legislative approval to change).

5

Moratoria on Data Center Development Are Spreading Across North Carolina.

Moratoria serve as a “pause button” on development, can be imposed at the state or local level, and may target new or “objectionable” uses or respond to insufficient services. Recent local data center moratoria include Chatham County (February 2026, expiring February 11, 2027), the City of Charlotte (June 2026, expiring November 5, 2026), the City of Raleigh (October 2026, expiring April 6, 2027), Rowan County (April 2026), Beaufort County (October 2026), and the Town of Boone (March 2026). Moratoria are legally well grounded: the U.S. Supreme Court held in *Tahoe-Sierra* that temporary moratoria are not categorical takings, and N.C.G.S. 160D-107 authorizes temporary moratoria on non-residential development approvals.

6

Moratoria Face Strict Procedural Limits and Vested Rights Exceptions.

Absent an imminent and substantial threat to public health and safety, a moratorium requires a public hearing, with added notice for moratoria (or extensions) over 60 days. Under N.C.G.S. 160D-107(d), the ordinance must state the problems and alternatives considered, the approvals affected, a reasonably necessary termination date, and a plan and schedule to address the problems. Duration must be reasonable, and extensions require a showing that all reasonable steps have been taken and that new facts warrant more time. Moratoria do not apply to projects with a valid building permit, complete special use permit applications (per the “permit choice” rule), approved site-specific vesting plans under N.C.G.S. 160D-108.1, substantial good-faith expenditures in reliance on a prior valid approval, or subdivision plats accepted for review before the hearing was called. Aggrieved persons may seek injunctive relief, which receives priority scheduling in trial and appellate courts, and the local government bears the burden of proving procedural compliance.