

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL24-334
(CLERK'S OFFICE USE ONLY)

Prince William

Circuit Court

KATY BURKE, et al

BOARD OF COUNTY SUPERVISORS, PWC

PLAINTIFF(S)

v./In re:

DEFENDANT(S)

I, the undersigned plaintiff defendant attorney for plaintiff defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- Claim Impleading Third Party Defendant
 - Monetary Damages
 - No Monetary Damages
- Counterclaim
 - Monetary Damages
 - No Monetary Damages
- Cross Claim
- Interpleader
- Reinstatement (other than divorce or driving privileges)
- Removal of Case to Federal Court

Business & Contract

- Attachment
- Confessed Judgment
- Contract Action
- Contract Specific Performance
- Detinue
- Garnishment

Property

- Annexation
- Condemnation
- Ejectment
- Encumber/Sell Real Estate
- Enforce Vendor's Lien
- Escheatment
- Establish Boundaries
- Landlord/Tenant
 - Unlawful Detainer
- Mechanics Lien
- Partition
- Quiet Title
- Termination of Mineral Rights

Tort

- Asbestos Litigation
- Compromise Settlement
- Intentional Tort
- Medical Malpractice
- Motor Vehicle Tort
- Product Liability
- Wrongful Death
- Other General Tort Liability

ADMINISTRATIVE LAW

- Appeal/Judicial Review of Decision of (select one)
 - ABC Board
 - Board of Zoning
 - Compensation Board
 - DMV License Suspension
 - Employee Grievance Decision
 - Employment Commission
 - Local Government
 - Marine Resources Commission
 - School Board
 - Voter Registration
 - Other Administrative Appeal

DOMESTIC/FAMILY

- Adoption
 - Adoption - Foreign
- Adult Protection
- Annulment
 - Annulment - Counterclaim/Responsive Pleading
- Child Abuse and Neglect - Unfounded Complaint
- Civil Contempt
- Divorce (select one)
 - Complaint - Contested*
 - Complaint - Uncontested*
 - Counterclaim/Responsive Pleading
 - Reinstatement - Custody/Visitation/Support/Equitable Distribution
- Separate Maintenance
 - Separate Maintenance Counterclaim

WRITS

- Certiorari
- Habeas Corpus
- Mandamus
- Prohibition
- Quo Warranto

PROBATE/WILLS AND TRUSTS

- Accounting
- Aid and Guidance
- Appointment (select one)
 - Guardian/Conservator
 - Standby Guardian/Conservator
 - Custodian/Successor Custodian (UTMA)
- Trust (select one)
 - Impress/Declare/Create
 - Reformation
- Will (select one)
 - Construe
 - Contested

MISCELLANEOUS

- Amend Birth/Death Certificate
- Appointment (select one)
 - Church Trustee
 - Conservator of Peace
 - Marriage Celebrant
- Approval of Transfer of Structured Settlement
- Bond Forfeiture Appeal
- Declaratory Judgment
- Declare Death
- Driving Privileges (select one)
 - Reinstatement pursuant to § 46.2-427
 - Restoration - Habitual Offender or 3rd Offense
- Expungement
- Firearms Rights - Restoration
- Forfeiture of Property or Money
- Freedom of Information
- Injunction
- Interdiction
- Interrogatory
- Judgment Lien-Bill to Enforce
- Law Enforcement/Public Official Petition
- Name Change
- Referendum Elections
- Sever Order
- Taxes (select one)
 - Correct Erroneous State/Local
 - Delinquent
- Vehicle Confiscation
- Voting Rights - Restoration
- Other (please specify)

Damages in the amount of \$ 0.00 are claimed.

1/12/2024

DATE

PLAINTIFF

DEFENDANT

ATTORNEY FOR

PLAINTIFF
 DEFENDANT

John Chapman Petersen, Esq.

PRINT NAME

3970 Chain Bridge Rd. Fairfax, VA 22030

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

571-459-2512

jcp@petersenfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

**"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

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CIRCUIT COURT OF EMINENT DOMAIN
PRINCE WILLIAM COUNTY, VA

VIRGINIA:
IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

KATY BURKE,
LIAM BURKE,
MARK GERL,
JULIE GERL,
CHARLOTTE GERSTENFELD,
STEVE WARD,
CAROL CZARKOWSKI,
WANDA SABIN,
DOUG SABIN, and
AMERICAN BATTLEFIELD TRUST,

Petitioners,

v.

BOARD OF COUNTY SUPERVISORS,
PRINCE WILLIAM COUNTY,
Serve: Michelle R. Robl
County Attorney
1 County Complex Ct., Ste. 240
Woodbridge, VA 22192

H & H CAPITAL ACQUISITIONS, LLC, and
Serve: Corporation Service Company
100 Shockoe Slip, Fl. 2
Richmond, VA 23219

GW ACQUISITION CO., LLC,
Serve: Corporation Service Company

Case No.: CL24-344

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CIRCUIT COURT OF ETTA'S OFFICE
PRINCE WILLIAM COUNTY, VA

100 Shockoe Slip, Fl. 2)
 Richmond, VA 23219)
)
 GW ACQUISITION CO. I, LLC,)
 Serve: Corporation Service Company)
 100 Shockoe Slip, Fl. 2)
 Richmond, VA 23219)
)
Respondents.)
 _____)

**PETITION TO OVERTURN
 ACTION BY BOARD OF SUPERVISORS**

COMES NOW the Petitioners, Katy Burke, Liam Burke, Mark Gerl, Julie Gerl, Charlotte Gerstenfeld, Steve Ward, Carol Czarkowski, Wanda Sabin, Doug Sabin, and American Battlefield Trust (collectively, “Petitioners”), by counsel, who hereby petition this honorable Court to overturn the December 13, 2023 decisions taken by the Board of County Supervisors, Prince William County (the “Board”) in Ordinance Nos. 23-57, 23-58, and 23-59 (collectively, the “Rezoning Ordinances”) pursuant to Va. Code § 8.01-184, Va. Code § 15.2-2285(F), and Code of Ord. § 32-700.90 and in support thereof states as follows:

INTRODUCTION

This matter concerns the Board’s vote on December 13, 2023 to rezone three separate parcels of land, equaling 1,760 acres in western Prince William County, an area formerly known as “the Rural Crescent.” The gist of the rezoning is to permit the construction of thirty-seven (37) “data centers,” which are oblong-shaped buildings, nearly a football field in length, that will stand up to eighty (80) feet in height. The ostensible purpose of these drab behemoths is to provide data storage for millions of “cloud” users. Few, if any jobs, will be created.

The land where the data centers are to be located was formerly zoned “agricultural” and “residential.” It has never seen intense industrial use. More pertinently, the rezoned land

includes land that was the site of two significant Civil War Battles: First Manassas and Second Manassas,¹ as well as numerous other more minor Civil War actions. The land is further adjacent to Manassas National Battlefield Park. A portion of the rezoning site lies just yards away from the Railroad Cut, scene of the most intense fighting at Second Manassas, and much of the rezoning site served as the launching point for one of the most devastating assaults of the American Civil War, again at Second Manassas. The fact that the historic site will now sit in the shadow of the monstrous data centers, along with their associated electrical infrastructure, is a national disgrace.

The legal bases for overturning the County Board's action are: (i) violation of Va. Code § 15.2-2204 and associated County ordinances regarding "notice" of the rezoning proceedings; (ii) violation of Prince William County Ordinance §32-700.43 regarding the submission and review of "proffers;" (iii) failure to properly consider the environmental factors of the proposed datacenter developments in violation of Va. Const., Art. XI, § 1 and Va. Code § 15.2-2000; (iv) failure to file special use permits as required by the Prince William County Code of Ord. §§ 32-403.23(3), 32-402.23(3), 32-402.33(3), and 32-402.43(3); (v) failure of the Applicants to provide the requisite specificity in their master zoning plans or general development plans (e.g. they never included the locations of the datacenter buildings nor delineated where the various proposed zoning districts would lie) in violation of Code of Ord. § 32-700.21; (vi) failure of Applicants to request, and the Board to explicitly approve, waivers of the zoning requirement to delineate the requested districts or include the locations of the proposed buildings in violation of Code of Ord. § 32-700.25; (vii) failure of the Applicants to justify the waivers and modifications sought and to demonstrate how the aims of those code sections waived were still accomplished

¹ The battles have also been known to history as the "First and Second Bull Run." For consistency, petitioners will use the "Manassas" appellation.

in violation of Code of Ord. § 32-700.25; and (viii) failure to comply with Va. Code §15.2-2200 and 2282 *et seq.* requiring the uniform application of laws for rezoning. In addition to exceeding the Board's authority and violating express limitations on the Board's powers, the failures of submission, process and consideration also impeded, obstructed, and adversely affected both the Planning Commission's and the Board's consideration of the governing zoning and other legal standards contained in the Virginia Code and Prince William County Ordinances.

Each of these violations, which were identified by County staff and the Planning Commission in recommending "denial," represents a basis to void the Rezoning. The sum total of them is to render the Board's decision in passing the Rezoning Ordinances as "arbitrary and capricious," if not void *ab initio* and thus liable for being set aside.

SUBJECT MATTER

1. This appeal challenges three (3) separate rezoning ordinances, approved by the Board on December 13, 2023, that together purport to rezone approximately 1,760.12 acres of land previously zoned as either agricultural or residential property lying directly adjacent to the historical Manassas Battlefield (the "Properties") to a mix of different industrial and office districts (the "Rezoning").
2. The Rezoning was requested by applicants H&H Capital Acquisitions, LLC ("H&H"), GW Acquisitions Co., LLC ("GW"), and GW Acquisitions Co. I, LLC ("GW I") (collectively, "Applicants") for the purpose of developing around 22,255,200 sq. ft. of server space on the related parcels. The Rezoning also purports to grant numerous waivers of key portions of the Prince William County Zoning Ordinances.
3. Ordinance No. 23-57 relates to the set of parcels designated as the Compass Datacenters Prince William County Campus 1 ("Compass") and purports to rezone approximately

884.12 acres of property composed of 103 individual parcels and separated into eleven (11) different land bays into zones suitable for a maximum of **11,555,200 sq. ft.** of data centers (the “Compass Application”). *See* Ordinance No. 23-57 attached hereto as

Exhibit A. The Compass properties are “generally located on both the east and west side of Pageland Lane, to the northwest of Manassas National Battlefield Park, northeast of Conway Robinson Memorial State Forest, east of Heritage Hunt Golf and Country Club, and approximately 1 mile north of Route 29/Lee Highway.” Exh. A, p. 1. The applicant for the Compass Application is H&H Capital Acquisitions, LLC. Exh A, Proffer, p. 1.

4. Ordinance No. 23-58 relates to the set of parcels designated as Digital Gateway South (“DG South”) and purports to rezone approximately 342 acres of property composed of fifteen (15) individual parcels and separated into four (4) different land bays into zones suitable for a maximum of **3,700,000 sq. ft.** of data centers (the “DG South Application”). *See* Ordinance No. 23-58 attached hereto as **Exhibit B.** The DG South properties are “generally located on both the east and west side of Pageland Lane, to the north and northwest of Manassas National Battlefield Park, north and northeast of Conway Robinson Memorial State Forest, east of Heritage Hunt Golf and Country Club, and approximately ½ mile north of Route 29/Lee Highway.” Exh. B, p. 1. The applicant for DG South Application is GW Acquisition Co., LLC. Exh. B, Proffer, p. 1.
5. Ordinance No. 23-59 relates to the set of parcels designated as Digital Gateway North (“DG North”) and purports to rezone approximately 534 acres of property composed of eighteen (18) individual parcels and separated into four (4) different land bays into zones suitable for a maximum of **7,000,000 sq. ft.** of data centers (the “DG North Application”). *See* Ordinance No. 23-59 attached hereto as **Exhibit C.** The DG North

properties are “generally located on both the east and west side of Pageland Lane, to the south of Catharpin Recreational Park and Sudley Road, north of Thornton Drive, and east of Catharpin Valley Drive.” Exh. C, p. 1. The applicants for the DG North Application are GW Acquisition Co., LLC and GW Acquisition I, LLC.

6. Together the Compass, DG South, and DG North applications (collectively, the “Applications”) would effectuate parts of the Prince William Digital Gateway Master Corridor Plan. *See* Prince William Digital Gateway Master Corridor Plan (the “Master Plan” or “MCP”) attached hereto as **Exhibit D**.
7. The Rezoning Ordinances were approved by the Board on December 13, 2023 – in a split vote – at the end of a marathon 28 hour-long public hearing which involved a full *17 hours* of statements from hundreds of citizens overwhelmingly opposed to the MCP. Notably, the proponents of the Rezonings consisted either of the applicant or those other persons that had a direct financial interest in the project.
8. Further, the Rezoning Ordinances were passed despite the Planning Office staff and the Planning Commission recommending that the Board **deny** the Rezonings due to a myriad of fundamental issues with the Applications. *See* Staff Report on Compass attached hereto as **Exhibit E**; Staff Report on DG South attached hereto as **Exhibit F**; Staff Report on DG North attached hereto as **Exhibit G**; Planning Commission Res. No. 23-089 recommending denial of the Compass application attached hereto as **Exhibit H**; Planning Commission Res. No. 23-090 recommending denial of the DG South application attached hereto as **Exhibit I**; and Planning Commission Res. No. 23-091 recommending denial of the DG North application attached hereto as **Exhibit J**.

9. Besides running roughshod over sustained popular opposition and the well-reasoned analyses of the County Planning Staff and the Planning Commission, the Board's adoption of the Rezoning Ordinances flouted a number of Prince William County's Zoning Ordinances, various provisions of the Virginia Code, and the Virginia Constitution.

PARTIES AND JURISDICTION

10. Petitioners Katy and Liam Burke are natural persons residing at the address 4825 Sudley Road, Catharpin, VA, 20143, which is located adjacent to Catharpin Recreational Park and directly across Sudley Road from Land Bay D of the DG North project.²
11. Petitioners Mark and Julie Gerl are natural persons residing in the historic district at the address 12050 General Trimbles Lane, Manassas, VA, 20109, just to the east of both Land Bay C of the DG South project and Land Bays 4 and 4A of the Compass project.
12. Petitioner Charlotte Gerstenfeld is a natural person residing at the address 12049 General Trimbles Lane, Manassas, VA, 20109, just to the east of both Land Bay C of the DG South project and Land Bays 4 and 4A of the Compass project and to the south of Land Bays B and D of the DG North project.
13. Petitioner Steve Ward is a natural person residing at the address 12199 General Trimbles Lane, Manassas, VA, 20109, just to the east of both Land Bay C of the DG South project and Land Bays 4 and 4A of the Compass project.

² While not a Petitioner in this action, the Coalition to Protect Prince William County has also retained the services of the undersigned and is working closely with Petitioners to ensure that the unjust Rezoning Ordinances are found to be void *ab initio* and set aside in accordance with Virginia Law and the County Ordinances.

14. Petitioner Carol Czarkowski is a natural person residing at the address 4506 Old Field Drive, Gainesville, VA, 20155, which is located just north of Land Bays 1 and 1A of the Compass project.
15. Petitioners Wanda and Doug Sabin are natural persons residing at the address 12025 General Trimbles Lane, Manassas, VA, 20109, which is located just to the north of Land Bay C of the DG South project, just south of Land Bays 4 and 4A of the Compass project, and just to the east of Land Bays 5 and 7 of the Compass project.
16. Petitioner American Battlefield Trust, successor of the Civil War Preservation Trust, is a not-for-profit Virginia nonstock corporation, and is qualified as a tax-exempt organization under 26 U.S.C. § 501(c)(3) (the "Trust").
17. The Trust exists to preserve America's hallowed battlegrounds, including those of the American Civil War, and to educate the public about what happened on these battlefields and why those events and battles matter today. It traces its origin back to public opposition to the development of land near the Manassas National Battlefield.
18. To date, the Trust has preserved over 58,000 acres of American battlefields at more than 150 sites in 25 states. This preservation occurs by various means, including by Trust ownership of historic lands as well as through agreements with landowners restricting land use.
19. The Trust has a long history of preservation of land associated with the Manassas Battlefield. The Trust can trace its origin back to public opposition to the development of land near the Manassas National Battlefield Park.

20. The land currently designated as protected Manassas Battlefield land is directly adjacent to Land Bays A and C of the DG South project and just to the east of Land Bays 6 and 6A of the Compass project.
21. All of the above parties own property which is immediately adjacent or otherwise within visible proximity to (as well as within earshot of) the planned data centers. As such, each owner stands to suffer a unique injury from the rezoning, per the Supreme Court holding in *Friends of the Rappahannock*, which is not shared by the general public.
22. Respondent Board of County Supervisors, Prince William County is the governing body for Prince William County established by Article I of the Prince William County Ordinances and vested with authority pursuant to Va. Code § 15.2-1400.
23. Respondent H&H Capital Acquisitions, LLC (“H&H”) is a limited liability corporation formed under the laws of Delaware that is authorized to transact business in the Commonwealth of Virginia. H&H is the applicant for the Compass Application.
24. GW Acquisition Co., LLC (“GW”) is a limited liability corporation formed under the laws of Delaware that is authorized to transact business in the Commonwealth of Virginia. GW is the applicant for the DG South Application and an applicant for the DG North Application.
25. GW Acquisition Co. I, LLC (“GW I”) is a limited liability corporation formed under the laws of Delaware that is authorized to transact business in the Commonwealth of Virginia. GW I is an applicant for the DG North Application.
26. This petition is made pursuant to Va. Code § 8.01-184, Va. Code § 15.2-2285(F), and Code of Ord. § 32-700.90 by aggrieved petitioners, all of whom own land adjacent to, or even within, the Properties and, because of their proximity, will be impacted uniquely by

the noise, light, traffic, and run-off and emissions from the Digital Gateway. The hulking data centers, which will dwarf all nearby structures, and particularly all those of the Petitioners, will negatively impact their viewsheds and diminish their property values in addition to ruining the character of the neighborhoods they call home.

27. Therefore jurisdiction, the Petitioners in this matter have standing and this Court has proper jurisdiction over the challenge to the Rezoning Ordinances. Further, venue is proper in this Circuit Court.

28. Prior to examining the legal issues at stake, it is appropriate to explain the historic significance of the land which the Digital Gateway proposes as the site of the world's largest data center project . To that end, petitioners submit the following history, which traces the history of the property now subject to the Digital Gateway development from its roots in the Civil War to the current effort by the Board to develop the land into a major technology corridor in North America, with substantial historical, cultural, and environmental complications.

BACKGROUND OF THE CASE

Setting the Stage from the American Civil War

29. In July 1862, the Federal Army of the Potomac and the Confederate Army of Northern Virginia both lay exhausted after The Seven Days' battles around Richmond. After repulsing numerous attacks, the Federal army had retreated back to Harrison's Landing on the James River below Richmond, while the Confederates guarded the approaches to the capital city.

30. One hundred miles to the north, a new Federal army had organized under General John Pope, which was confusingly called "the Army of Virginia." Pope had come East after

victories over secessionist forces in Kentucky and Tennessee. He evinced only a modest regard for the army of Robert E. Lee and made it clear that he intended to punish those Virginians who supported secession by seizing their property and burning their farms.

31. Hearing of this, Lee promised to “suppress” the westerner Pope. An epic contest beckoned in the farmlands of central Virginia.
32. Pope’s army consisted of several disparate commands, which organized outside Washington D.C. in July of 1862, then marched south with the intent of occupying those Virginia counties which lay undefended, as Lee’s Army was now southeast of Richmond.
33. Word soon reached Lee that a new Federal army was approaching. Critically, its forward regiments were pointed at Gordonsville in Orange County, a northern spur on the railroad which connected the western Virginia counties with Richmond.
34. Lee dispatched his top lieutenant, Thomas J. “Stonewall” Jackson, to deal with Pope’s army. Jackson’s corps, the most famous troops in either army, left their Richmond fortifications and marched swiftly north.
35. On a hot summer day, August 9, 1862, Jackson’s troops ran into the forward elements of Pope’s army at Cedar Mountain in Culpeper, Virginia, twenty miles west of Gordonsville.
36. Union troops, under the command of Nathaniel Banks, initially drove the Confederates. Jackson himself rushed forward to rally his men, who were streaming to the rear.
37. However, the Federal army was not in sufficient force to hold their gains. Led by the divisions of Richard Ewell and A.P. Hill, the Rebel Army counter-attacked and drove back the Union divisions, capturing several hundred prisoners.
38. When the battle of Cedar Mountain had ended, Jackson’s corps held the field, and the forward divisions of Pope’s Army withdrew across the Rappahannock River.

39. Over the next few days, Pope's Army consolidated along the north side of the Rappahannock, facing Jackson and his three divisions of Confederate veterans. At full strength, Pope had an advantage of nearly 2-1 in available men. However, most of his troops were new and unproven.
40. Sensing an opportunity, General Robert E. Lee took a gamble. Leaving behind a skeleton force to cover the Army of Potomac outside Richmond, he marched his remaining divisions north towards the Rappahannock to combine with Jackson.
41. As he had guessed correctly, the Army of the Potomac, left behind him, was already set to withdraw permanently. Over the next two weeks, they would board steamships to take them down the James River, and eventually back to the port of Alexandria where they could link up with Pope's Army of Virginia.

The Armies Consolidate – then Lee Divides His Command

42. Back in Culpeper, the Confederates under Jackson waited on the other half of Lee's Army, as the Union Army consolidated to the north. Pope had nearly all his effectives in one place and was seeking (again) to attack the Confederates. For the next week, the armies sparred with one another through intermittent cavalry raids.
43. Arriving in Culpeper to join Jackson in mid-August, Lee decided to take the initiative, by isolating and attacking Pope's Army before it could re-combine with the divisions of the Army of Potomac which were still *en route* (one corps under the command of General Fitzjohn Porter had already joined Pope's army).
44. Predictably, Lee selected his senior commander to take the lead.

45. On August 25, 1862, Jackson's troops left their positions in Culpeper, crossed the Rappahannock upstream, and began to march northwest towards the Bull Run mountains, thereby circling the right flank of Pope's Army.
46. Jackson's men traveled over forty miles in two days. Reaching Thoroughfare Gap, they turned eastwards, then marched along the line of the Manassas Gap Railroad which led down into the rolling hills of Prince William County. By August 28th, Jackson's column had reached Bristoe Station, in the direct rear of the Pope's Army.
47. On August 27th, Jackson's men announced their presence by attacking the railroad junction at Bristoe Station and capturing several Union railcars.
48. The next day, the Confederates attacked further east at Manassas Junction (today, the City of Manassas), which joined the Manassas Gap and Orange & Alexandria railways and served as a major Union supply depot. There they seized substantial stores of Union provisions, including delicacies like whiskey and lobster. From Manassas, an alert Union stationmaster sent word by telegraph to Pope that Jackson's army was now in his rear.
49. From his headquarters in Warrenton, directly to the south of Manassas, General Pope saw a golden opportunity: Jackson's corps of 25,000 men was now isolated. They could be easily destroyed with all Union divisions coming together.
50. The next day, the Union Army of Virginia started marching north, along the Warrenton Turnpike (today's Rte 29). Meanwhile, the bulk of the Army of the Potomac, having disembarked in Alexandria, headed west along the Little River Turnpike (today's Rte. 236).
51. Between these two forces, Jackson would be caught in a vise at Manassas and destroyed.
52. But Jackson had chosen his ground carefully. From the railroad junction, he moved his forces north along the banks of the Bull Run, then placed them in a defensive line along

the Manassas Gap railway bed (the “unfinished railroad” on National Park Service maps and which lies within Land Bay B of the DG South project), which ran parallel to the Warrenton Turnpike and perpendicular to Sudley Road.

53. This was familiar ground, the site of the very first battle of the War where Jackson had gained his notoriety. Indeed, in August 1862, thirteen months after the first battle, the fields and woods around Warrenton Pike were still littered with spent shells and even skeletons from the first battle. There, Jackson waited for Pope to arrive.

August 29, 1862

54. On the evening of August 29, Jackson’s men lay hidden in the woods, north of Warrenton Pike, near a small hamlet known locally as “Groveton.” At that time, the forward elements of Pope’s Army, under the command of General Rufus King, came marching up the Pike. They were completing their two-day march from Warrenton.
55. King’s men were headed to the Stone Bridge, just three miles away, which divided Prince William and Fairfax Counties. At that time, Union intelligence was reporting that Jackson’s men had fallen back to Centreville in Fairfax County. It was Pope’s intention to box them in there, and then capture Jackson’s whole command.
56. As the Union army came up the Pike, a solitary figure on a horse came out of the woods and observed them. He was a few hundred yards away. The Union infantry paid him no mind, not knowing that the mounted man was Stonewall Jackson.
57. A few minutes later, a phalanx of Confederate artillery emerged from a wooded ridge behind Brawner’s Farm, next to the present-day intersection of Warrenton Pike and Pageland Lane. Unlimbered, the guns began shelling the Union infantry below them.

58. Stung into action, the lead brigade of Union infantry, nearly 2,000 men, stepped off the Turnpike, tore down the bordering split rail fences, and reformed in the open fields around the Farm. They began to march up the hill towards the artillery.
59. With the trap sprung, over 6,000 Confederate infantrymen emerged from the woods behind Brawner's Farm to confront the lonely Federal brigade.
60. It did not appear to be an even fight. The Confederates on the battlefield were veterans from Jackson's celebrated Valley campaign, when he had defeated four separate Union armies. They included the legendary "Stonewall Brigade," Jackson's original command, which had won the day at First Manassas.
61. But these Union soldiers were not typical rookies. They were tough westerners from the states of Wisconsin, Indiana and Michigan; men who grew up on farms and knew how to handle a gun. They were also outfitted in black hats, thanks to their commander John Gibbon, which gave them a swashbuckling look to go along with their physical swagger.
62. As Jackson's veterans closed in, the westerners held their ranks, then let go a series of murderous volleys. The rebels went down in heaps. General Ewell, one of Jackson's most trusted lieutenants, was shot in the thigh and eventually lost the leg to amputation.
63. For two hours, the opposing forces faced each other in the fields around Brawner's Farm, trading volleys even as the sun dipped down behind Bull Run Mountain. Reinforcements reached both sides, leaving the Union men still outnumbered. Yet they did not fall back.
64. Around 8 pm, it had become dark, and the Union infantry finally disengaged, having suffered nearly a thousand casualties at Groveton.³ The Confederates suffered the same.

³ From that day forward, the westerners with black hats would be known as "the Iron Brigade," the most respected unit in the Union Army. On the other side, the Stonewall Brigade lost nearly half its strength and would be only a shadow of its former self for the rest of the War. Notably, after the War,

65. That night, the Union army consolidated around the Manassas Junction, approximately three miles to the south along Sudley Road.
66. Sensing correctly that Jackson's men were massed north of the Warrenton Pike, General Pope ordered his divisions to attack all along the line the next day -- from the town of Groveton to Sudley Springs -- assuming his superior forces could clear the field.

August 30, 1862

67. The next day, individual Union divisions attempted to breach the Confederate line, attacking northwards towards the Sudley Springs Church where the opening salvos of First Manassas had taken place. (In that battle, the two armies had been facing in the exact opposite direction: the Union army attacking south and the Confederates facing north).
68. Jackson had hidden his men north of the Turnpike in a railroad cut, which had been constructed in the mid-1850's so as to extend the Manassas Gap Railroad directly to Alexandria. (Up to that time, the railroad had diverted south to Manassas Junction, then used the Orange and Alexandria line to reach Alexandria).
69. The railroad cut formed a natural trench within the woods. When the Union infantry approached on August 30th, the well-concealed Confederates loosed a murderous fire which cut down scores of Union infantry.
70. The Union men charged bravely on, and at least one Union division even managed to gain a foothold in the Railroad Cut on the left side of Jackson's line. But a furious counterattack led by General A.P. Hill, the commander of Jackson's left wing, restored the line.

the Stonewall Brigade continued to exist as a unit. Among other things, the survivors marched in the New York City funeral of President (and General) Ulysses Grant in 1885.

71. Eventually the Union divisions fell back, leaving thousands of bodies in the hills and fields above the Warrenton Pike, just west of Sudley Road.
72. At the end of the day on August 30, the Union army was unable to break Jackson's line. But Pope was not discouraged. His disjointed attacks had not yet succeeded, but they had prevented Jackson from retreating across the Bull Run and escaping the Union noose. He was sure he would finish the job on the next day.
73. During the day, new divisions had joined him at the Groveton battlefield, including the full corps of both Porter and Heintzelman, nearly 30,000 additional men.
74. What he did not realize was that the Army of Northern Virginia was also now together.
75. Days earlier, the remainder of Lee's Army, under the command of James Longstreet, had crossed the Rappahannock following the path of Jackson.
76. While the Union army marched north from Warrenton, the corps under Longstreet moved parallel behind the screen of Bull Run Mountain. Clearing the Thoroughfare Gap on August 29th, they marched eastwards towards the Manassas Battlefield.
77. By the afternoon of August 30th, Longstreet's lead brigades had reached the battlefield. They did not announce their presence to the Federal army but rather stayed hidden in the foothills, just west of today's Pageland Lane. Meanwhile Longstreet's artillery posted on Dogan's Ridge, with a clear view over the fields where the Federal army attacked.
78. That night, August 30, a Confederate division, under the Texan John Bell Hood, pushed up the Warrenton Pike in reconnaissance and briefly engaged in the darkness with the Union troops under Porter, who reported to Pope that "the rest" of Lee's army had arrived. Pope ignored him.

August 31, 1862

79. The next day, Pope's corps commanders gathered at his headquarters at the corner of the Groveton Road and Warrenton Pike, a half-mile below the Railroad Cut.
80. Pope sought an immediate attack, but there was again a delay as the Union army reorganized and also brought up their guns.
81. Prior to the attack, the Union artillery shelled the woods around the Railroad Cut. There was no response. Pope assumed that the silence from the Confederates meant that Jackson had retreated to the north, leaving his defensive line. He ordered a general attack.
82. His assumption was wrong.
83. In fact, Jackson's men had been intentionally withdrawn from the Railroad Cut, in expectation of a Union cannonade. Instead, they waited in the hills just below the Bull Run. Once they saw that the Union divisions had crossed the Warrenton Pike, the rebels sprinted back to the Railroad Cut with their weapons. Clambering to the top of the Cut, they opened fire on the approaching Federals.
84. On the right of the Union line, the German-American⁴ troops under General Fritz Sigel were the first to hit Jackson's line, just as the day before. They were again stymied by infantry fire. Once again, the Germans fell back with casualties.
85. The hardest fighting took place on the Confederate right, nearer to Groveton, where Porter's corps was attacking the division of Ewell, now under Isaac Trimble.
86. Porter's troops were veterans who had fought well at the Seven Days, causing thousands of rebel casualties while fighting from defensive positions.

⁴ These Union troops consisted of immigrants from Prussia and the German Confederation who had immigrated to the U.S. after the unsuccessful revolutions of 1848.

87. Today the tables were turned. Porter's men had to cross the Warrenton Pike, then turn left and cross Groveton Road (today's Featherbed Lane) to reach the right wing of Jackson's Army, which was posted on an embankment, or "Raised Cut," built for the railroad line.
88. Prior to the attack, Union sharpshooters came across Groveton Lane, laying down in the meadow underneath the Raised Cut and picking off Confederates who raised their heads above the natural barrier. A few minutes later, Porter's men came down Groveton Road, then turned northwest towards the Railroad. They began to ascend the hill.
89. The fighting here was some of the heaviest of the War. Confederates poured fire down on the Union infantry, primarily New Yorkers, who came sweating up the hill, still wearing their dark blue jackets in the late August heat.
90. One Union officer on horseback actually made it to the top of the Cut, his form a frozen tableau against the summer sky, before he was cut down by a Confederate volley.
91. A hundred yards from the top of the Raised Cut, the New Yorkers crashed into the remnants of the Stonewall Brigade, and the two sides traded volleys at point blank range. Running out of ammunition, the rebels threw rocks at the Northerners to stop their advance.
92. Around 4:00 pm, the Confederate line was about to break. General Lee was standing on Dogan's Ridge next to Longstreet, when he received a dispatch from Jackson asking for assistance. Lee nodded to Longstreet, who finally instructed his artillery to fire.
93. The Confederate guns fired north across the battlefield, covering a range of nearly a mile. Their cannonballs tore into the ranks for Porter's supporting infantry moving forward to finish off the Confederates in the Raised Cut. Stunned by the crossfire, the Union soldiers fell back across the Warrenton Pike.

94. Recognizing that support was not coming, the Federal infantry along the Raised Cut began to scramble back to safety. Others threw down their rifles and were captured.
95. As the Union Army fell back, Longstreet's corps moved forward on both sides of the Warrenton Pike, with five divisions massed over a one-mile front. They swept away the regiments on Pope's left flank and moved directly into the Union rear.
96. Moving east at rapid speed, Longstreet's divisions cleared Chinn Ridge, where the Federal artillery had been posted, and surged towards the Stone Bridge, intending to cut off Pope's army from its escape route to Fairfax County.
97. On Henry House Hill, there was a confused fight that went late into the evening. The Union troops did not panic but fought well. In particular, King's division and Phil Kearney's division, also Seven Days veterans, held off Longstreet for several critical hours, allowing the bulk of Pope's army to cross the Stone Bridge and retreat east into Fairfax.
98. That night, at his new headquarters in Centreville, Pope composed a dispatch to President Lincoln in which he admitted defeat. Shortly thereafter, his army would be folded back into the Army of the Potomac and command returned to General McLellan. Henceforth, the Union Army on this front would only be known as "the Army of the Potomac."

Immediate Aftermath of the Battle

99. The next day, September 1, Jackson's men attacked the Union army at the battle of Ox Hill, near the site of the current Fairfax County Government Center. After an hour of confused fighting in a driving rainstorm, the Union army held off the Confederates.

100. It came at a heavy cost: two Union generals, Phil Kearney and Isaac Stevens, were killed in the fight at Ox Hill (also known as “the Battle of Chantilly”). The former was one of the most celebrated Union officers of the War.⁵
101. Still numbering their losses and collecting their wounded from the Manassas battlefield, the Union army completed its retreat to Fairfax Courthouse, then eventually retreated back to the fortifications defending Washington D.C.
102. Lee’s Army of Northern Virginia followed the retreating Federals, reaching the small hamlet of “Germantown,” a mile west of the Fairfax Courthouse.
103. At the road there (today known as “Jermantown Road”), General Lee turned his army to the north and began the invasion which would eventually lead to the battle of Antietam on September 13, 1862 and then Lee’s eventual retreat to Virginia – after which Lincoln would announce the Emancipation Proclamation, which formally ended slavery in the seceding states.

Postwar African American History in and Around the Properties

104. History in the rezoned area did not end with the Civil War.
105. In the Historical Commission’s review of the Applicants’ proffers dated around August 15, 2022, it recognized that land within the proposed Digital Gateway, contains cultural resources significant to not only Prince William County, but also the history of Virginia and the greater story of the United States.
106. In an October 2022 letter sent to the Board from Chairman Kim Brace, the Prince William County Historical Commission affirmed that they would “oppose any development on the entire area south of Little Bull Run and on the area between Sudley

⁵ Upon learning that their leader had died in action, the Michiganders in Kearney’s original command “wept unashamedly,” according to their regimental history.

Road and the unnamed tributary of Lick Branch.” They cited oft-repeated concerns about the visual and auditory impacts of the proposed data centers as well as their associated substations and transmission lines. The Historical Commission also affirmed the historic relevance of the area, not only for the Civil War, but also for the lesser-known history of free Black communities in the postwar landscape. See October 22, 2022 Letter to Board from Historical Commission attached hereto as **Exhibit K**.

107. Unsurprisingly, African Americans faced discrimination in the late 19th century, and could not purchase land in towns. Instead, they were pushed out into rural areas, where they established freedman “settlements.” These settlements were created to help the community build wealth for the first time and were crucial to the formation of Black education and identity following the end of slavery.
108. One such settlement was established along Thornton Drive, between Catharpin Road and Pageland Lane. The Thornton School was built on the corner of Pageland Lane and Thornton Drive to serve this community. The community was established by formerly enslaved people who moved off the plantations after the Civil War, and both Free Black and Native American populations called the area home. The Thornton Drive Free Slave Settlement would grow to have over 600 residents by the time of the 1900 census.
109. The northeast corner of the Digital Gateway is also on a site of historical significance. The area, once known as Marble Hill/Flat Iron, is full of oddly-shaped parcels of land—likely evidence of a freed slave settlement. The land was probably broken off from neighboring Marble Hill farm to sell to new settlement members/formally enslaved people. Today, the only known remnants of the former Marble Hill plantation are the

Marble Hill Slave Cemetery and the Cushing family cemetery at Marble Hill. The original home on the property burned down many years ago.

110. Marble Hill was once home to Jennie Dean, a woman who rose from enslavement to become an advocate for education and religion in the free Black community of Prince William County. Jane Serepta “Jennie” Dean (1852-1913) was born into slavery at Marble Hill plantation. In 1893, Dean founded the Manassas Industrial School, which for four decades was the only institution of secondary education available to African Americans in Northern Virginia. She is buried in the Mount Calvary Baptist Church Cemetery. The church is located on the site of an earlier, log-cabin church that Dean herself founded, and it most likely served as an anchor of a post-Civil war freedman settlement.
111. The proposed Digital Gateway will also significantly impact the Sudley Springs/Mount Cavalry area as it will affect the historic viewshed and diminish the impact of this important area and the stories it still can tell.
112. In a July letter to the Prince William County Planning Office, Superintendent Kristofer Butcher of the Manassas Battlefield National Park, National Park Service (“NPS”), wrote that “Perhaps the singularly most important resource contained within and around the project area is the presence of the post-Civil War settlement community of African Americans like the Dean family.” The legacies of these reconstruction-era Black communities live on through things like surviving vernacular structures, historic road traces, archeological sites, and potential family cemeteries. *See* National Park Service July 24, 2023 Letter attached hereto as **Exhibit L**.
113. Despite their historic value, Butcher stated that these resources were “not properly assessed through the evaluations provided in the application due to the nature of resources

associated with historically marginalized communities,” and stressed the need for a Cultural Landscape Report before further consideration of development on the site.

Graves and Graveyards

114. In assessing the consolidated rezonings, the County Planning Staff Report further states that the Properties contain *19 archaeological sites and 32 architectural sites* as well as an unknown number of graves and graveyards. *See* Compass November 8, 2023 Staff Report, pp. 38-46.
115. In fact, across the Properties there are at least seven (7) *known* cemeteries including the Settle Cemetery, Davis Cemetery, Marble Hill Slave Cemetery, Haislip Cemetery, Pattie Cemetery, Jennie Dean Burial Site, and the Phillips Cemetery. *See* Historical Places Maps attached hereto as **Exhibit M**.
116. It is also assumed that somewhere within Land Bay 6 of the Compass project, or elsewhere, there are burial places for Confederate Soldiers. Exh. A, Proffer, p. 8. As a result of the likely discovery of additional graves, the Applicants agreed to establish plans for the “Reinternment of Human Remains. Exh. A, Proffer, p. 8; Exh. B, Proffer, pp. 14-15; Exh. C, Proffer, pp. 14-15.
117. Even with the agreements of the Applicants to preserve the existing cemeteries, the estimated (though in no way binding) locations of datacenters in the Master Corridor Plan show the datacenter right next to or almost surrounding these graveyards. Exh. M, pp. 3-14.
118. The significant historical resources on the Properties led to unusual event of the National Park Service sending a letter to the Board dated July 24, 2023 in which it cites

numerous locations on the properties that meet the requirements to be registered as historical places. Exh. L.

Further Historical Resources on the Properties

119. In its October 22, 2022 letter, the Historical Commission cited both the extensive African American historical, cultural, and potential archaeological sites on the Properties, but also listed other important historical places and events that took place on the Properties. See Exh. K, pp. 1-2.

120. Regarding the Battle of Second Manassas, the Historical Commission noted the following:

“The area south of Little Bull Run is in the Manassas Battlefield Historic District (76-0271) and is listed on the National Register of Historic Places and the Virginia Landmarks Register and any construction will destroy this resource.

The area south of Little Bull Run was area mapped by the American Battlefield Protection Program, a division of the National Park Service, as Battlefield Study Area and portions were mapped as Battlefield Core Area.

During the Second Battle of Manassas, on August 28 and August 29, 1862, conservative estimates range from 5,000 – 5,500 troops on Pageland. Until the arrival of James Longstreet's "Right Wing" of the Army of Northern Virginia late on the morning of August 29, Jubal Early's and Henry Forno's (Hays') brigades of Lawton's (Ewell's) Division held down Jackson's extreme right flank at (west) Pageland.

The Marsteller house, located south of Little Bull Run, was used as a Confederate field hospital, and it is believed the Cross home, east of Pageland and south of Little Rull Run, served as a Confederate field hospital during the Second Battle of Manassas;

North of Manassas Battlefield National Park and east of Pageland, from August 28 – August 30, 1862, conservative estimates indicate 2,000 – 4,000 troops were stationed;

There is high potential for unmarked burials from the Civil War. Historical research show Confederate infantry units camped at Pageland, from August 1861 to November 1861, **where between 374 – 476+ soldiers died from measles and were buried at Pageland.”** *Id.*

Attempts to Preserve the Properties

121. In the 1930s, the federal government began to take interest in protecting the Manassas Battlefield, acquiring several key properties associated with the struggles of 1861 and 1862. In 1940, Congress created Manassas National Battlefield Park, composed of more than 1600 acres of battlefield encompassing parts of the First and Second Battles of Manassas. In 1966, in the wake of the Civil War Centennial, 4,522 acres of the battlefield were added to the National Register of Historic Places. In 1988, Congress expanded the park boundaries to include potentially include 5,071 acres.
122. In the late 1980s, a landowner proposed to develop nearly 600 acres of the Manassas Battlefield, including 29 acres then known as the “Stuart’s Hill Tract” and lying at the intersection of Route 29 and Pageland Lane and now located in the northwest corner of Manassas National Battlefield Park, for a mixed-use development. *See* U.S. Nat’l Park Service, American Battlefield Protection Program, Profiles of America’s Most Threatened Civil War Battlefields (1998) at v–vi, attached hereto as **Exhibit N**.
123. The Stuart’s Hill Tract “was the site of Robert E. Lee’s headquarters during the Second Battle of Manassas.” U.S. Nat’l Park Service, Brawner Farmstead Cultural Landscape, <https://www.nps.gov/articles/600182.htm#4/34.42/-98.48>.
124. In response and to preserve this historic site, the National Park Service (“NPS”) acquired, by eminent domain, the Stuart Hill Tract in 1988 along with the remaining proposed development area at a cost of \$120 million. *See* Exh. N at vi.
125. Because of national concern over the increasing loss of Civil War battlefield sites, the U.S. Congress established the Civil War Sites Advisory Commission (the “CWSAC”) in 1990 to identify the nation’s historically significant Civil War sites, assess their condition and “recommend alternatives for preserving and interpreting them.” *See* “Civil

War Sites Study Act of 1990,” Pub. L. No. 101-628, Title XII Sections 1201-1210, 104 Stat. 4469, 4503–07 (Nov. 28, 1990).

126. At the same time, the U.S. Secretary of the Interior also created the American Battlefield Protection Foundation to serve as nonprofit partner to NPS to protect battlefield land whose preservation was of highest priority. The American Battlefield Protections Foundation eventually became the American Battlefield Trust.
127. In a 1993 report produced by the CWSAC entitled “The Report on the National Civil War Battlefields,” the CWSAC reviewed all 10,500 military actions of the American Civil War to prioritize the actions and sites according to historic significance and preservation priority and selected only 384 sites as worthy of preservation. *See* Civil War Sites Advisory Commission, Report on the Nation’s Civil War Battlefields (1993) (the “CWSAC Report”), relevant portions attached hereto as **Exhibit O**.
128. The CWSAC Report identified the Second Manassas Battlefield as a Priority I, Class A battlefield from among the 384 sites selected and among those sites with the most critical need for coordinated nationwide action. Exh. O.
129. The CWSAC Report additionally identified the land proposed for the Digital Gateway as within the historic boundaries of the Second Manassas Battlefield, a conclusion that was reaffirmed in a 2009 update produced by the National Park Service. *See* relevant portions of 2009 CWSAC Update attached hereto as **Exhibit P** (with added circle in red of the general area of the proposed Digital Gateway).
130. The passage of time and the rise of developmental pressures has made preservation of the Manassas Battlefield only more critical.

131. Since 2009, the Trust has taken additional efforts and expended substantial additional resources to preserve the Manassas Battlefield, much of which still lies outside the Manassas Battlefield National Park or is otherwise unprotected from development.
132. Among those steps taken by the Trust are the acquisition and preservation of land for their historical connection to the engagements during First and Second Manassas, land that is contiguous, or proximate, to the Properties proposed for development.
133. This land includes nearly 170 acres of land acquired by the Trust at the cost of \$500,000, that lies within the battlefield core area of the Manassas II Battlefield designated by the CWSAC, part of what was once the “Rock Hill Farm” owned by John Cross (“Rock Hill Farm”).
134. Rock Hill Farm, bearing GPIN 7498-87-0402, 7498-96-2370, and 7498-75-5154, is believed to have been used as (i) a staging area for Confederate reserves, (ii) a Confederate field hospital for Jackson’s forces during the Battle of Second Manassas and (iii) the final resting place of those who died at the field hospital.
135. Rock Hill Farm is contiguous to portions of the Properties slated for development as the Digital Gateway and is also adjacent to the Manassas National Battlefield Park.
136. Rock Hill Farm has approximately 1,480 feet of frontage along Pageland Lane and another 812 feet of frontage along General Trimbles Lane. Portions of Rock Hill Farm are visible from these roads and from adjacent Manassas National Battlefield Park.
137. As the funding necessary to acquire Rock Hill Farm were provided by the American Battlefield Protection Program of the NPS, the Trust encumbered Rock Hill Farm with a Declaration of Restriction, preventing development of Rock Hill Farm.

138. The proposed development of the now largely unimproved Properties for use as part of the Digital Gateway, described more fully herein, threatens Rock Hill Farm with noise, dust, odor, and light pollution; a dramatic increase in traffic; and permanent viewshed impacts. All of these harms flow to Rock Hill Farm from the construction of dozens of towering data centers and supporting transportation and electric infrastructure, which would permanently diminish the historical and preservation value of Rock Hill Farm to the Trust particularly and to the Nation generally.

**A Brief History of the Digital Gateway
The (Inevitable) Rise of the Data Storage Industry**

139. The threat to the Battlefield and the natural and cultural resources it represents arises from a little known aspect of 21st century computing technology.

140. For most of history, concerns of storage space were purely physical. Cumbersome file cabinets, dusty library stacks, and vast archival labyrinths preserving memories. Today, modern people still have loads of things to be stored, they are (supposedly) out of sight now—filed away in one of the world’s many data centers.

141. Cloud computing, content creation, and the artificial intelligence (“AI”) revolution have driven a 49x increase in data creation and consumption over the last decade, according to Blackstone. AI in particular has been a tremendous driver for data center demand, as businesses across the world race to incorporate this fast-evolving technology into their strategies. In order to capitalize on demand, data center companies are furiously building facilities in high-traffic areas.

142. In the first half of 2023, North America saw a record for data center construction, as hyper-scalers like Amazon and Google spent billions of dollars to build their own data centers in Virginia and elsewhere.

Focusing on Northern Virginia

143. According to real estate firm JLL's annual data center report, Northern Virginia is the biggest data center market in the world. It encompasses almost 50% of the data centers in the United States and more than 20% of all hyperscale data centers worldwide. Going forward, the number of data centers in Virginia is expected to **double** by 2028, due to demand as explained *infra*.
144. Northern Virginia is an attractive host to data center companies for a number of reasons. First, the Commonwealth has a reputation for being "business-friendly" compared to other neighboring jurisdictions. (For example, Virginia state law includes a sales tax exemption for data center equipment including servers, generators, chillers and server-related equipment, which exceeds over \$100 million in annual lost revenue).
145. Second, Northern Virginia has also been home to telecom giants since the 1990s, enabling a dense enterprise ecosystem, network connectivity infrastructure, and service provider capabilities. In the 2000s, as demand for data centers began to take off, Virginia's established market offered low risk and stability.
146. Third, those who build in Virginia also enjoy access to America's largest data center workforce. AWS has offered a "cloud associate" degree with Northern Virginia Community College since 2018, a first for the company. There is also a nearby international airport (Dulles) and other nearby support systems, such as Amazon's HQ2 National Landing.
147. By definition, data centers are a high-intensity use which demand local zoning approval before they can be constructed. As a result, there is a non-stop balancing of costs and revenues which demand strict zoning scrutiny.

148. On their face, data centers bring in big tax revenue without having to provide many additional local services. Due to their lower levels of employees, data centers put fewer additional cars on the road than similarly capital-intensive investments. They also generally do not stress growth in schools or put substantial additional strain on police and fire departments.
149. However, data centers impose numerous other costs and strains, including on the electricity grid and the rate payers who must build capacity to meet their fast-growing demand. *See* Adam Cowle-Haskell, Duke University Fuqua School of Business (Jan. 4, 2024) ,<https://centers.fuqua.duke.edu/edge/2024/01/04/data-center-growth-threatens-virginias-clean-energy-future-its-not-too-late-to-fix-it/>.
150. In sum, localities face extraordinary temptation to approve data center development wherever it is proposed, internalizing the benefit of increased tax revenue while externalizing to those in the immediate vicinity, including the Petitioners here, the unique private harms flowing from data center construction and operation. That is why state law and zoning laws must be rigorously applied.

The Digital Gateway along Pageland Lane

151. In 2020-2021, a number of landowners along Pageland Lane in Prince William County banded together to submit a request to change the designation of their properties in the Comprehensive Plan from agricultural to technology, in order to promote the Prince William Digital Gateway.
152. Data center developers Compass and QTS jumped onto the opportunity. They saw an opportunity as much of the area sits under or adjacent to existing high-voltage electric transmission lines and fiber optic corridors.

153. The proposal, which was named the Prince William Digital Gateway, was unprecedented in scale: 27.6 million square feet of data centers on 2,100 acres, the equivalent of 144 Walmart Supercenters. All on rural land sitting adjacent to Manassas National Battlefield Park, the very location where the Army of the Potomac and the Army of Northern Virginia faced off in August 1862.

Environmental Consequences of the Digital Gateway

154. The proponents of the Digital Gateway along Pageland Lane all seek to sell their land and then depart with the proceeds, which can approach \$1.0 million per acre, multiples of their assessed values.

155. The environmental consequences to those left behind are severe.

156. Those who live close to existing data centers in Loudoun have complained about the 60-decibel noise of the data centers' constantly whirring fans.⁶ There is additional concern of low-frequency sounds, which cannot be measured by decibels. Low-frequency sounds travel long distances and are not absorbed by air molecules like high-frequency sound. The constant low-frequency hum of a data center has the potential to reduce cognitive ability, disrupt sleep, and contribute to heart problems and high blood pressure. It can also harm wildlife ecology; studies show that it only takes 40 decibels to disrupt communication within a species.

157. Then there is the loss of natural forest. For example, the developer QTS justified the reduced open space in the Digital Gateway is necessitated by other County policies calling for "a technology corridor and other economic development objectives." Instead, QTS proposed 30.8% reforested "protected open space," which ignored that Prince

⁶ More than forty complaints about data center noise have been officially made in Loudoun County.

William County's approved CPA already called for 30% natural open space. This departure has drawn the objection of groups like the Virginia Department of Forestry, which seek to preserve naturally wooded areas.

Impact on Water

158. Based on Service Authority records for 25 operational data centers in Prince William County, the *average* daily water consumption of a single data center building is about 18,000 gallons per day, while the *maximum* day consumption being about 88,000 gallons per day. Currently, the combined water consumption of the operational data centers in Prince William County accounts for about 1.5% of the Service Authority's average-day demand and about 3.9% of the Service Authority's maximum-day demand. *See* Prince William County Comprehensive Plan Amendment #CPA2021-00004 FAQ (Frequently Asked Questions. PW Digital Gateway.03.28.pdf (pwcva.gov)).
159. The identical "Data Center Cooling" proffer proposed for both the Digital Gateway North and the Digital Gateway South projects are supposed to ensure that the applicant would utilize air or closed-loop cooling systems to help mitigate the data centers' impacts on local and regional water supply resources. However, the November 8, 2023 Prince William County planning staff reports flagged problems with the ambiguity the prior version of this proffer created by also allowing the applicant to use "other similar technology."
160. What about wastewater discharge? In August of 2022, Prince William supervisors voted 5-0 to participate in a regional study of the effects of the Digital Gateway and other development on the reservoir. However, the supervisors failed to review the effects of the study before giving the go-ahead to the development. This was despite the urging of

Fairfax Water to study the impacts from the development on drinking water supplied by the Occoquan watershed. While more closely associated with evaporative cooling systems, blowdown (such as calcium, magnesium, chloride, and silica) can still be a factor in closed loop systems.

Energy Usage

161. Data centers consume vast amounts of energy. Currently, the 102 data centers in Northern Virginia require more energy than the entire city of Seattle. By 2038, anticipated electric demand for data centers in Virginia will be 13 gigawatts, roughly the equivalent of powering about 13.3 million homes – or equivalent to three times Virginia’s current population. *See* Issie Lapowsky, “Inside AI’s Giant Land Grab,” *Business Insider* (<https://www.businessinsider.com/ai-data-centers-land-grab-google-meta-openai-amazon-2023> 12#:~:text=In%20the%20process%2C%20data%20centers,energy%2C%20has%20accelerated%20the%20boom)
162. Dominion Energy is predicting that electricity demands in their service area will nearly double in the next 15 years—attributed primarily to data centers. Furthermore, Dominion also predicts that in 25 years, its carbon emissions will be 65% higher than they were expecting two years ago, despite shifting to renewable resources. *Id.*
163. The regional energy grid is now faced with the increasing power demands of the data centers, combined with decommissioning of fossil-fuel plants, as required by the 2020 Virginia Clean Economy Act (“the VCEA”). Virginia’s renewable energy sector is also not innovating fast enough to meet this explosive energy demand.

164. To keep up with the soaring power demands of data centers, Dominion must rely on existing natural gas and coal power sources once slated for closure. Fossil fuels must be brought in from places like West Virginia and Pennsylvania. This will negate Dominion’s ability to meet its legally mandated clean energy goals by 2045 and effectively nullify the VCEA. Additionally, by being sited in more developed areas, like Prince William County, data centers cannot avail themselves of opportunities to co-locate with renewable energy sites, such as wind or solar farms, further increasing their reliance on fossil fuels.

165. Companies that own data centers have been top purchasers of clean energy worldwide. However, the industry isn’t contributing enough to offset its use of fossil fuel energy, which is why these new power lines will be used to bring in “dirty energy.”

166. Indeed, the booming data center sector requires mirrored growth in generation and transmission. So, despite the Digital Gateway’s primary justification being the *existing* transmission lines, the new data centers will require even more transmission lines and substations not yet identified and will require vastly more power generation.

The Data Center Opportunity Zone Overlay District

167. On May 16, 2021, in order to contain data center growth, the Board established the “Data Center Opportunity Zone Overlay District”(“DCOZOD”) through the passage of Ord. 16-21. Significantly, the Digital Gateway Area was not included at that time.

168. The expressed purpose of the DCOZOD was to promote the development of data centers within areas of the County **where there is existing infrastructure that could adequately support the proposed use...while limiting negative impacts to communities.**” Code of Ord. § 32-509.01 (Emphasis added); Ord. 16-21.

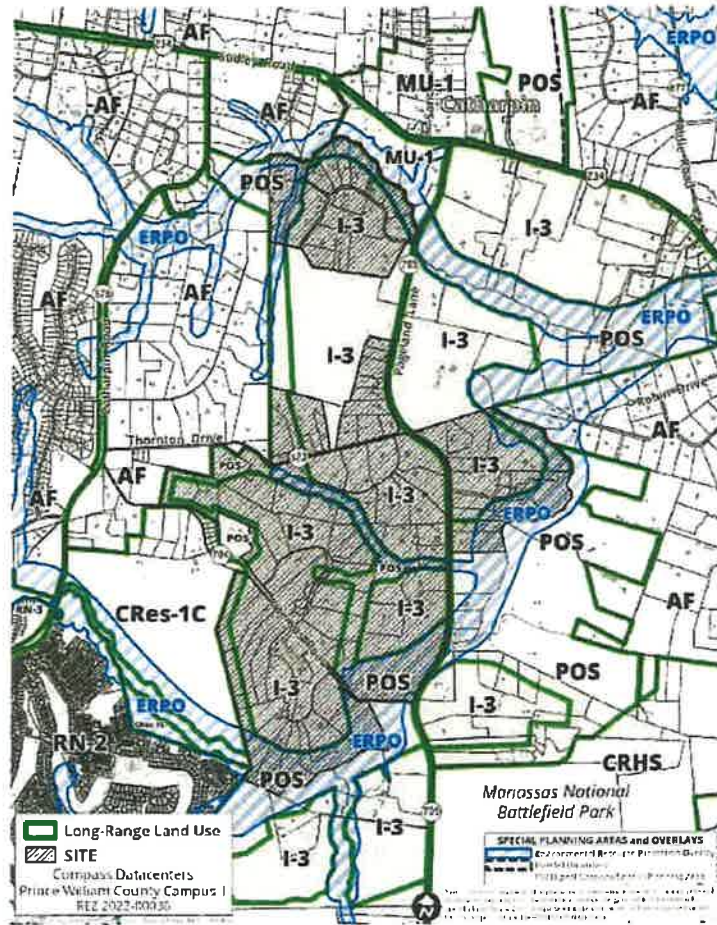
169. The DCOZOD is a result of the County's efforts to balance the preservation of residential areas and the potential revenue of data centers by ensuring those data centers are allowed only in industrial corridors.
170. The ordinances state, without equivocation, that data centers "**shall be prohibited**" in agricultural and residential districts. Code of Ord. § 32-509.06
171. On March 2, 2021, the Board, via Directive (DIR) 21-20, requested that planning staff bring forward recommendations to expand and change the DCOZOD to reflect increased infrastructure and new ways of developing data centers.
172. As the overlay district was running out of marketable land, the Board voted to open more than 2,000 acres for data center development use. The parcels of land today proposed for the Digital Gateway project were not among the parcels absorbed into the data center overlay.
173. In November 2022, for the first time, the Board did amend the Comprehensive Plan as stated *infra* to open up the possibility of data center development in the Rural Crescent, including along Pageland Lane.
174. The area of the Manassas Battlefield has always been a site of contention, with the Civil War hosting the First and Second Battles of Manassas. The more recent battles have been a push to stop encroaching economic interests from ruining the land where thousands of Americans died. Many refer to a successful fight in the 1990s to site a new Disney World in Prince William County as the Third Battle of Manassas. Now, the Board's action has set the stage for this Fourth Battle of Manassas.

STATEMENT OF PRESENT-DAY FACTS

A Rural Corner of Prince William County

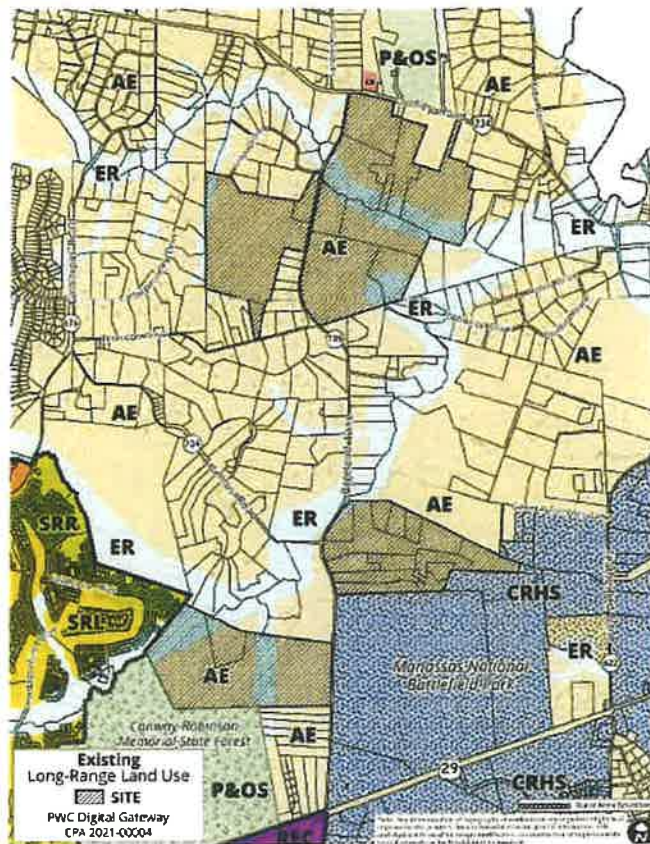
175. The land forming the Digital Gateway has traditionally been used for agricultural purposes as it is on the western slice of Prince William County, in what has historically been the County's Rural Crescent.
176. Prior to the passage of the Rezoning Ordinances, the Properties were zoned principally as A-1, for agricultural use, with a smattering of parcels zoned as SR-5 for low density residential properties where it is typically one home per 5 acres.
177. The purpose and intent of properties zoned as A-1 are set forth in Code of Ordinances § 32-301.01 as follows:
- “The A-1, Agricultural Zoning District is intended to implement the agricultural or estate classification of the Comprehensive Plan. The district is designed to encourage conservation and proper use of large tracts of real property in order to assure available sources of agricultural products, to assure open spaces within reach of concentrations of population, to conserve natural resources, prevent erosion, and protect the environment; and to assure adequate water supplies. The intent is to encourage private land owners to protect these values and thereby create an environment favorable for the continuation farming and other agricultural pursuits; to preserve prime agricultural land, forest land and/or open space; and to reduce the demand for costly public facilities and services that are inconsistent with the character of the rural areas within Prince William County.”
178. The A-1 district designation ensures that rural areas and their natural resources remain untouched and it is one of the least land-use intensive zoning classifications.
179. Similarly, the SR-5 is the least intensive of the residential districts and its purpose is “to encourage land owners to protect the environment, conserve natural resources and limit the type and density of development so that a harmonious relationship of land uses in the semi-rural area is ensured.” Code of Ord. § 32-302.21.
180. In addition to zoning, parts of the Properties are designated as POS, or parks and open spaces, and part of the property is designated as part of the Environmental Resource

Protection Overlay (or “ERPO”) where the Little Bull Run stream flows through on its way to the adjacent Conway Robinson State Forest. See Long Range Land Use Map, Exh. E, p. 17 (image below).



The Board Amends the Comprehensive Plan for the Property

181. Prior to 2021, the Properties were designated as either AE or ER on the County’s Comprehensive Plan. See July 20, 2021 Staff Report for Comprehensive Plan Amendment #CPA2021-00004, p. 17 (image below).



182. Properties designated on the long-range land use map as AE, or agricultural or estate, are designated as such in order to “protect existing agricultural lands, cultural resources, and open space, as well as other important rural environmental resources.”

Exh. K, p. 12.

183. Properties designated on the long-range land use map as ER, or environmental resource, are designated as such in order to “protect the sensitive nature of the identified resources.” Exh. K, p. 13.

184. On July 20, 2021, the Board passed Resolution No. 21-445, to initiate amending the long-range planning map (a/k/a “the Comprehensive Plan”) to redesignate some of the Properties to T/F, or technology/flex, in order to potentially set the stage for data

center development in the rural community. Res. No. 21-445 attached hereto as **Exhibit**

Q.

185. On December 21, 2021, the Applicants submitted a further request to amend the long-range land use map so as to rezone the entirety of the Digital Gateway property to the status of T/F.
186. On November 1, 2022, the Board would approve Resolution No. 22-508 as part of the Digital Gateway plan which redesignated the majority of the Digital Gateway property to T/F, with some parts designated as POS, for purposes of the Comprehensive Plan. *See* Res. No. 22-508 attached hereto as **Exhibit R** (attachments excluded).
187. The November 1, 2022 hearing would run over 14 ½ hours, 9 ½ hours of which consisted of public testimony overwhelmingly against Resolution No. 22-508 and the amendment of the long-range use map.
188. Board Chair Ann Wheeler, along with fellow Democratic supervisors Victor Angry, Andrea Bailey, Kenny Boddye, and Margaret Franklin, voted in favor of the county's comprehensive plan amendment. The Board's three Republicans voted against it. In a straight party line vote, the BOCS approved the largest industrial data center development in the world.⁷

⁷ This vote came as no surprise. Now Former Board Chair Ann Wheeler had been a vocal proponent of the Prince William Digital Gateway from the outset. Prior to her vote, a total of 6,209 registered voters in Prince William County had signed a petition to recall her over a claimed conflict of interest, as she owned stock in companies related to data centers. She would eventually lose her seat in a Democratic primary in June 2023 but would not leave office until December 31, 2023, mere weeks after pushing through the Rezoning Ordinances with a lame duck Board. Controversy also swirled around former supervisor Pete Candland, with a similar petition demanding his recall over conflict of interest, as he had contracted to sell his property for use in the Digital Gateway. He resigned his seat in 2022.

189. The approval of Res. No. 22-508 in November 2022 – along party lines – set the stage for the rezoning of the Properties sought by the Applicants.

**The Light Industrial and Office Classifications,
As Represented by the Rezoning:
What They Can (and Cannot) Do**

190. The Ordinances passed by the Board on December 13, 2023 (Ord. Nos. 23-57, 23-58, and 23-59) purport to rezone the Properties to a mix of M-2 (light industrial) and PBD using the O(H) (Office High-Rise District), O(M) (Office Mid-Rise), and O(F) (Office/Flex District) designations.

191. Data centers are permitted in M-2 districts as of right **only if the property in that district is also a part of the Data Center Opportunity Zone Overlay District (“DCOZOD”)**. Code of Ord. § 32-403.21(13). *See supra for history on DCOZOD.*

192. Otherwise, in an M-2 District outside of the DCOZOD, data centers are only permitted if accompanied by a Special Use Permit. Code of Ord. § 32-403.23(3).

193. The O(H), or Office High-Rise district, is “designed to provide areas for high-rise office and institutional uses” and “to permit the establishment of non-industrial and non-retail employment centers.” Code of Ord. § 32-402.20.

194. Data centers may only be developed by right on a property zoned O(H) when that property is “within the Data Center Opportunity Zone Overlay District” and, otherwise, **only by special use permit**. Code of Ord. §§ 32-402.21(6), 32-402.23(3).

195. The O(M), or Office Mid-Rise district, is designed for “mid-rise office and institutional uses, with limited scale supporting retail and service uses.” Code of Ord. § 32-402.30.

196. Data centers may only be developed by right on a property zoned O(M) when that property is “within the Data Center Opportunity Zone Overlay District” and, otherwise, **only by special use permit**. Code of Ord. §§ 32-402.31(6), 32-402.33(3).
197. The O(F), or office/flex district, is “designed to provide areas for research and development centers, office, institutional, and minimal impact industrial uses, with limited scale supporting retail and service uses.” Code of Ord. § 32-402.40.
198. Data centers may only be developed by right on a property zoned O(F) when that property is “within the Data Center Opportunity Zone Overlay District” and, otherwise, **only by special use permit**. Code of Ord. §§ 32-402.41(8), 32-402.43(3).
199. Significantly, the Properties are not part of the DCOZOD and, as such, **all of the new zones for the Properties must receive a special use permit in order to develop data centers on those properties** under the County Code of Ordinances.

State Laws on Zoning

200. The fundamental process of zoning and rezoning properties within a locality is defined by state law. *See* Va. Code § 15.2-2280 (“Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape, and size as it may deem best suited to carry out the purposes of this article.”).
201. The Virginia Code further states that “[a]ll zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district.” Va. Code § 15.2-2282.
202. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

203. More specifically, Virginia law requires that zoning ordinances give due consideration to a number of factors, including: facilitating “the creation of a convenient, attractive and harmonious community,” “to provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment,” and to “promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the planning district.” *Id.*
204. The Commonwealth’s statutory law also requires that “[z]oning ordinances and districts shall be drawn and applied with *reasonable consideration for the existing use and character of the property*” in addition to other considerations.” Va. Code § 15.2-2284 (Emphasis added).
205. The Virginia Code further states that “Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall publish a notice as required by § 15.2-2204, after which the governing body may make appropriate changes or corrections in the ordinance or proposed amendment. However, no land may be zoned to a more intensive use classification than was contained in the documentation made available for examination pursuant to subsection A of § 15.2-2204.” See Va. Code § 15.2-2285(C).
206. In terms of notice, Va. Code § 15.2-2204(A) requires that the Board not “adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality, with the first notice appearing no more than 14 days before the intended adoption... with not less than six days elapsing between the first and second publication.”

207. In addition, “[a]ny ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.” Va. Code § 1-248.

208. The Constitution of the Commonwealth of Virginia states that it “shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.” Va. Const., Art. XI, § 1

209. These purposes and requirements of state law, as well as the Constitution, are also incorporated into the Prince William County Code. *See* Code of Ord. § 32-200.01 *et seq*

Local Requirements for Rezoning and Special Use Permits

210. In addition to defining uses in zoning categories like M-2 and the Office Districts, the County Code of Ordinances has particular requirements for Board approval of the following: a rezoning, changes to the Comprehensive Plan, and issuing special use permits. *See* Code of Ord. § 32-700.01 *et seq*. These ordinances both grant and limit the Board’s authority on zoning matters, including the process by which they are considered.

211. In general, changes to zoning or the legal status of properties must be approved by the Board and are evaluated in the context of “the public necessity, convenience, general welfare or [what] good zoning practice require[s].” Code of Ord. § 32-700.01, 32-700.02.

212. Submissions by Landowners related to changes to a property are required to be submitted with certain documentation, including but not limited to: (i) an application form, (ii) a general development plan, (iii) names and addresses of all property owners

within 500 feet (or 1,320 feet if changes to maximum height are proposed) of the property, and (iv) historical records for the property. Code of Ord. § 32-700.20.

213. A general development plan submitted as part of an application must include a schematic land use plan that includes “the location of all buildings and other structures” as well as a sufficiently detailed written statement. Code of Ord. § 32-700.21.

214. In addition, Code of Ord. § 32-700.41 states that “[i]n the application for a zoning map amendment, the review shall include an examination of the applicant’s proffer statement” and “[n]o substantial change shall be made in any proffered condition after the public hearing commences before the Board of County Supervisors, unless it is **readvertised** in accordance with the provisions of this chapter.” (Emphasis added).

215. The Code of Ordinance also requires that the Commission “shall hold at least one (but may hold more than one) public hearing on all text and map amendments.” Code of Ord. § 32-700.42(1). Following the amendment of a map or text and “following the planning commission’s recommendation on an Amendment, the Board of County Supervisors shall hold at least one (but may hold more than one) public hearing on such amendment with notice given in accordance with the provisions of this chapter.” Code of Ord. § 32-700.43(1).

216. Significantly, “[o]nce notice of a public hearing before the Board of County Supervisors on an amendment is given in accordance with the provisions of this chapter, the applicant may make a substantial change in his application **only if the application is referred back to the planning commission** for further consideration and recommendation.” Code of Ord. § 32-700.43(3) (Emphasis added).

217. The Code of Ordinances states that, before there is a public hearing before the Board, notice as required by Code of Ord. § 32-700.60 must be given. Specifically, the ordinances require that notice “shall be published once a week for two successive weeks (with not less than six days elapsing between the first and second publication)” and the hearing date “shall be held not less than 5 days nor more than 21 days after the second advertisement shall have appeared.” Code of Ord. § 32-700.50(1).
218. In the event a special use permit (“SUP”) is required, the applicant must submit an application along with the information and documents specified in Code of Ord. § 32-700.50(3).
219. In the event that an applicant is seeking waivers of “specific development standards of the subdivision ordinance, this chapter or the requirements of the Design and Construction Standards Manual” must: 1) “provide written justification of for all proposed waivers or modifications,” 2) “the applicant shall propose an alternative or modified approach to fulfill the intent of the standard being waived or modified,” 3) “all modifications or waivers must demonstrate that the alternative proposal fulfills or exceeds the intent and purpose of the regulation being modified or the comprehensive plan,” and 4) “the approval of any waiver or modification requests shall be reflected in the approved rezoning.” Code of Ord. § 32-700.25.
220. While the Board is granted broad powers by the Code of Ordinances, **there is no provision which grants them the power to waive the need for a special use permit.** Instead, their power to modify requirements is limited to waiver of specific design limitations for a given zoning district.

221. When considering a SUP application, the Commission and the Board are required to look at a number of factors, including the impact of noise, light, and traffic; the character of the existing area; the designation of the property on the Comprehensive Plan; and the ensuing effects on public, health, safety, and welfare.⁸ Code of Ord. § 32-700.54.

The Current State of the Property

222. Presently, the Properties subject to the rezoning are an idyllic rural area with sparse housing and a great deal of open space.
223. The Properties are bounded by agricultural land, lightly populated residential land, and consequential parkland and historic land.
224. As described in detail *supra*, the Properties directly bound the historic Manassas Battlefield to the south.
225. Also, it is notable that the Little Bull Run flows diagonally across the Properties and into the Conway Robinson State Forest which abuts the property to the southwest.
226. The Properties also touch the Catharpin Regional Park, a major recreational area, to the north.
227. The Properties are themselves home to significant natural bounty as well as notable historic places.
228. These include multiple graveyards, the site of a Confederate Field Hospital from the Battle of Second Manassas where numerous soldiers are buried, multiple historic

⁸ Further, the Board can attach conditions to the approval of a SUP, including an expiration date for the SUP. Code of Ord. § 32-700.55. Also, even an approved SUP comes with additional requirements for the permittee and additional oversight by the Board. Code of Ord. §§ 32-700.56, 32-700.57, 32-700.58, 32-700.59.

households of former enslaved, along with unique burial grounds, and other potential archeological dig sites.

Here Comes the Digital Gateway, Like it or Not

229. Prior to the Applicants seeking the amendment of the long-range land use map, as discussed *supra*, and their subsequent filing of their rezoning Applications, the Properties were indistinguishable from other rural agricultural lands that used to define the area.
230. This land was zoned as A-1, meaning that the County recognized the rural character of the land and meant to preserve that character and the land's historic and environmental bounties.
231. In early 2023, the Applicants filed applications with Prince William County to change the Properties from the rare island of rural living in Northern Virginia into a dystopian hellscape.
232. In essence, the Applicants seek to transform the Properties from the below idyllic rural area (see maps on next page)



Into this...



233. The above comparison images show the scale of the proposed buildings as compared with the residential neighborhoods lying to the southwest, where a single data center building would dwarf an entire street holding dozens of homes. This also shows the likely haphazard arrangement of buildings crammed into the Properties without consideration of aesthetics but just measured in dollars per square foot.

**The Digital Gateway Rezonings are Reviewed (and Rejected)
by the Staff and the Planning Commission**

234. Sometime in early to mid-2023, the Digital Gateway plans were broken into its three component parts -- Compass, DG South, and DG North -- and began wending their way simultaneously through the zoning process.⁹

235. Timing became a factor in the summer of 2023 as certain proponents of the data centers, namely Chair Ann Wheeler, lost their re-election bids to Digital Gateway opponents and thus became a “lame duck” Board attempting to accelerate the approval process before they left office at the end of 2023.

236. On November 8, 2023, that process would bring these projects before the Prince William County Planning Commission.

237. Prior to that hearing, the Planning Office Staff (the “Staff) reviewed the Applications as they then existed and recommended denial of all three of the Applications in no uncertain terms. *See* Compass November 8, 2023 Staff Report; DG South November 8, 2023 Staff Report; DG North November 8, 2023 Staff Report. The

⁹ For a time in 2023, the project was forestalled when the Applicants lost control of certain parcels and had to sue the landowners in Federal court to regain control. *GW Acquisition Co., LLC v. Pageland Limited Liability Company, et al.*, Case No. 1:23-cv-01207-LMB-WEF.

Staff summarized their reasons for recommending denial in the Compass November 8, 2023 Staff Report, pp. 6-9 as follows:

“Lack of Building Footprint and Site Layout: The Master Zoning Plan (MZP) does not provide site layouts consistent with the information required for an MZP under Sections 32-280.02, 32-700.23, and 32-700.21 of the Zoning Ordinance, which requires the location of all buildings and other structures, the proposed plan for all major sanitary sewers, water systems and storm water management and drainage improvements. The proposal is not consistent with the Comprehensive Plan, nor the CPA policies, that encourage the depiction of site layouts for rezonings and special use permits. Currently the Master Corridor Plan (MCP) is proffered to general conformance with respect to i) the general orientation of the buildings ii) the general locations of the points of access to each Land Bay, and iii) the extent of the limits of disturbance within each Land Bay. Proffered site layouts and building footprints are important for this project because the viewshed analysis is predicated on the proposed height and proposed building locations as they are depicted on the MCP. In this instance, the building locations and the site layouts depicted in the MCP are for illustrative purposes. As such, the Applicant provides no assurances that the buildings will be located in these specific locations and layouts as depicted on the MCP. Without proffered site layouts that depict building footprints, the County is provided less assurances that the massing and scale of buildings, and resulting viewshed impacts presented in the viewshed study is what will result when the project is built out.

Lack of Proffered Elevations: The Applicant has not proffered elevations of the data center buildings. Staff encourages the Applicant to proffer to substantial conformance with the building elevations provided in the MCP. Without substantial conformance to the elevations, the design of the building may look different than what is shown in the elevations. Currently, the Applicant only proffers the “quality and character” of the architectural designs, whereas the CPA policy encourages colored architectural elevations for rezonings and special use permits. Without proffered elevations, the County is provided less assurances that what is being presented in the MCP for the building architecture will result when the project is built out.

Waiver of Special Use Permit (SUP) to Permit Data Centers Outside of the Data Center Opportunity Overlay District: Staff does not support the approval of this waiver because the Application is lacking building footprints, site layouts, and proffered elevations, and the SUP is the mechanism by which these specific details are typically provided. The equivalent level of detail has not been provided on the MZP. Additionally, the proffers provide uncertainty in the proposed buffers and supplemental landscaping, and the ability for the Planning Director and the Applicant to make substantial changes after the BOCS approval.

Height Modification: As proffered in Proffer 5B, the Applicant has the ability to increase the height up to 100 feet in Land Bays 1 through 5 with additional viewshed analysis that show that the heights do not result in substantially greater visibility of the data center buildings than that shown in the analysis submitted with the Application. Staff cannot support this modification as it effectively relegates a legislative action to an administrative action without the opportunity to receive public input.

Ability to Make Changes: As proffered, the Planning Director is permitted to approve changes to various proffered elements based on their own subjective decision. If the Planning Director or other County staff are approving changes, it should be based on clear, expressed, and objective criteria. Furthermore, as proffered, the Applicant is providing significant flexibility to make substantive changes to the project after BOCS approval. These include the following: Proffer 5, which provides the Applicant the ability to increase the height up to 100 feet in Land Bays 1 through 5 with additional viewshed analysis after approval by the BOCS; Proffer 6, which provides the Applicant significant flexibility with number of buildings, the building sizes, and the building layout/orientation after BOCS approval; Proffer 16, which permits the Director of Planning to approve changes to architecture, building material, and building colors; Proffer 22, which permits the Applicant to develop and modify the Development of the Master Landscape Plan outside of the conventional process that would allow for enforcement of a particular standard and with limited input from County staff; Proffer 33, which permits the Sustainability Officer to approve alternative sustainability measures that are being proffered and approved by the BOCS; Proffer 37, which permits staff to make a subjective decision related to the type of noise mitigation measures acceptable for the project; Proffer 38, which permits the Director of Planning to approve additional substations, change their location and size prior to the decision by the BOCS; Proffer 54, which permits the Director of Planning to approve extensions of time for proffer fulfillment and additional various proffers provide ultimate flexibility for the Applicant to modify the proposal after the BOCS approval.

Significant Flexibility in Landscaping: As proffered, the Applicant is providing significant flexibility to dictate what landscaping will be provided through the proffers associated with the Master Landscape Plan, proposed limits of disturbance, reforestation areas, buffers, tree save areas. Staff will have limited ability to evaluate this commitment against the goals of the Comprehensive Plan regarding landscaping.

Proposed Electric Infrastructure: Other than substation locations, no information is provided about the proposed location of the electrical infrastructure on the property that will serve the facilities in each land bay, such as transmission lines. Without this information, staff is not fully able to analyze the projects' impacts on the surrounding community, to include but not limited to impacts on viewsheds, proposed open space, proposed tree preservation areas, buffering, and site layout. By not including proposed transmission line corridors on the MZP, and as

proffered to provide maximum flexibility for the location of these utility lines, the Applicant may cause these transmission corridors to be located in areas identified to preserve forests and sensitive environmental resource, and the perimeter buffers required by the Design Construction Standard Manual (DCSM), and the supplemental landscaping areas shown on the MZP.

Inconsistencies with the Comprehensive Plan: The application is found to be inconsistent with the relevant components of the Community Design Plan, Cultural Resources Plan, Environment Plan, Transportation Plan, and Electrical Utilities Services plan in the Comprehensive Plan, and the Sustainability Focus Area of the PW Digital Gateway Study Area.

Proffers Issues/Deficiencies: As currently written, many of the proffers contain technical errors, are contradictory, and contain non-descript verbiage, that may make enforcement of some of the proffers difficult. Additionally, some of the proffers contain larger policy issues that staff is unable to support.

Outstanding 4th Review Comments: There are many unresolved issues with the following agencies (see Attachment G): Transportation Department, VDOT, Watershed Management, Parks and Recreation, Land Development, Manassas National Battlefield Park, Conway Robinson State Park, County Archaeologist and Cemetery Preservation Coordinator, and Historical Commission.”

238. The November 8, 2023 public hearing before the Planning Commission would end up being an astounding 23 hours long. Fourteen hours or more of that run time was devoted to public comments from over 200 citizens that were overwhelmingly opposed to the approval of the applications, for reasons ranging from environmental concerns to loss of viewshed and, of course, the impact on the County’s historic legacy.¹⁰

239. At the conclusion of the Planning Commission hearing, the Planning Commission issued Resolution Nos. 23-089, 23-090, and 23-091 which recommended denial of each of the Applications “for the reasons stated in the staff report.” See Exhs. H-J. The vote

¹⁰ As stated *infra*, the persons supporting the application were those landowners standing to make \$1.0 million per acre for selling their land. Notably, each was allowed to speak as “the applicant” while opponents of the project had their comments limited to “comments by the public.”

was especially significant in that the Planning Commission, the year before, had approved the amendment of the Comprehensive Plan.

**Proffer Amendments Made After
the November 8th Planning Commission Hearing**

240. Following the Planning Commission hearing – which recommended denial -- and in anticipation of the hearing before the Board, the Applicants made substantial changes to their respective proffers to address the many defects pointed out by both the Planning Commission as well as the Staff.

241. The Staff would review the Applicants' proffers dated both November 1, 2023 and November 28, 2023 (referred to as the 4th and 5th submittals, respectively) and again recommended denial of the applications. Specifically, the Staff summarized the remaining issues with the applications in Exh. E, pp. 6-10 as follows:

“Lack of Building Footprint and Site Layout: The Master Zoning Plan (MZP) does not provide site layouts consistent with the information required for an MZP under Sections 32-280.02, 32-700.23, and 32-700.21 of the Zoning Ordinance, which requires the location of all buildings and other structures, the proposed plan for all major sanitary sewers, water systems and storm water management and drainage improvements. The proposal is not consistent with the Comprehensive Plan, nor the CPA policies, that encourage the depiction of site layouts for rezonings and special use permits. Currently the Master Corridor Plan (MCP) is proffered to general conformance with respect to i) the general orientation of the buildings ii) the general locations of the points of access to each Land Bay, and iii) the extent of the limits of disturbance within each Land Bay. Proffered site layouts and building footprints are important for this project because the viewshed analysis is predicated on the proposed height and proposed building locations as they are depicted on the MCP. In this instance, the building locations and the site layouts depicted in the MCP are for illustrative purposes. As such, the Applicant provides no assurances that the buildings will be located in these specific locations and layouts as depicted on the MCP. Without proffered site layouts that depict building footprints, the County is provided less assurances that the massing and scale of buildings, and resulting viewshed impacts presented in the viewshed study is what will result when the project is built out. **5th Submittal: The Applicant proffered “substantial conformance” to the MCP for specific pages (48-52) associated with Typical Land Bays related to building, orientation, the point of access and limits of disturbance for Land Bays 1, 2,**

3, 4, 5, and 7 and “substantial conformance” to the MCP for specific pages (53) associated with Typical Land Bays related to orientation and, footprints, the point of access and limits of disturbance to Land Bay 6. The Applicant did not revise the MZP to depict building locations.

While the revised proffer is an improvement from the 4th submittal, the proffer associated with site layouts does not meet the requirement of the Zoning Ordinance Sections, 32-280.02, 32-700.23, and 32-700.21. Additionally, the MZP does not show adequate details needed to ensure that the structures will be laid out in substantial conformance with the MCP, and that this layout will accommodate the necessary utilities in the Development Area. As proposed, the County may end up with a general conformance, regardless of the “substantial conformance to the MCP” being proffered. That is unless the Applicant has done enough engineering to determine that the site layouts depicted in the MCP can be substantially met, including room for the substantial amount of utilities needed. At this point, no one truly knows what site challenges will come up that may alter the site layout. It is possible that enough engineering has been done by the Applicant to know that the site layouts can be met, but that is not demonstrated on the MZP. Thus, when it comes time to review and approve the final site plans, the County’s Project Managers are going to do the best they can with what is truly an illustration, in an effort to get some form of conformance.

If the above guidance is not followed and the BOCS chooses to approve the project, to ensure enforceability, staff encourages that the proffer regarding site layout to be revised to “general conformance with the MCP”. If the proffer remains “substantial conformance”, it is likely that during final engineering, the building layouts will change and there will be multiple applications for minor modifications and/or rezoning amendments. This remains a reason for staff’s recommendation of denial.

Building Elevations as Proffered: The Applicant has not proffered elevations of the data center buildings. Staff encourages the Applicant to proffer to substantial conformance with the building elevations provided in the MCP. Without substantial conformance to the elevations, the design of the building may look different than what is shown in the elevations. Currently, the Applicant only proffers the “quality and character” of the architectural designs, whereas the CPA policy encourages colored architectural elevations for rezonings and special use permits. Without proffered elevations, the County is provided less assurances that what is being presented in the MCP for the building architecture will result when the project is built out. **5th Submittal: The Applicant proffered that the quality and character of the architectural design for the portion of the data center building(s) fronting Artemus Road in Land Bay 6 shall be in substantial conformance with the perspectives labeled as “Typical Compass Building Elevations” depicted on pages 40 and 41 of the MCP. In addition, the Applicant has proffered that the quality and character of the architectural**

design shall be in general conformance for all subsequent data center buildings and portions thereof within the Development provided such architectural design for all subsequent data center buildings shall be of a similar quality and character to the architectural design for the data center building(s) fronting Artemus Road in Land Bay 6. However, the MCP does not proffer specific building materials and will make the delivery of these standards harder to monitor and regulate. Staff believes that this proffer may make it appear that the Applicant has committed to a higher standard; however, enforcement of these standards may be difficult. The building material section of the proffer will allow significant flexibility in design. The Applicant will be held to the proffered design to the best extent possible, but staff would have to approve the final building designs, if the overall design met the conformance standards, even if the building materials have an impact on overall design. Staff feels that the proffer leads to confusion on the implementation side and may lead to confusion with the Board of County Supervisors (BOCS) and the public. Typically, when substantial conformance is proffered, it is a commitment to that exact known visual impact. To have this level of variability and still call it substantial conformance is misleading. While the revised proffers are an improvement from the 4th submittal, enforcement may be difficult. This remains a reason for staff's recommendation of denial.

Waiver of Special Use Permit (SUP) to Permit Data Centers Outside of the Data Center Opportunity Zone Overlay District: Staff does not support the approval of this waiver because the Application is lacking building footprints, site layouts, and proffered elevations, and the SUP is the mechanism by which these specific details are typically provided. The equivalent level of detail has not been provided on the MZP. Additionally, the proffers provide uncertainty in the proposed buffers and supplemental landscaping, and the ability for the Planning Director and the Applicant to make substantial changes after the BOCS approval. **5th Submittal: This remains a reason for staff's recommendation of denial.**

Height Modification: As proffered in Proffer 5B, the Applicant has the ability to increase the height up to 100 feet in Land Bays 1 through 5 with additional viewshed analysis that show that the heights do not result in substantially greater visibility of the data center buildings than that shown in the analysis submitted with the Application. Staff cannot support this modification as it effectively relegates a legislative action to an administrative action without the opportunity to receive public input. **5th Submittal: This item has been sufficiently addressed. Revised Proffer 5 removes this modification.**

Ability to Make Changes: As proffered, the Planning Director is permitted to approve changes to various proffered elements based on their own subjective decision. If the Planning Director or other County staff are approving changes, it should be based on clear, expressed, and objective criteria. Furthermore, as proffered, the Applicant is providing significant flexibility to make substantive

changes to the project after BOCS approval. These include the following: Proffer 5, which provides the Applicant the ability to increase the height up to 100 feet in Land Bays 1 through 5 with additional viewshed analysis after approval by the BOCS; Proffer 6, which provides the Applicant significant flexibility with number of buildings, the building sizes, and the building layout/orientation after BOCS approval; Proffer 16, which permits the Director of Planning to approve changes to architecture, building material, and building colors; Proffer 22, which permits the Applicant to develop and modify the Development of the Master Landscape Plan outside of the conventional process that would allow for enforcement of a particular standard and with limited input from County staff; Proffer 33, which permits the Sustainability Officer to approve alternative sustainability measures that are being proffered and approved by the BOCS; Proffer 37, which permits staff to make a subjective decision related to the type of noise mitigation measures acceptable for the project; Proffer 38, which permits the Director of Planning to approve additional substations, change their location and size prior to the decision by the BOCS; Proffer 54, which permits the Director of Planning to approve extensions of time for proffer fulfillment and additional various proffers provide ultimate flexibility for the Applicant to modify the proposal after the BOCS approval. **5th Submittal: Significant progress has been made to address the issues mentioned in this reason for denial. Proffer 6, while now in substantial conformance, still provides flexibility with the number of buildings, building sizes and building layout, with the exception of Land Bay 6. Proffer 17, (previously Proffer 16), removes the Planning Director's ability to approve substantive changes to the design or materials; however, there is still a significant amount of buildings materials flexibility. Proffer 41 (previously 37) still permits staff to make a subjective decision related to the type of noise mitigation measures acceptable for the project; Proffer 42 (previously 38) still permits the Planning Director to approve the general location and size of the substation (not number of substations), Proffer 57 (previously 54) still allows the Planning Director to approve extensions of time. These issues remain a reason for staff's recommendation of denial.**

Flexibility in Landscaping and Open Space: As proffered, the Applicant is providing significant flexibility to dictate what landscaping will be provided through the proffers associated with the Master Landscape Plan, proposed limits of disturbance, reforestation areas, buffers, and tree save areas. Staff will have limited ability to evaluate this commitment against the goals of the Comprehensive Plan regarding landscaping. **5th Submittal: While flexibility has been addressed specifically in the Master Landscape Plan, not enough was done to overcome the issue of flexibility in landscaping and open space as it pertains to the limits of disturbance (LOD), reforestation areas, buffers, tree save areas and the preservation of natural open space. This remains a reason for staff's recommendation of denial.**

Proposed Electric Infrastructure: Other than substation locations, no information is provided about the proposed location of the electrical infrastructure on the property that will serve the facilities in each land bay, such as transmission lines. Without this information, staff is not fully able to analyze the projects' impacts on the surrounding community, to include but not limited to impacts on viewsheds, proposed open space, proposed tree preservation areas, buffering, and site layout. By not including proposed transmission line corridors on the MZP, and as proffered to provide maximum flexibility for the location of these utility lines, the Applicant may cause these transmission corridors to be located in areas identified to preserve forests and sensitive environmental resource, and the perimeter buffers required by the Design and Construction Standards Manual (DCSM), and the supplemental landscaping areas shown on the MZP. **5th Submittal: Not enough was done to overcome this issue. This remains a reason for staff's recommendation of denial.**

Inconsistencies with the Comprehensive Plan: The application is found to be inconsistent with the relevant components of the Community Design Plan, Cultural Resources Plan, Environment Plan, Transportation Plan, and Electrical Utilities Services plan in the Comprehensive Plan, and the Sustainability Focus Area of the PW Digital Gateway Study Area. **5th Submittal: The proposal is now consistent with the Transportation Plan; however, not enough was done to change the other sections that are still inconsistent with the Comprehensive Plan. This remains a reason for staff's recommendation of denial.**

Proffers Issues/Deficiencies: As currently written, many of the proffers contain technical errors, are contradictory, and contain non-descript verbiage, that may make enforcement of some of the proffers difficult. Additionally, some of the proffers contain larger policy issues that staff is unable to support (See Attachment H: Proffer Issues/Deficiencies). **5th Submittal: Significant progress has been made to address this reason for denial, specifically as it relates to technical errors, and contradictory language. However, not enough was done to address larger policy issues that staff is unable to support. This remains a reason for staff's recommendation of denial.**

Outstanding 4th Review Comments: There are many unresolved issues with the following agencies: Transportation Department, VDOT, Watershed Management, Parks and Recreation, Land Development, Manassas National Battlefield Park, Conway Robinson State Park, County Archaeologist and Cemetery Preservation Coordinator, and Historical Commission. **5th Submittal: Significant progress has been made to address this reason for denial. However, not enough was done to overcome this issue. The following agencies still have outstanding issues associated with the proposal: Planning Office, Watershed Management, County Archaeologist and Cemetery Preservation Coordinator, Historical Commission, Manassas National Battlefield Park, and the Conway Robinson State Park."**

242. The Staff further recognized the same or similar issues with the DG South and DG North Proffers. *See* Exh. F, pp. 5-9 and Exh. G, pp. 5-9.

243. All of this set the stage for the following violations, once the submissions reached the County Board for the ultimate hearing which began on December 12, 2023 (and would eventually terminated on December 13, 2023).

**Failure to Send Applicant
Back to Planning Commission
For “Substantial Change in Proffers”**

244. The Applicant’s changes to the proffers, made after the November 9, 2023 Planning hearing and the notice of Board hearing, were substantial, yet the applications were not referred back to the Planning Commission as required by the Code of Ordinances. *See* Code of Ord. § 32-700.43(3) (“[o]nce notice of a public hearing before the Board of County Supervisors on an amendment is given in accordance with the provisions of this chapter, the applicant may make a substantial change in his application only if the application is referred back to the planning commission for further consideration and recommendation.”).

245. The proffers filed on November 28th and November 29th would be the last ones available for public review prior to the Board’s December 12, 2023 public hearing.

246. These new amendments were “substantial.”

247. For example, the DG South proffer includes a requirement that it dedicate five (5) acres to Prince William County for the development of a park and a contribution to the Board of \$10,000 per data center building for parks purposes. DG South November 28, 2023 Proffer, ¶ 44(c)-(d). Similarly, both the Compass and DG North proffers require the

same contribution to the Board of \$10,000 per data center building for parks purposes.

Compass November 28, 2023 Proffer, ¶ 38(C); DG North Proffer, ¶ 41(c).

248. None of these changes would be vetted by the Planning Commission in violation of the County Ordinance. The proffers would subsequently be revised yet again on December 11th and again during the December 12th – 13th Board hearing. At no time would these “substantially amended” proffers be referred back to the Board.

Failure to Properly Advertise

249. Prior to the Board’s December 12, 2023 hearing, the Board advertised the public hearing in the Washington Post on December 2nd, December 5th, and December 9th, a sequence which violated both the state and county notice requirements.¹¹ *See* Letter to the Board by the undersigned counsel attached hereto as **Exhibit S**.

250. Specifically, the issues with the advertisements were: 1) the first and second advertisements were published with less than six days between them, in violation of Code of Ord. § 32-700.60(1) and Va. Code § 15.2-2204(A); 2) the final advertisement was published less than five days before the public hearing in violation of Code of Ord. § 32-700.60(1); and 3) there were no statements – in the notice -- to “identify the place or places within the locality where copies of the proposed plans, ordinances, or amendments may be examined,” all these omissions were in direct violation of Code of Ord. § 32-700.60 and Va. Code § 15.2-2204(A).

251. On December 10, 2023 (just 2 days before the Board’s public hearing), the Applicants would once again revise their proffers and make substantial changes without

¹¹ The County had inquired with The Washington Post about purchasing an advertisement on November 28, 2023, but then failed to actually make that purchase, making the Board ineligible for the safe harbor language of Va. Code § 15.2-2404. See Exhibit T.

the applications being referred back to the Planning Commission. Again, there was no official advertisement or other notice provided on these amended proffers.

Hearing on December 12-December 13, 2023

252. On December 12th and December 13th, the Board would hold a marathon 28-hour public hearing. Seventeen hours of that meeting consisted of public comments from the citizens of Prince William County in which hundreds of them would overwhelmingly oppose the Applications.
253. In the face of the opposition of the public, the Staff, the Planning Commission, the National Park Service, the Watershed Management organization, and other organizations and groups, the Board passed the Ordinances to approve the Digital Gateway project in its entirety. *See* Exhs. A-C; *see also* National Park Service September 23, 2023 Letter attached hereto as **Exhibit T**; Watershed Management Letter attached hereto as **Exhibit U**.
254. Attached to the Rezoning Ordinances are those proffers **dated December 13, 2023**, i.e. they were revised *during the course of the public hearing*, in violation of both Code of Ord. § 32-700.43(3) and Code of Ord. § 32-700.41 (stating that “[i]n the application for a zoning map amendment, the review shall include an examination of the applicant’s proffer statement” and “[n]o substantial change shall be made in any proffered condition after the public hearing commences before the Board of County Supervisors, unless it is **readvertised** in accordance with the provisions of this chapter.”) (Emphasis added). Exhs. A, B, C.
255. Further, the final proffers attached to the Ordinances would incorporate by reference their respective master zoning plans (“MZP”) for the projects. *See* Exh. A, Proffer, p.2; Compass MZP attached hereto as **Exhibit V**; Exh. B, Proffer, p. 2; DG

South MZP attached hereto as **Exhibit W**; Exh. C, Proffer, p. 2; and DG North MZP attached hereto as **Exhibit X**.

256. Critically, the attached proffers establish that only the first eight or so MZP documents are binding on the Applicants; they are the only **binding maps** of the Properties incorporated into the Ordinances either by reference or directly. *Id.*

257. Despite these maps *being the only maps associated with the Ordinances*, they fail to show the locations of any of the proposed data centers, the exact locations of the power stations that will be built on the properties, or even *the lines for the districts that the property will be zoned into*. In other words, while the Properties have been “rezoned,” there is no map or ordinance delineating “how” the properties have been rezoned. After years (and millions of dollars) invested in the Application, the Board’s Ordinance does not actually include a map of how the Properties were to be rezoned.

258. Instead, the Ordinances and maps just state that the properties were being rezoned from A-1 into a mix of M-2, O(H), O(M), and O(F) -- but does not actually specify where those lines for the zoning categories would be drawn.

259. Essentially, it is left to the Applicants to zone the properties (and place the buildings) as they see fit. The Board abdicated any responsibility in that regard.

SUMMARY OF GROUNDS FOR SETTING ASIDE THE REZONING ORDINANCES

260. The Board’s vote to pass the Rezoning Ordinances on December 13, 2023 was the culmination of years of concerted efforts to pave over western Prince William County and erect brutal monoliths to the digital lifestyle.

261. All of this was done despite the consistent community opposition and through an outright refusal to consider those factors required by Virginia law and the County's Code of Ordinances and the repeated failure to follow the legally required processes.

262. There were numerous instances in which the law required that the Board refer the Digital Gateway applications back to the Planning Commission, but they failed to do so. There were many times that the Board treated the Applicants differently from previous applicants and repeatedly bent or broke the rules to push through the Applicants' extraordinary requests. The Board further did not weigh the numerous factors required by Virginia law or the Zoning Ordinance or apply the requisite checks such as having a "substantial change" in proffers referred back to the Planning Commission.

263. In summary, the Board's 2023 decision to approve Ordinance Nos. 23-57, 23-58, and 23-59 was unlawful and otherwise "arbitrary and capricious" in that it was done outside of those procedural guarantees built into Virginia law and the ordinances of Prince William County and so in excess of the Board's authority. Specifically, the passage of the Rezoning Ordinances violated the following laws and ordinances:

**COUNT I: VIOLATION OF VA CODE § 15.2-2282
(Failure to Approve Uniform Regulations)**

264. Petitioners incorporate all previous paragraphs as if fully set forth herein.

265. Va. Code § 15.2-2282 requires that further states that "[a]ll zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district."

266. Here, it is clear that the Board has applied the zoning laws to the applications in a unique fashion as compared to prior data center developments.

267. It is also clear that the broad waivers granted by the Board without authority are not at all uniform with other properties zoned M-2, O(H), O(M), or O(F) in the County.

268. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

269. Here, the Board’s failure to uniformly apply the zoning laws has caused special and particular harm to the Petitioners due to the property they own lying in close proximity to, or being included within, the Properties.

270. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT II: VIOLATION OF VA. CONSTITUTION
AND VA. CODE § 15.2-2200
(Failure to Protect Natural Resources)**

271. Petitioners incorporate all previous paragraphs as if fully set forth herein.

272. VA Const., Art. XI, § 1 states that it “shall be the Commonwealth’s policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.”

273. Similarly, Va. Code § 15.2-2200 requires that Board decisions give due consideration to a number of factors, including “the creations of a convenient, attractive and harmonious community,” and preservation of the environment.

274. Here, the Board gave no real consideration to issues with the Digital Gateways anticipated use of water, or environmental impacts and disregarded or ignored concerns with impairment of the community, property values, or the general welfare of surrounding natural and historical sites. The outcome was predetermined by the Board for years.

275. Instead, considering the facts, the Board approved in toto the Rezoning Ordinances which will collectively result in overwhelmingly negative impacts on the aesthetics of the community, the environment, property values, and the cultural assets of the community.
276. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.
277. The harms from the Board’s failure to comply with Va. Code § 15.2-2200 will fall disproportionately on the Petitioners due to the properties they own lying in close proximity to, or being included within, the Properties.
278. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT III: VIOLATION OF VA CODE § 15.2-2284
(Failure to Properly Delineate Zoning Districts)**

279. Petitioners incorporate all previous paragraphs as if fully set forth herein.
280. Va. Code § 15.2-2284 requires that zoning ordinances and districts “be drawn and applied with *reasonable consideration for the existing use and character of the property.*” (Emphasis added).
281. Here, the zoning amendments were not even consummated as the Board failed to actually delineate the boundaries for the the new zones. *See infra.* Further, the changes Applicants sought and which the Board granted gave no consideration to the existing character of the Properties as they were changed from agricultural properties into the most intensive industrial use.

282. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

283. The Board’s failure to comply with the Va. Code § 15.2-2284 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

284. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT IV: VIOLATION OF CODE OF ORD. § 32-700.21
(Failure to Properly Delineate Zoning Lines or
Identify Location of Structures)**

285. Petitioners incorporate all previous paragraphs as if fully set forth herein.

286. Code of Ord. § 32-700.21 requires that a general development plan include a schematic land-use plan that shows “the location of all buildings and other structures.”

287. Code of Ord. § 32-700.21 also requires that the general development plan shall be a “written, graphic, and/or visual statements of the uses intended for the property” and generally it requires that the plans for the property specifically show the proposed changes to the property.

288. As the Staff recognized in its issues with the applications, a major issue with the applications is their lack of specificity and the significant leeway the Applicants give themselves to make changes to the already very sparse concrete information contained in the plans.

289. Further, this lack of specificity extends to the fact that *nowhere in the ordinances or final proffers is it stated where the actual data centers or other structures would be located. Nor have they provided the actual lines for the new zoning maps.*

290. Instead, the Board has simply approved these applications which state they are seeking to rezone the Properties to a mix of M-2, O(II), O(M), and O(F), but the ordinances do not include maps showing where those districts would be drawn. Nor do they indicate the location of structures, such as the actual data centers, or ancillary structures such as substations or electrical lines.

291. Now the Applicants are free to rezone their own properties (or place the buildings) as they see fit, which *de facto* delegates governmental powers to private citizens or corporations.

292. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

293. The Board’s failure to comply with the Code of Ord. 32-700.21 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

294. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT V: VIOLATION OF CODE OF ORD. § 32-700.43
(Failure to Refer Matter back to Planning Commission
After Substantial Changes Made to Proffers)**

295. Petitioners incorporate all previous paragraphs as if fully set forth herein.

296. Code of Ord. § 32-700.43 states that no substantial changes may be made to the proffer statement supporting an application after a public hearing before the planning commission *unless* the application is then referred back to the planning commission for further consideration.

297. Here, at each step of the application process, the Applicants made substantial changes to their proffers without the Applications being referred back to the planning commission for further review.

298. This is especially true for the multiple revisions of the proffers after the Planning Commission hearing on November 8, 2023, including one made during the course of the December 12th – 13th public hearing before the Board.

299. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that “residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

300. The Board’s failure to comply with the Code of Ord. 32-700.43 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

301. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT VI: VIOLATION OF CODE OF ORD. § 32-700.41
(Failure to Re-advertise Public Hearing After
Substantial Changes Made to Proffers)**

302. Petitioners incorporate all previous paragraphs as if fully set forth herein.

303. Code of Ord. § 32-700.41 states that “[n]o substantial change shall be made in any proffered condition after the public hearing commences before the Board of County Supervisors, unless it is **readvertised** in accordance with the provisions of this chapter.” (Emphasis added).
304. Here, the proffers were amended on November 29th, December 10th, and during the public hearing on December 12th - December 13th.
305. The changes made to the proffers were substantial and impacted numerous citizens, government agencies, and other groups and they did not have adequate time to respond to these changes. Indeed, numerous proffers had been changed – after citizens had already testified at the Board public hearing.
306. Under the Code of Ordinances, this meeting should have been readvertised and the matter brought back before the Board.
307. Instead, the Board approved the Rezoning Ordinances with the amended proffers attached without readvertising the Applications in direct violation of the Code of Ordinances.
308. Here, at each step of the application process, the Applicants made substantial changes to their proffers without the Applications being referred back to the planning commission for further review.
309. This is especially true for the multiple revisions of the proffers after the Planning Commission hearing on November 8, 2023, including one made during the course of the December 12th – 13th public hearing before the Board.
310. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that

“residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

311. The Board’s failure to comply with the Code of Ord. 32-700.41 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

312. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT VII: VIOLATION OF CODE OF ORD.
§§ 32-403.23(3), 32-402.23(3), 32-402.33(3), 32-402.43(3)
(Failure to Obtain Special Use Permit to
Construct Data Centers Outside of DCOZOD)**

313. Petitioners incorporate all previous paragraphs as if fully set forth herein.

314. Code of Ord. §§ 32-403.23(3), 32-402.23(3), 32-402.33(3), and 32-402.43(3) state that an applicant seeking to construct data centers on properties zoned as M-2, O(M), O(H), or O(F) and which are located outside the DCOZOD must obtain a special use permit from the Board to construct data centers on those properties.

315. Here, the Applicants sought to rezone the Properties into a mix of M-2, O(M), O(H), and O(F) and the Properties lie outside of the DCOZOD. As such, construction of data centers on the Properties were prohibited without first obtaining special use permits.

316. There is no provision in the Prince William County Code of Ordinances which explicitly permits the Board to waive the requirements for the Applicants to obtain special use permits.

317. In the Rezoning Ordinances, the Board purported to grant waivers to the Applications wherein they were not required to obtain special use permits to be approved

to construct data centers on the Properties. However, nothing in the County Code grants that authority to the Board.

318. The Ordinances' waiver of the Applicants' requirement to obtain SUPs is therefore beyond the Board's power and so violates the above sections of the Code of Ordinances.

319. While certain entitlements can be granted concurrently, *see, e.g.*, Code of Ord. § 32-700.26 and 700.53 and Va. Code § 15.2-2232(H), there is no provision in either state or local law for concurrently rezoning and granting an SUP. Even if there was, the Ordinances did not actually award an SUP, but purported to dispense with the law contrary to the powers granted by the Ordinances, which is not permitted.

320. The purpose of laws concerning planning and zoning is to "improve the public health, safety, convenience, and welfare of their citizens" and this includes that "residential areas be provided with healthy surroundings for family life." Va. Code. § 15.2-2200.

321. The Board's failure to comply with the Code of Ord. §§ 32-403.23(3), 32-402.23(3), 32-402.33(3), and 32-402.43(3) causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

322. As such, the Rezoning Ordinances are void *ab initio* and Petitioners' only remedy is for the Rezoning Ordinances to be set aside.

**COUNT VIII: VIOLATION OF CODE OF ORD. § 32-700.25
(Failure to Justify Waivers of Certain Design Standards)**

323. Petitioners incorporate all previous paragraphs as if fully set forth herein.

324. Code of Ord. § 32-700.25 states that, in the event that an applicant is seeking waivers of "specific development standards of the subdivision ordinance, this chapter or

the requirements of the Design and Construction Standards Manual,” they must: 1) “provide written justification of for all proposed waivers or modifications,” 2) “the applicant shall propose an alternative or modified approach to fulfill the intent of the standard being waived or modified,” 3) “all modifications or waivers must demonstrate that the alternative proposal fulfills or exceeds the intent and purpose of the regulation being modified or the comprehensive plan,” and 4) “the approval of any waiver or modification requests shall be reflected in the approved rezoning.”

325. As such, even if the Board could waive special use permits or the and the other ordinances referenced in the applications, there is a requirement that the Applicants justify the need for those changes and to “demonstrate that the alternative proposal fulfills or exceeds the intent and purpose of the regulation being modified.”

326. Here, there was clearly no attempt by the Applicants to justify the waivers sought; to state how they still fulfilled the purpose of the code sections being waived, especially as it concerns the special use permits; or for the Board to directly state they were approving the waivers and modifications.

327. Instead, these very broad waivers and modifications were simply tacked onto the end of the proffers without further explanation.

328. Further, the Rezoning Ordinances themselves do not address the modifications and waivers and instead only state that the proffers are attached and the Rezoning Ordinances are subject to the proffers.

329. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that

“residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

330. The Board’s failure to comply with the Code of Ord. 32-700.25 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

331. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

**COUNT IX: VIOLATION OF VA. CODE § 15.2-2204
and CODE OF ORD. § 32-700.60
(Failure to Properly Advertise Board’s Public Hearing)**

332. Petitioners incorporate all previous paragraphs as if fully set forth herein.

333. Va. Code § 15.2-2204(A) requires that the Board not “adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality, with the first notice appearing no more than 14 days before the intended adoption... with not less than six days elapsing between the first and second publication.”

334. Code of Ord. § 32-700.60(1) requires that notice “shall be published once a week for two successive weeks (with not less than six days elapsing between the first and second publication)” and the hearing date “shall be held not less than 5 days nor more than 21 days after the second advertisement shall have appeared.”

335. Prior to the Board’s December 12, 2023 hearing, the Board advertised the public hearing in the Washington Post on December 2nd, December 5th, and December 9th.

336. These advertisements violated Code of Ord. § 32-700.60(1) and Va. Code § 15.2-2204(A) as the first and second notices were issued with less than six days between them.

337. The advertisements further violated Code of Ord. § 32-700.60(1) as the final notice for the public hearing was issued less than five (5) days after the final notice in violation of Code of Ord. § 32-700.60(1).
338. The failure to comply with Virginia law was even noticed by a Board member, Robert Weir, who moved after the December 5th public hearing that the December 12th vote on the Digital Gateway be delayed and the matter re-advertised. His motion was defeated as it would have meant that the “lame duck” Board would have lost control of the PWDG project, as December 12th was the last date when a public hearing could be held and the vote would be binding.¹²
339. Va, Code § 15.2-2204 and Code of Ord. § 32-700.60 also require that “[e]very such advertisement shall identify the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.”
340. Neither the advertisements published in the Washington Post nor the individual notices given to adjoining landowners or to ABT, “identify the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined,” but merely provide contact information for County Staff and a uniform resource locator.
341. At no time prior to approval of the Rezoning Ordinances were copies of the Applications, including proffers, that were approved available to the public, violating the public participation purposes animating Code § 15.2-2204 and Code of Ord. 32-700.60.
342. The purpose of laws concerning planning and zoning is to “improve the public health, safety, convenience, and welfare of their citizens” and this includes that

¹² Under Prince William County Code, a vote can be reconsidered at the next meeting which would have been December 19th. That was the last meeting of the year, as December 26th was a state holiday. Had the Board deferred from December 12th and held its vote on December 19th, then the new Board could have “reconsidered” that vote at its first meeting on January 2, 2024.

“residential areas be provided with healthy surroundings for family life.” Va. Code. § 15.2-2200.

343. The Board’s failure to comply with the Code of Ord. 32-700.41 causes particular harm to the Petitioners due to the properties they own lying in close proximity to, or being included in, the Properties.

344. As such, the Rezoning Ordinances are void *ab initio* and Petitioners’ only remedy is for the Rezoning Ordinances to be set aside.

COUNT X: OMNIBUS COUNT

(The Acts of the Board are Arbitrary and Capricious)

345. Petitioners incorporate all previous paragraphs as if fully set forth herein.

346. Here, the prior zoning of the Properties as principally A-1 agricultural lands with sparse residential development was in line with the historical and traditional character of the Properties. Further, given the significant environmental, historical, and cultural resources on the Properties, the zoning as A-1 was in line with that district’s purpose to “encourage conservation and proper use of large tracts of real property in order to assure available sources of agricultural products, to assure open spaces within reach of concentrations of population, to conserve natural resources, prevent erosion, and protect the environment; and to assure adequate water supplies.” Code of Ord. § 32-301.01

347. Further, the intent of A-1 districts “is to encourage private landowners to protect these values and thereby create an environment favorable for the continuation farming and other agricultural pursuits; to preserve prime agricultural land, forest land and/or open space; and to reduce the demand for costly public facilities and services that are

inconsistent with the character of the rural areas within Prince William County.” Code of Ord. § 32-301.01.

348. In contrast, the Board’s approval of the Rezoning Ordinances was in direct contradiction with the existing use and character of the Properties and this will lead to the destruction of the cultural, historical, and environmental resources on the Properties that A-1 districts are intended to protect by rezoning the Properties to one of the most intensive industrial uses possible.

349. The approval of the Rezoning Ordinances to such unreasonable districts was only accomplished by the Board directly violating and disregarding the Commonwealth statutes and County ordinances that require the Board to follow procedures created in order to protect the citizens of Virginia and Prince William County from poorly considered rezonings and other changes to properties. *See infra*.

350. The Board’s utter disregard for the statutes and ordinances that guide their work and the approval of the Rezoning Ordinances to fundamentally and irreversibly alter the character of the Properties is eminently unreasonable by any metric. It is arbitrary and capricious *per se* and cannot be sustained.

351. This disregard for the requirements for submission, process and consideration also impeded obstructed and adversely affected both the Planning Commission and the Board’s consideration of the governing zoning and other legal standards contained in the Virginia Code and Prince William County Ordinances, ensuring that an unreasonable decision would result.

352. As such the Board’s approval of the Rezoning Ordinances is illegal, unreasonable, and arbitrary and capricious.

353. As is the nature of rezoning, those most affected by fundamental changes to land are those owning property with the land as well as those owning land in close proximity. Here, the Petitioners are all owners of property that are either within the Properties or lying in close proximity to the Properties.

354. Therefore, the Petitioners are particularly and specially harmed by the Board's decision to approve the Rezoning Ordinances.

355. The Petitioners will suffer irreparable harm if the Court does not intervene. The Petitioners have no adequate remedy at law.

356. It is humbly requested that this Court set aside the Rezoning Ordinances for the reasons stated herein.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners respectfully request that this Court enter an Order which (i) holds that the Rezoning Ordinances are void *ab initio* and sets aside Ordinance Nos. 23-57, 23-58, and 23-59 approved by the Prince William Board of County Supervisors on December 13, 2023, (ii) grants such remedial relief as provided in Title 15.2 as may be necessary to enjoin, amend or nullify *ultra vires* acts taken by a locality in violation of Virginia law, and (iii) provides for such other relief as this Court deems necessary and proper.

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