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Facing a Federal Lawsuit, Texas County Repeals Blanket Pause on Data Center Construction, Adopting New Approval Procedures Instead

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In this article, the authors discuss a construction moratorium on new data centers enacted by a Texas county, the federal lawsuit that followed, and the county's decision to rescind the moratorium and to adopt a new approval process instead of the blanket prohibition.

As anti-data center sentiment grows nationwide, the legal strategies necessary to protect project investments are continually evolving. A construction moratorium on new data centers enacted in Hill County, Texas, was emblematic of a nationwide public backlash against data center development. The Hill County moratorium subsequently became the subject of a federal lawsuit filed in the U.S. District Court for the Western District of Texas. Thereafter, in response to that suit, the county rescinded the moratorium, adopting a new approval process instead of a blanket prohibition. While the new requirements may still be onerous for developers, the county's rush to amend its moratorium in the face of the lawsuit appears to validate the suit's premise that Texas counties lack broad authority to halt projects altogether. It also signals that regulators can act nimbly to sidestep legal challenges, all of which reinforces the need for an integrated legal strategy.

THE HILL COUNTY MORATORIUM AND THE LARGER TREND OF PUBLIC OPPOSITION

In early May, by a 3-2 margin, Hill County officials enacted a one year moratorium on new data center construction in unincorporated areas. The measure followed significant public opposition to the rapid influx of proposed data center projects. Residents expressed concern about the potential impacts on water use, electricity demand, infrastructure, and quality of life. The Hill County moratorium is part of a broader pattern of organized and official resistance to data center development. In our prior coverage, we identified several ways that public opposition is manifesting itself, in Texas and nationally, as a major risk factor for data center development.

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THE INDUSTRY PUSHES BACK

The Hill County moratorium predictably faced legal challenges. The first significant challenge arrived in the form of a federal lawsuit by a company claiming its once valuable purchase rights to acquire 800 acres in Hill County were rendered valueless by the moratorium. The plaintiff is challenging the county's authority to enact the measure and seeking compensation for an alleged taking in violation of the US Constitution, among other claims.

The suit is captioned *RCM Hill LLC v. Hill County*.[1] The complaint asserts a multipronged constitutional and state-law challenge to the moratorium, combining:

(i) federal and state declaratory judgment claims that the moratorium is ultra vires and void, including parallel claims for prospective injunctive relief against the county and its officials;

(ii) federal regulatory takings and inverse condemnation claims under the Fifth Amendment and Fourteenth Amendment (via 42 U.S.C. § 1983), alleging that the moratorium effects both a per se taking and, alternatively, a Penn Central taking by eliminating economically viable use and destroying investment-backed expectations;

(iii) a § 1983 due process claim (procedural and substantive) premised on arbitrary, unauthorized government action that allegedly alters property and entitlement rights without lawful authority or adequate process; and

(iv) parallel Texas constitutional claims including inverse condemnation under Article I, § 17, denial of due course of law and arbitrary and capricious government conduct under Article I, § 19, and impairment of contracts/retroactivity under Article I, § 16, all tied to the alleged retroactive imposition of a new approval regime that frustrates pre-existing contractual and development rights.

The *takings* claims may garner the most attention for their potential national application as a compensation mechanism for categorical data center prohibitions. However, in Texas specifically, whether a Texas county has the authority to impose such sweeping regulations is a central question. The complaint against Hill County alleges that Texas counties are creatures of statute with no inherent police power, and therefore, they may act only when authority is expressly granted or necessarily implied by statute or the state constitution—and no such authority exists for a data center (or any) development moratorium.

THE COUNTY ALTERS ITS APPROACH

In response to the lawsuit, Hill County has pivoted from an outright moratorium on data center development to a process-driven regulatory regime, rescinding the ban and replacing it with a formal development checklist and major industrial development review framework that compels developers to submit detailed, project-specific disclosures regarding infrastructure, traffic, and resource impacts before proceeding. Rather than prohibiting projects, the county's new approach functions as a front-end screening and information-forcing mechanism that subjects large-scale industrial developments to heightened scrutiny,

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transparency requirements, and compliance obligations—effectively shifting from categorical restriction to a structured review process that can influence project feasibility, timing, and cost without formally blocking development. Questions persist regarding whether the county has the authority to implement this new process and whether plaintiffs will continue their lawsuit in some amended form.

PRACTICAL TAKEAWAYS

Project participants, including developers, purchasers, investors, equipment suppliers, and contractors, need to anticipate prolonged risks from community opposition. Project participants should understand the benefits and risks of using litigation as a means of challenging local and state action that unduly restricts development and for potentially recouping investments.

Hill County's shift illustrates that categorical prohibitions invite ultra vires and takings challenges, causing local governments to possibly pivot to process-driven regulatory layering—leveraging disclosure requirements, infrastructure reviews, and public transparency mandates to influence (and potentially slow or deter) development without formally banning it.

For project participants, the takeaway is straightforward: risk allocation must now account not only for outright regulatory bars, but also for incremental, information-based approval regimes that can alter project economics and timelines just as materially.

SPOTLIGHT ON FOREIGN EQUITY INVESTORS

Federal and state regimes now treat data centers—and the land they occupy—as critical infrastructure tied to sensitive data, energy grids, and strategic assets. Laws like Texas SB 17 illustrate this shift by regulating not just how land is used but who is allowed to own or finance it, aligning with federal frameworks like the Committee on Foreign Investment in the United States, which scrutinize foreign investment in infrastructure for national security risks. Modern data center restrictions are as much about capital origin and geopolitical risk as traditional zoning or environmental concerns. As data center opposition evolves, expect more focus on the extent to which foreign participants could face restrictions.

Foreign stakeholders should also take care to investigate whether their investments qualify for investment treaty protections. Where applicable, investment treaties may offer stronger protection than domestic law for compensation for government interference in data center projects. Companies that operate in jurisdictions that have investment treaties with the United States should examine their deal structures to maximize treaty protections. Critically, once the dispute arises, it will be difficult to restructure an investment for the purpose of obtaining treaty protections. The key period for structuring investments for treaty protections is ideally prior to the investment being made but, in any case, before a dispute becomes reasonably foreseeable.

NOTES:

[1]RCM Hill LLC v. Hill County, No. 6:26-cv-00340 (W.D. Tex.).

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