

Early Considerations in Data Center Development

The crucial role of the landman.



This presentation was prepared with the assistance of Artificial Intelligence.

Data Center Development Shifts Traditional Real Estate Development Priorities

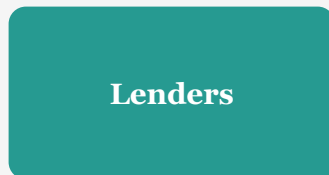
The investment in a data center facility dwarfs the cost of the land beneath it.

The shift in approach to development requires a shift in approach to title research that supports development.



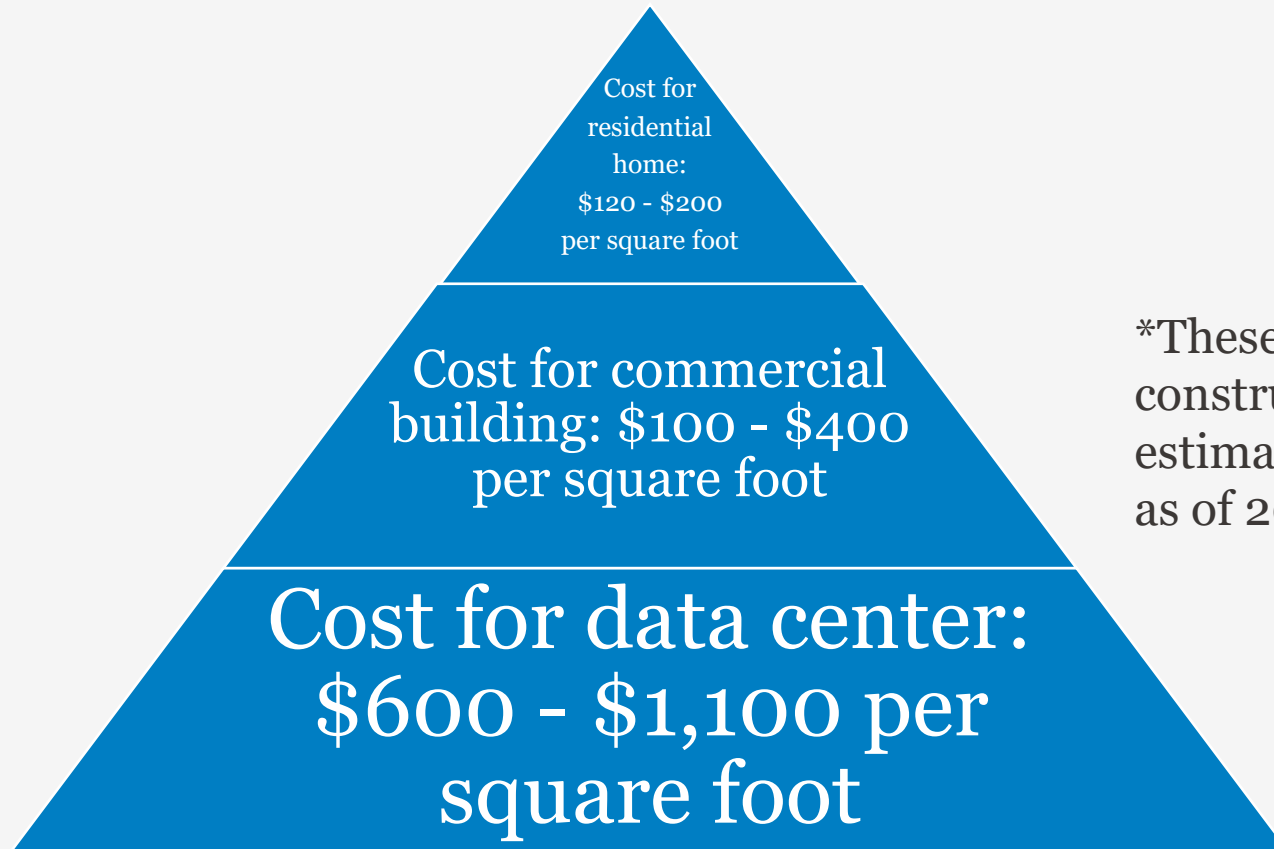
Each stakeholder brings different:

- ▶ Risk tolerances
- ▶ Security demands
- ▶ Due diligence needs
- ▶ Timeline expectations



Different stakeholders bring different risk tolerances and demands.

Investment Scale: How Data Centers Compare*



*These are construction cost estimates in Texas as of 2025.


Sources: BlueCap Economic Advisors "Cost of a Data Center" June 26, 2025, by Gary Marx (bluecapeconomicadvisors.com); "Cost to Build a House in Texas" by Home Nation published April 12, 2025 (homenation.com).

Data Centers: Global & National Growth

5,000+
Data centers operating in the United States

#1
U.S. is the world's largest data center market

\$200B+
Capital invested in U.S. data centers in recent years

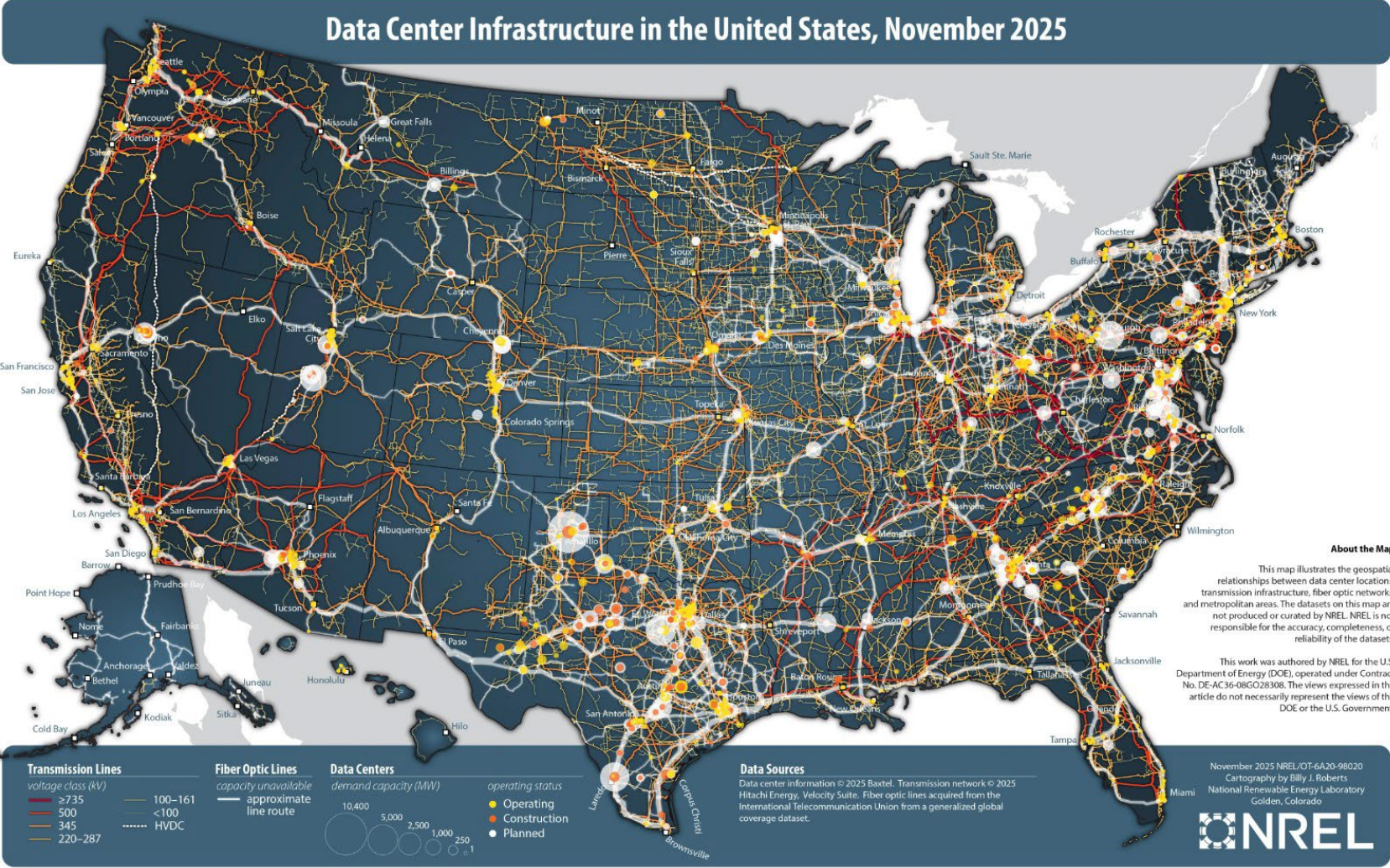
 **10-15%** annual growth projected through 2030

KEY GROWTH DRIVERS

- AI & Machine Learning
- Cloud Computing
- Edge Computing
- IoT Expansion

Sources: Synergy Research Group, Global Data Center Market (2025); CBRE North America Data Center Report H2 2024; JLL Data Center Outlook (2025); Cushman & Wakefield Data Center Market Report (2024).

Data Centers: Global & National Growth

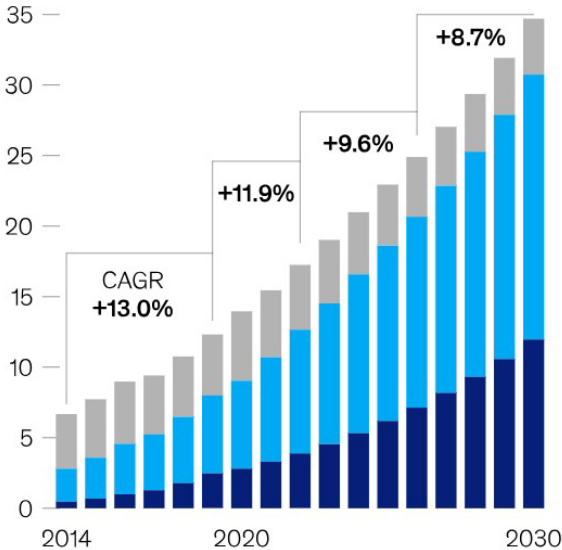


Data Centers: Global & National Growth

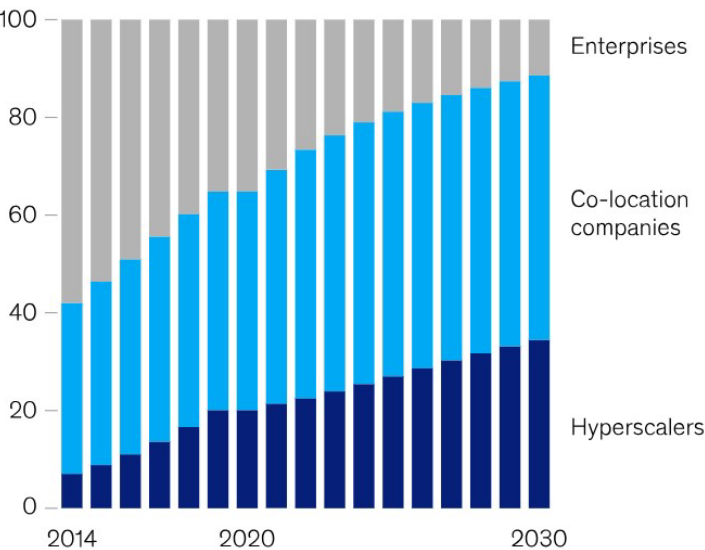
Exhibit 1

US data center demand is forecast to grow by some 10 percent a year until 2030.

Data center power consumption, by providers/enterprises,¹ gigawatts



Data center power consumption, by providers/enterprises,¹ % share



¹Demand is measured by power consumption to reflect the number of servers a data center can house. Demand includes megawatts for storage, servers, and networks.

McKinsey & Company

Texas: A Data Center Powerhouse

Texas Advantages

- ✓ **Abundant land** for large-scale campus development
- ✓ **Deregulated energy market** with competitive power pricing
- ✓ **Tax incentives** (Chapter 313 successor programs)
- ✓ **Business-friendly** regulatory environment
- ✓ **Growing fiber & connectivity** infrastructure
- ✓ **No state income tax** for workforce attraction

Top Data Center States

- 1 Virginia**
Loudoun County #1 globally
- 2 Texas**
Rapid growth, multiple metros
- 3 Arizona**
Phoenix corridor
- 4 Georgia**
Atlanta hub
- 5 Nevada / Ohio**
Emerging markets

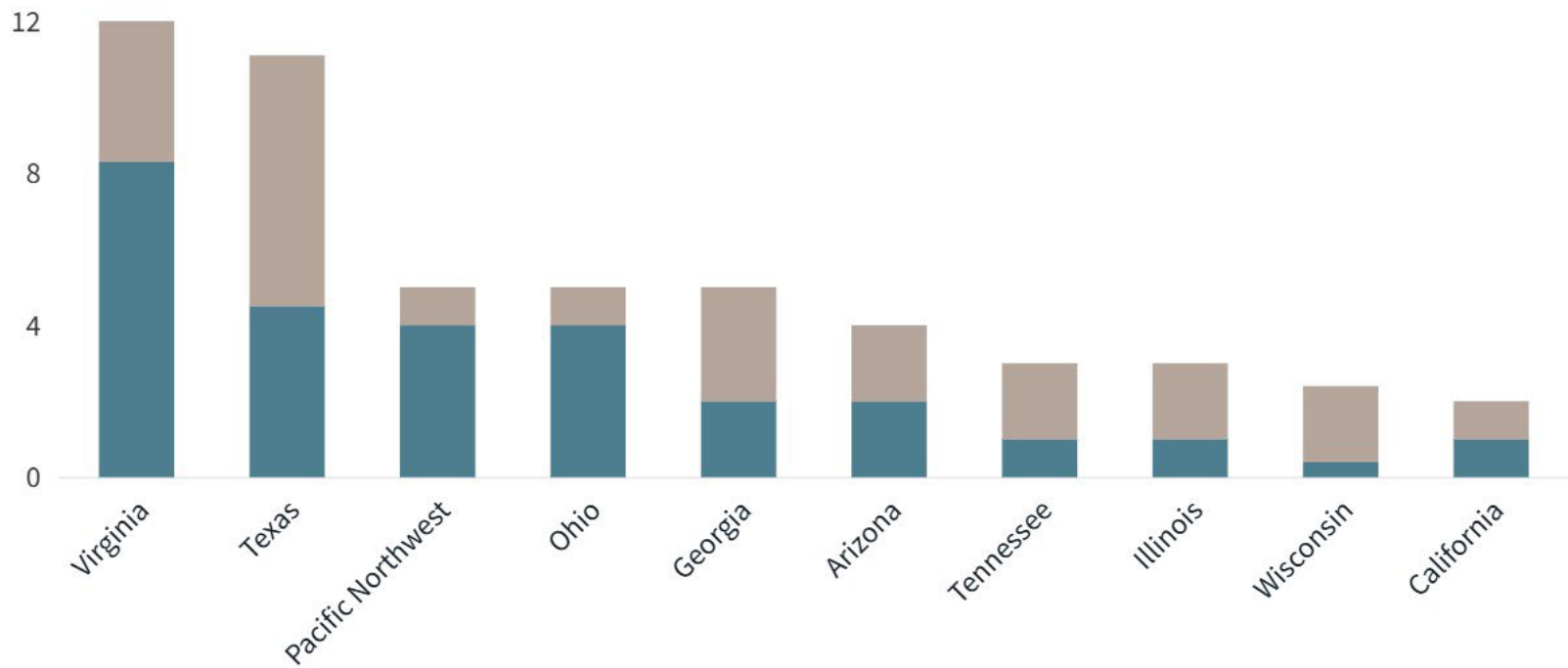
Sources: CBRE North America Data Center Report (2025); DatacenterHawk State Rankings (2025); Texas Comptroller of Public Accounts; Cushman & Wakefield U.S. Data Center MarketBeat (2024).

Texas: A Data Center Powerhouse

Texas could overtake Virginia as the largest global data center market by 2030 due to plentiful land and energy

2025 year-end leased data center + hyper-owned capacity (GW)

Existing (GW) Under construction (GW)



Source: JLL Research

Texas: A Data Center Powerhouse

Texas data center campus to be Vantage's largest development

The \$25 billion data center campus is being built on 1,200 acres in West Texas



The 1,200-acre data center campus, known as "Frontier," in West Texas is expected to be the largest property of its kind in Vantage's real estate portfolio. (Vantage Data Centers)

By **Candace Carlisle**

CoStar News

August 20, 2025 | 1:50 P.M.



The Race to Build: Why the Urgency?



AI Demand Explosion

AI workloads are accelerating timelines dramatically; every month of delay costs millions



Data Center Land-Grab

Data center developers and tenants are competing aggressively for prime sites



Power is the #1 Constraint

Grid capacity is the bottleneck; sites with power win the deals



Speed = Revenue

Developers who move fast secure tenants; delays mean lost contracts

Speed to Power = Speed to Revenue

Sources: McKinsey & Company, "The Future of Data Center Growth" (2024); Goldman Sachs, "AI & Data Center Power Demand" (2024); IEA Electricity 2024 Report; CBRE Data Center Construction Pipeline (2025).

What Keeps Data Center Developers Up at Night?

These are just a few of the considerations contemplated by different stakeholders.

D Developers / Tenants

- ▶ Site control & speed to market
- ▶ Power availability & reliability
- ▶ Confidentiality of site locations
- ▶ Scalability for future expansion

L Lenders

- ▶ Collateral security & asset value
- ▶ Title clarity & ownership chain
- ▶ Risk assessment & loan covenants
- ▶ Insurance coverage adequacy

T Title Insurance Underwriters

- ▶ Mineral rights & severed interests
- ▶ Surface use restrictions & waivers
- ▶ O&G general exceptions
- ▶ Building placement & set-asides

I Insurers

- ▶ Physical security requirements
- ▶ Environmental risk exposure
- ▶ Natural disaster vulnerability
- ▶ Business continuity planning

Enter the Landman: Your Role in the Data Center Boom

*"When you get a call to help
on a data center, you need to
shift your thinking."*

- ◆ The stakes are exponentially higher than traditional O&G or residential work
- ◆ Confidentiality is paramount — expect early NDAs
- ◆ This is a growing opportunity for landmen

What Data Center Developers Need from Landmen

- Title work & ownership reports — accurate, thorough, fast
- Lease and production analysis
- Surface waiver identification and restrictions in title documents
- Identify and locate mineral interest owners (sleuth-like skills needed!)
- Heirship research and contact information gathering
- Curative work — acquire documents underwriters need
- Right-of-way acquisition support
- Land surveys coordination

Mineral Rights: The 800-Pound Gorilla

The mineral estate owner has SUPERIOR rights

The accommodation doctrine governs the relationship between surface and mineral estate owners

Surface Estate

Data center sits here

▼ MINERAL ESTATE DOMINATES ▼

Mineral Estate

May be severed & separately owned

Greenfield developments: Minerals are highly likely to be severed and leased in these locations.

Developer's Arsenal

- W** **Surface Waivers**
Negotiate with mineral owners for surface use rights
- E** **Endorsements**
Title insurance endorsements to address O&G general exception
- S** **Set-Asides**
Reserve areas for potential mineral access
- P** **Mineral Purchases**
Outright acquisition of mineral interests
- A** **Accommodation Doctrine**
Legal framework balancing surface and mineral rights

Surface Waivers, Endorsements & Set-Asides

Surface Use Waivers

- Negotiated directly with mineral owners
- No bright line on how many you need
- Some underwriters want 100%
- If leased, also need from working interest owners/operators

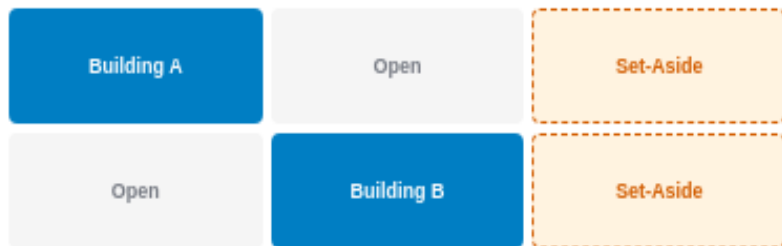
Endorsements

- Title insurance endorsements
- Address the O&G general exception
- Require supporting documentation
- Partnership with experienced attorney is key

Set-Asides

- Areas reserved for mineral access
- "Reverse set-asides": underwriters ask where buildings will go
- 10% built out = lower risk vs. 100% surface used

Example Site Plan with Set-Asides



Waivers vs. Purchasing Minerals

Waivers

- + Lower upfront cost
- + Faster to negotiate
- May not satisfy all lenders
- Subject to lease terms

Purchase

- + Complete control
- + Cleanest title
- Higher cost
- Harder to locate all owners

Working with Title Underwriters

Requirements vary by location, project scope, and day-to-day risk assessment. Engineering Production Reports may be required.

• Lower Risk

- ✓ No active production nearby
- ✓ Few severed mineral interests
- ✓ Rural location
- ✓ Limited development history

• Higher Risk

- ✗ Active oil & gas production
- ✗ Multiple severed mineral interests
- ✗ Near urban growth corridors
- ✗ Complex ownership chains

What Underwriters Want to Know

Where will buildings go?

Exact placement affects risk calculation

Active production?

Current wells & production volumes

Severed minerals?

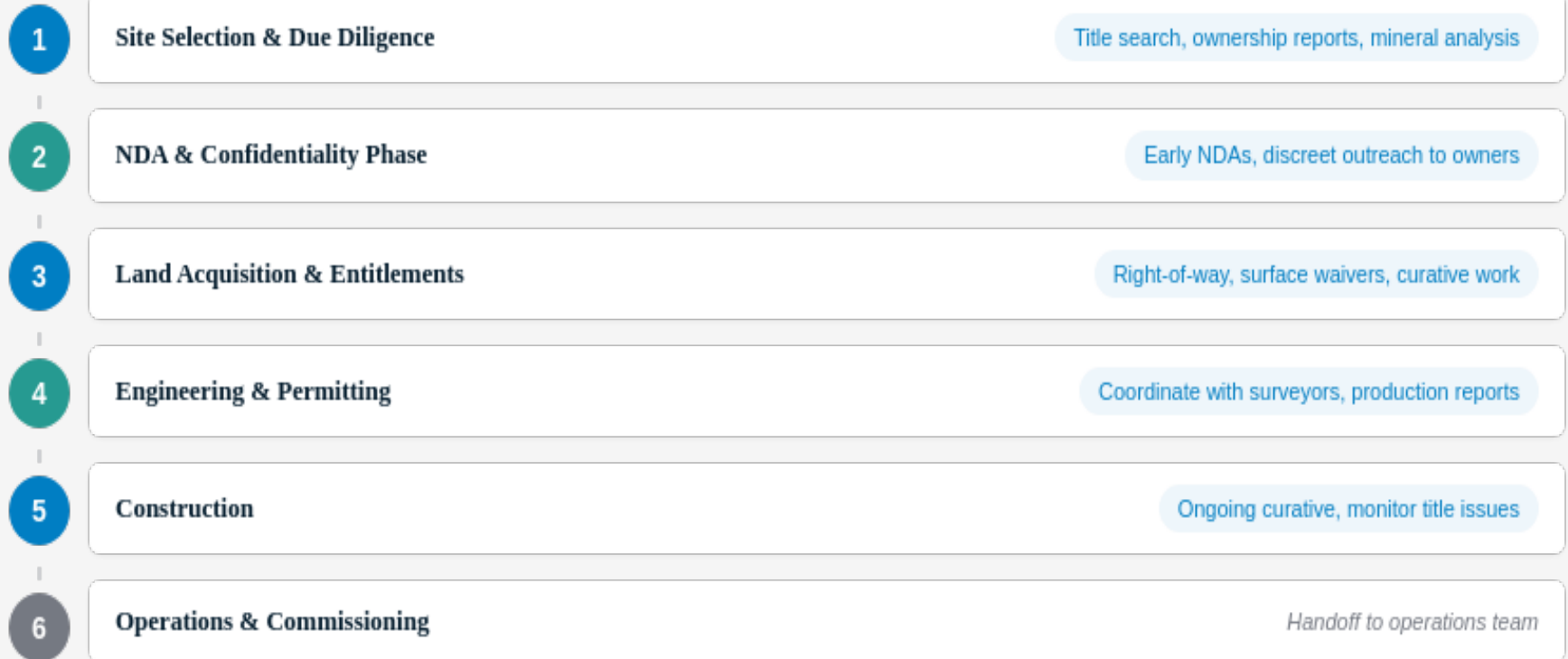
Number and status of mineral owners



Partnership with an experienced data center attorney is key - they will educate the client and advocate with underwriters.

The Development Timeline: Where Landmen Fit In

Landmen are involved from the VERY BEGINNING



Confidentiality: A Non-Negotiable



Site Locations = Competitive Intelligence

Knowing where a hyperscaler is building gives competitors a strategic advantage



Tenant Identities May Be Secret

Major tech companies often use shell entities to mask their involvement



NDA Signed Early

Often before any project details are shared; signed at first engagement



Treat every aspect of the project
as confidential from day one

Landmen must treat every aspect of the project as confidential. This is not optional - it is a fundamental requirement of data center work.

Key Takeaways



Data center development is booming - landmen have a critical role to play in this growth sector



Shift your thinking: higher stakes, faster timelines, more stakeholders than traditional work



Know mineral estate issues cold - waivers, endorsements, set-asides, accommodation doctrine



Build relationships with data center attorneys and title underwriters early



Confidentiality is everything - NDAs are signed early and cover all project aspects



The earlier you're involved, the more value you add - be ready from site selection onward



Jennifer Forgey
*Senior Counsel, Austin
Real Estate*
512.236.2006
jforgey@jw.com



Meghan Griffiths
*Partner, Austin
Environmental Regulatory &
Legislative*
512.236.2363
mgriffiths@jw.com



CONFIDENTIAL INFORMATION

This information is confidential and has been prepared for the sole use of the recipient. It is the property of Jackson Walker. Jackson Walker considers this work to be an unpublished work in which it is the author of all copyrights. It is requested that the recipient not publish the contents or reveal any portion of this document to anyone outside the recipient.

© Jackson Walker LLP

EXISTENCE OF ATTORNEY-CLIENT RELATIONSHIP

To obtain legal counsel or legal services from Jackson Walker LLP, you must first establish an attorney-client relationship with the Firm. This document does not establish an attorney client relationship with Jackson Walker or any individual attorney at Jackson Walker. Until you have received an engagement letter from the Firm, do not disclose or send any information or documents that you consider private or confidential.

Austin | Dallas | Fort Worth | Houston | San Angelo | San Antonio
JW.com