

Chair Jennifer Allen
Pima County Board of Supervisors
33 N. Stone Avenue
Tucson, AZ 85701

Re: Unlawful Moratorium on Data Center Development

VIA EMAIL AND U.S. MAIL

Chair Allen and Members of the Board:

We are writing to you regarding the Pima County Board of Supervisors' recent moratorium on data center development in unincorporated Pima County. This moratorium is unlawful under state law and raises significant concerns under Arizona's Private Property Protection Act ("Prop 207"). We therefore request that the Board promptly rescind it.

Arizona law sharply restricts a county's authority to suspend otherwise lawful property development. Specifically, A.R.S. § 11-833 establishes specific prerequisites for the extraordinary act of stopping development, which the County has not satisfied. Indeed, state law does not authorize a county to halt lawful development merely because officials wish to study an industry, consider additional regulations, or complete amendments to the zoning code. Instead, counties have only those powers delegated to them by the Legislature, *State ex rel. Pickrell v. Downey*, 102 Ariz. 360, 363 (1967) (A county board of supervisors has only those powers "expressly conferred by statute, or [as] necessarily implied therefrom."). Counties may not exceed their delegated powers, and "[a]ctions taken by a board of supervisors by methods unrecognized by statute are without jurisdiction and wholly void." *Hancock v. McCarroll*, 188 Ariz. 492, 498 (App. 1996).

The data center moratorium was unlawfully imposed and should be immediately rescinded.

First, the County's moratorium is not based on a demonstrated shortage of essential public facilities under Section 11-833(B), which means it can be justified, if at all, only under Section 11-833(C). That section only permits a moratorium where there is a "compelling need," a term defined as "a clear and imminent danger to the health and safety of the public." A.R.S. § 11-833(I)(1).

That demanding standard requires more than identifying potential risks, matters warranting additional study, or a desire to adopt more comprehensive regulations. The danger must be both clear and imminent. But the County's own evidence fails to establish such a danger. The August 2026 *Public Health Review of Data Center Projects*, on which the County relies, repeatedly acknowledges the speculative and preliminary nature of its conclusions. It expressly acknowledges that the existing evidence *does not establish* a danger to public health—let alone a clear and imminent one. It states, **"The absence of empirical epidemiologic studies directly measuring health outcomes in communities near data centers is the defining limitation of the current evidence base."** It further acknowledges **"the lack of direct empirical evidence on health impact in communities near data centers."** It acknowledges that it *"is not* a formal Health Impact Assessment nor a formal Environmental Impact Assessment," and that the County

“did not attempt to systematically collect new qualitative or quantitative data to judge potential health outcomes or to predict health or environmental effects of building and operating data centers in Pima County.”

In addition, the County Administrator observed that this report is merely a “public health screening and baseline assessment,” not a prediction of health outcomes, and cautioned that it “should not be interpreted as a conclusion that data center development will result in specific adverse health outcomes.”

These, and other concessions in the report, cannot reasonably be reconciled with the statutory requirement of “compelling need,” which would require proof of “a clear and imminent danger to the health and safety of the public.” A.R.S. § 11-833(I)(1). Pure, evidence-free speculation is not is not enough.

Second, the County has not demonstrated other requirements of state law. Section 11-833 includes other restrictions on moratoria, which are also not satisfied here. For rural land, the County must establish not merely that existing regulations could be improved, but that they are inadequate to prevent irrevocable public harm. *See* A.R.S. § 11-833(C)(2)(a). But, again, the County’s report does not make that showing. It recommends monitoring, project-specific evaluation, mitigation, and other measures to address potential effects—all of which undermine the idea that existing regulations are inadequate.

Additionally, Section 11-833(C)(2)(b) requires the County to state “[t]he reasons that alternative methods of achieving the objectives of the moratorium are unsatisfactory.” But there are such alternatives here, and they are satisfactory. These include including existing federal, state, and local laws that already regulate ma construction activity, water, noise, land use, and other environmental effects. What’s more, we understand that County staff has already prepared a regulatory alternative to the moratorium in the form of a zoning-code amendment governing data centers. Since the County cannot show that available regulatory measures are incapable of addressing the alleged danger during the period necessary to complete the ordinary zoning process, the moratorium fail Section 11-833.

Third, Section 11-833(C)(2)(c) also requires the County to show that the moratorium is “sufficiently limited” that property outside affected geographical areas is not unreasonably restricted. But the County’s own public-health analysis emphasizes repeatedly that the potential effects of data centers depend upon the characteristics of particular projects and locations—and the County acknowledges that it lacks site-specific data and that additional project-specific information is required.

As a result, a categorical moratorium is impossible to reconcile with the statute.

An additional concern is that the County has not complied with state law in adopting the moratorium. Section 11-833 does not authorize the County to suspend existing development rights while it completes that legislative process merely because officials would prefer that future applications be governed by regulations that do not yet exist.

If the Legislature intended counties to possess a general “planning pause” authority whenever they were considering amendments to their zoning codes, it would have said so. It did not. Instead, it limited moratoria to circumstances involving shortages of essential public facilities or a “compelling need,” expressly defined as a “clear and imminent danger to the health and safety of the public.” The County’s desire for additional time to adopt new regulations cannot substitute for that statutory requirement.

Finally, the moratorium implicates Arizona’s Private Property Rights Protection Act (A.R.S. § 12-1134(A)). That statute requires a political subdivision to pay just compensation when it reduces an owner’s existing rights to use private property and thereby reduces the property’s value. Thus, property owners may have claims for diminution in value caused by the County’s subsequent and outright prohibition of data center use.

While Section 12-1134(B)(1)’s includes an exception for laws enacted “for the protection of the public’s health and safety,” the County bears the burden of demonstrating that an exemption applies, *id.* § 12-1134(C), and as explained above, the County cannot satisfy that burden.

Affected property owners are entitled to challenge the legality of the County’s moratorium, and the County could face significant financial liability. *See* A.R.S. §§ 11-833(H); 12-1134(E).

Based on the foregoing, the Institute requests that the Board promptly rescind the data center moratorium.

Should you have any questions regarding this matter, I can be contacted directly at jriches@goldwaterinstitute.org or (602) 462-5000.

cc. Board of Supervisors
County Attorney