

**VIRGINIA:**

**IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY**

**OAK VALLEY HOMEOWNERS  
ASSOCIATION, INC.**

**IAN C. MIRKES**

**GABRIELLE J. PYLE**

**MICHAEL DONEGAN**

**CHRISTOPHER D. WALL**

**JEFFREY DELYLE JENSEN**

**CAMERON ROHRER**

**JOHN B. BRADSHAW**

**STEPHANIE C. CHARTRAND**

**JOHN C. HERMANSEN**  
Trustee of the John C. Hermansen  
Revocable Living Trust

**JOSE R. MEDINA**  
Trustee of the Medina Living Trust

**ROGER A. YACKEL**

**Plaintiffs,**

**v.**

**PRINCE WILLIAM COUNTY  
BOARD OF COUNTY SUPERVISORS**

**SERVE:**  
**Michelle R. Robl, Esq.**  
**Prince William County Attorney**  
**Office of the County Attorney**  
**1 County Complex Ct., Ste. 240**  
**Prince William, VA 22192**

CASE NO. CL 24-0375

<b>H&amp;H CAPITAL ACQUISITIONS, LLC</b>	)
	)
<b>SERVE:</b>	)
<b>Corporation Service Company</b>	)
<b>100 Shockoe Slip Fl 2</b>	)
<b>Richmond, VA, 23219 – 4100</b>	)
	)
	)
<b>GW ACQUISITION CO., LLC</b>	)
	)
<b>SERVE:</b>	)
<b>Corporation Service Company</b>	)
<b>100 Shockoe Slip Fl 2</b>	)
<b>Richmond, VA, 23219 – 4100</b>	)
	)
	)
<b>GW ACQUISITION CO.I, LLC</b>	)
	)
<b>SERVE:</b>	)
<b>Corporation Service Company</b>	)
<b>Registered Office Address:</b>	)
<b>100 Shockoe Slip Fl 2</b>	)
<b>Richmond, VA, 23219 - 4100</b>	)
	)
<b>Defendants.</b>	)

**COMPLAINT FOR APPEAL, DECLARATORY RULING AND INJUNCTIVE RELIEF**

Oak Valley Homeowners Association, Inc., Ian C. Mirkes, Gabrielle J. Pyle, Michael Donegan, Christopher D. Wall, Jeffrey Delyle Jensen, Cameron Rohrer, John B. Bradshaw, Stephanie C. Chartrand, John C. Hermansen, Trustee of the John C. Hermansen Revocable Living Trust, Jose R. Medina, Trustee of the Medina Living Trust and Roger Yackel (collectively “Plaintiffs”) by counsel, hereby submit their Complaint in this matter.

Plaintiffs request that this Court find that the Prince William County Board of County Supervisors’ (“Board” or “County Board”) December 13, 2023 decision approving Rezoning

#REZ2022-00036 (Ord. No. 2357), Compass Datacenters Prince William County Campus 1; Rezoning #REZ2022-00033 (Ord. No. 23-58, Digital Gateway South; and Rezoning #REZ2022-00032,(Ord. No. 23-59) Digital Gateway North (“collectively “Rezoning”)”<sup>1</sup> was *ultra vires* and/ or void *ab initio*. Plaintiffs request that the Court declare that the Board’s decision approving the Compass and the QTS rezonings violated Virginia law as well as Prince William County Ordinances and was arbitrary and capricious. Plaintiffs also request that this Court grant attorneys’ fees, such other relief as it may deem just and proper. In support thereof, the following is shown:

### **THE PARTIES**

1. Plaintiff OAK VALLEY HOMEOWNERS ASSOCIATION, INC., (“Oak Valley” or “Oak Valley Community”), a Virginia non-stock corporation, is a 254-member homeowners association. Article III, Section (g) of the Oak Valley Articles of Incorporation provides that it has all powers afforded it under the Virginia Nonstock Corporation Act. The Act includes the power to buy, acquire, own, and dispose of real estate (§13.1-826 (3) and (4) Va. Code) and the right to sue and be sued (§ 13.1-826 (1), Va. Code).

2. Oak Valley owns a number of parcels of land comprising over 190 acres (“HOA Parcels”). The HOA Parcels include the property at 13513 ACCORD COURT, GAINESVILLE,

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<sup>1</sup> The three Rezoning were approved by the County in one meeting and are interrelated. In the interest of judicial economy, Plaintiffs are bringing this action as a combined complaint directed at the Board’s actions in the three Rezoning. The three Rezoning were treated by the staff and the Board as concurrent applications. QTS and Compass even submitted a “Master Corridor Plan” to demonstrate how the applications all “fit together” in the Digital Gateway area. QTS’s initial application stated: “A companion application, Digital Gateway South, has been filed concurrently. These two interrelated cases will be considered and advanced together... Processing these applications concurrently will ensure consistency with the Board of County Supervisors’ desire to achieve a holistic land use evaluation and implementation of the Comprehensive Plan, Comprehensive Plan, rather than a piecemeal approach, as well as the County more quickly realizing the significant public benefits and opportunities for the Corridor presented by these interrelated rezoning. (QTS North Application p. 2 of 12.)

VA 20155 (“Oak Valley Property”). The Oak Valley Property is zoned SR1-C. The Oak Valley Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-6537. It is located approximately 1,370 ft from the western boundary of the Digital Gateway CPA Area, and is in the Rural Crescent. The HOA Parcels are an asset of Oak Valley and some of this acreage is appropriate for sale and/or further development. Oak Valley individually, and its Members, will be adversely affected by all three Rezoning, but the closest Land Bay to the property is Compass 5 North.

3. Plaintiff IAN C. MIRKES owns property and resides at 13510 ACCORD COURT, GAINESVILLE, VA 20155 (“Mirkes Property”). The Mirkes Property is zoned SR1-C. The Mirkes Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-5557. Mr. Mirkes pays real estate taxes to Prince William County. The Mirkes Property is approximately 1,482 ft from the western boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Mirkes will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 5 North.

4. Plaintiff GABRIELLE J. PYLE owns property and resides at 5417 ANCESTRY COURT, GAINESVILLE, VA 20155 (“Pyle Property”). The Pyle Property is zoned SR1-C. The Pyle Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-4892. Ms. Pyle pays real estate taxes to Prince William County. The Pyle Property is approximately 1,650 ft from the western boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Ms. Pyle will be adversely affected by all three Rezoning, but the closest Land Bay to her property is Compass 5 North.

5. Plaintiff MICHAEL DONEGAN owns property and resides at 5405 ANCESTRY COURT, GAINESVILLE, VA 20155 (“Donegan Property”). The Donegan Property is zoned

SR1-C. The Donegan Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-00-5027. Mr. Donegan pays real estate taxes to Prince William County. The Donegan Property is approximately 1,820 ft from the western boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Donegan will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 5 North.

6. Plaintiff CHRISTOPHER D. WALL owns property and resides at 13516 HERITAGE FARMS DRIVE, GAINESVILLE, VA 20155 (“Wall Property”). The Wall Property is zoned SR1-C. The Wall Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-00-1762. Mr. Wall pays real estate taxes to Prince William County. The Wall Property is approximately 2,290 ft from the western boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Wall will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 5 North.

7. Plaintiff JOSE R. MEDINA is Trustee of the MEDINA LIVING TRUST. The Trust holds title to Mr. Medina’s residence at 4610 SUDLEY ROAD, CATHARPIN, VA 20143 (“Medina Property”). The Medina Property is zoned A-1 and is on well and septic. The Medina Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-65-0558. The Trust pays real estate taxes to Prince William County. The Medina Property abuts the northern boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Medina will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 1.

8. Plaintiff JEFFREY DELYLE JENSEN owns property and resides at 4580 SUDLEY ROAD, GAINESVILLE, VA 20155 (“Jensen Property”). The Jensen Property is zoned A-1 and is on well and septic. The Jensen Property is designated in the real estate tax records of Prince

William County, Virginia as GPIN 7499-55-1569. Mr. Jensen pays real estate taxes to Prince William County. The Jensen Property abuts the northern boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Jensen will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 1.

9. Plaintiff CAMERON ROHRER owns property and resides at 4511 OLD FIELD DRIVE, GAINESVILLE, VA 20155 ("Rohrer Property"). The Rohrer Property is zoned A-1 and is on well and septic. The Rohrer Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-45-6165. Mr. Rohrer pays real estate taxes to Prince William County. The Rohrer Property is approximately 130 ft from the northern boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Rohrer will be adversely affected by all three Rezoning, but the closest Land Bay to his property is Compass 1.

10. Plaintiff JOHN B. BRADSHAW owns property and resides at 12010 BOBWHITE DRIVE, CATHARPIN, VA 20143 ("Bradshaw Property"). The Bradshaw Property is zoned A-1 and is on well and septic. The Bradshaw Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-90-3329. Mr. Bradshaw pays real estate taxes to Prince William County. The Bradshaw Property abuts the northern boundary of the Digital Gateway CPA Area and is in the Rural Crescent. . Mr. Bradshaw will be adversely affected by all three Rezoning, but the closest Land Bays to his property are QTS N- B and Compass 4.

11. Plaintiff JOHN C. HERMANSEN is Trustee of the JOHN C. HERMANSEN REVOCABLE LIVING TRUST. The Trust holds title to Mr. Hermansen's residence at 12012 ROBIN DRIVE, CATHARPIN, VA 20143 ("Hermansen Property"). The Hermansen Property is zoned A-1 and is on well and septic. The Hermansen Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7599-10-0562. The Trust pays real estate

taxes to Prince William County. The Hermansen Property abuts the eastern boundary of the Digital Gateway CPA Area and is in the Rural Crescent. Mr. Hermansen will be adversely affected by all three Rezoning, but the closest Land Bay to his property is QTS-N B.

12. Plaintiff STEPHANIE C. CHARTRAND owns property and resides at 6598 ALDERWOOD WAY, GAINESVILLE, VA 20155 (“Chartrand Property”). The Chartrand Property is zoned Planned Mixed Residential (“PMR”). The Chartrand Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-11-6075. Ms. Chartrand pays real estate taxes to Prince William County. The Chartrand Property is approximately 986 ft from the southwestern boundary of the Digital Gateway CPA Area. Ms. Chartrand will be adversely affected by all three Rezoning, but the closest Land Bay to her property is QTS-S A.

13. Plaintiff ROGER YACKEL owns property and resides at 13348 FIELDSTONE WAY, GAINESVILLE, VA 20155 (“Yackel Property”). The Yackel Property is zoned PMR. The Yackel Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-22-8840. Mr. Yackel pays real estate taxes to Prince William County. The Yackel Property is approximately 36 ft from the southwestern boundary of the Digital Gateway CPA Area.

14. Defendant H&H Capital Acquisitions, LLC is the Applicant and, on information and belief, contract owner of ±884.12 acres in the Gainesville Magisterial District that applied to rezone said property from A-1 Agricultural land SR-5, semi-Rural Residential to PBD, Planned Business District. The H&H Capital Acquisitions, LLC project is known as Compass Datacenters Prince William County Campus I, REZ2022-00036. (“Compass”)

15. Defendant GW Acquisition Co., LLC is the Applicant and, on information and belief, contract owner of ± 342 acres in the Gainesville Magisterial District that applied to rezone said property from A-1 Agricultural land SR-5, semi-Rural Residential to PBD, Planned Business District. This GW Acquisition Co., LLC project is known as QTS – PW DIGITAL GATEWAY SOUTH, REZ2022-00033, Digital Gateway South. (“Digital Gateway South”). The developer is known as QTS (“QTS”).

16. Defendant GW Acquisition Co .I, LLC, together with Defendant GW Acquisition Co., LLC, (collectively “QTS”) is the Applicant and, on information and belief, contract owner of ±534 acres in the Gainesville Magisterial District that applied to rezone said property from A-1 Agricultural land SR-5, semi-Rural Residential to PBD, Planned Business District. This GW Acquisition Co., LLC project is known as QTS – PW DIGITAL GATEWAY NORTH, REZ2022-00032, Digital Gateway North. (“Digital Gateway North”).

17. Defendant County Board is the duly constituted governing body for the County of Prince William, Commonwealth of Virginia.

### **JURISDICTION AND VENUE**

18. This action is brought pursuant to Sections 15.2-2285(F) and 8.01-184 *et seq.* of the Virginia Code. Plaintiffs appeal the Board’s decision approving the Digital Gateway Rezoning, request a declaratory ruling that the Board violated applicable Virginia law and local ordinances and further request that the Court enjoin the Board from taking further actions in furtherance of the Rezoning. Venue is proper pursuant to Section 8.01-257 *et seq.* of the Virginia Code, as all parties reside and/or conduct business in Prince William County, Virginia.



## STATEMENT OF FACTS

### **The Unique Environmentally Sensitive and Culturally Significant Area That Is The Digital Gateway**

19. At issue in this case is the unlawful approval of the Compass rezoning application and the two QTS rezoning applications (collectively “Rezoning”) in the 2,139-acre Digital Gateway CPA Area<sup>2</sup> by the County Board on December 13, 2023, following a grueling overnight public hearing that lasted over 29 hours.

20. The Board approved these three controversial applications to rezone 1,790 acres of environmentally sensitive and culturally and historically significant rural and semi-rural land in western Prince William County to allow the construction of at least 33+ looming industrial data center buildings totaling approximately 22.3 million square feet.<sup>3</sup>

21. The QTS Staff Reports<sup>4</sup> depict a breakdown of the Digital Gateway CPA Area and the location of the three Rezoning as follows:

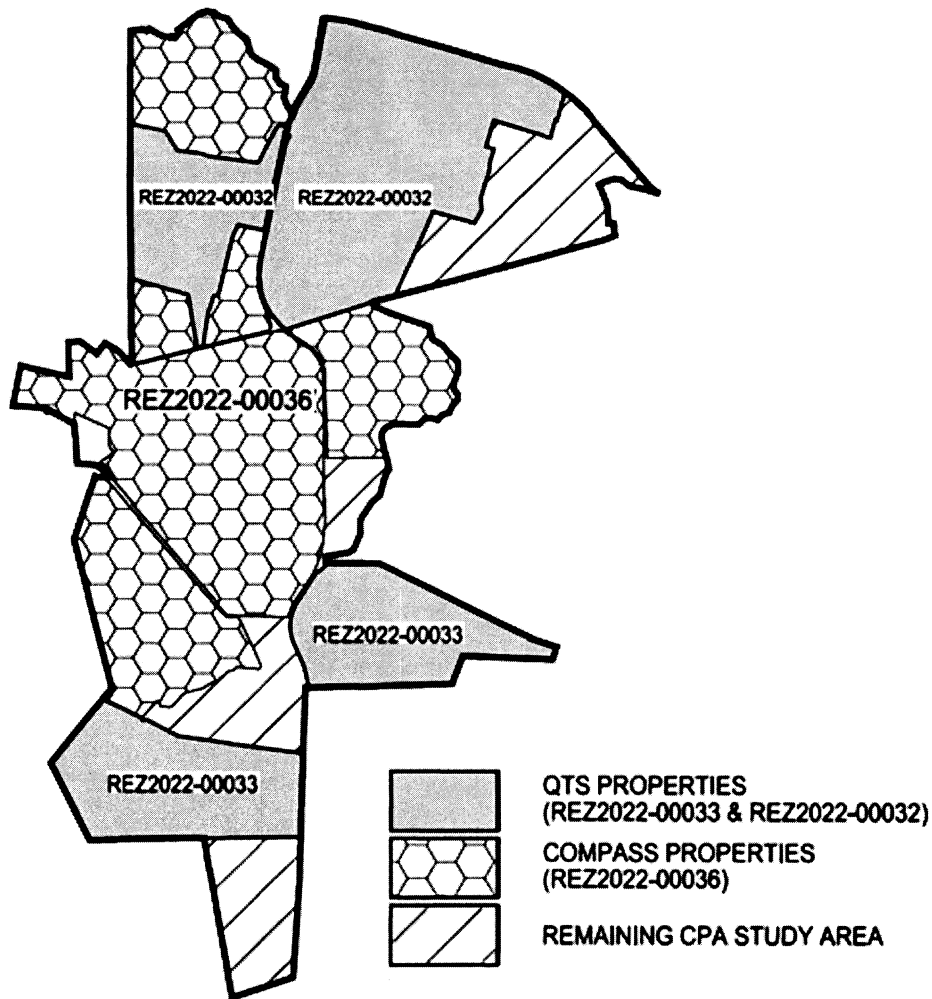
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<sup>2</sup> The developers are under contract to purchase 1,760 of the 2,139 acres of the Digital Gateway CPA area leaving 379 acres to be later developed into possible data center or other uses.)

<sup>3</sup> The proposed number of data centers could be as few as 33 or as many as 37. The Rezoning applications do not provide a specific number or location for the proposed structures.

<sup>4</sup> The undated Staff Reports of the Rezoning, totaling 1419 pages (“Staff Report”) (including 9 pages of draft resolutions **recommending denial of all three Rezoning**) were posted to the BOCS website on Thursday, December 7, 2023 as part of the Agenda Packet.

<https://d3n9y02raazwpg.cloudfront.net/pwcgov/ea0620cf-1891-41b2-82d3-347aead84af1-a9a62e69-fba9-4fc4-b622-d3a40d5cf67f-1701960506.pdf>. On information and belief, this is when the Members of the Board received these staff reports and their recommendations. See Exhibit 1 hereto (“Staff Report”).



22. The Rezoning were the end result of a series of numerous procedural irregularities and unlawful actions by the Board dating back to the adoption in November of 2022 of the Digital Gateway Comprehensive Plan Amendment (CPA #2021-00004) (“Digital Gateway CPA” or “CPA”) in violation of Virginia law.

23. Known simply as the “Digital Gateway,” on information and belief, the Rezoning at issue here, made possible by the CPA, comprise one of the largest (if not the largest) assemblage of acreage devoted to the data center industry in the country.

24. To put the enormity of this data center development into perspective, 22.3 million square feet of data center structures is the equivalent of 168 football fields-worth of windowless office buildings, each between 6 and 9 stories tall.

25. The Digital Gateway CPA Area is adjacent to a mix of residential and agricultural uses to the west and north, including the properties of Plaintiffs Jensen, Medina, Rohrer, Oak Valley, Mirkes, Donegan, Pyle, and Wall. To the east are residential areas including the properties of Plaintiffs Bradshaw and Hermansen, and historic areas, including the iconic Manassas National Battlefield Park. To the south are Plaintiffs Chartrand's and Yackel's properties and the Conway Robinson Memorial State Forest.

26. Dotted throughout the Digital Gateway landscape is a rich tapestry of important cultural heritage resources, the most significant of which is the Manassas National Battlefield Park, which directly abuts the CPA Area. Established in 1940, the park's mission is to preserve and protect the hallowed ground associated with the Civil War Battles of First and Second Manassas.<sup>5</sup> Also significant are the hundreds of acres of land located inside the Digital Gateway Area itself where a series of Civil War camps were located.

27. Of equal cultural and historical significance is the land in the Digital Gateway where Native American and Black residents settled during the United States' post-Civil War Reconstruction era.<sup>6</sup> In fact, according to the Superintendent of the Manassas National Battlefield Park, "Perhaps the singularly most important resource contained within [the Digital Gateway] is the presence of the post-Civil War settlement community of African Americans like the Dean family."<sup>7</sup>

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<sup>5</sup> Staff Report, p. 961 of 1419.

<sup>6</sup> Staff Report, p. 962 of 1419.

<sup>7</sup> Staff Report, p. 423 of 1419.

28. Of similar importance, woven among these cultural and historical treasures are a wide range of natural resources including sensitive lands in the Environmental Resource Protection Overlay District (“ERPO”),<sup>8</sup> which include extensive tracts of forest land critical to the infiltration of stormwater and removal of runoff pollutants.<sup>9</sup> These sensitive portions of the ERPO are destined to be clear-cut and flattened by the developers, along with ample wetlands, natural 100 year floodplains, and Resource Protection Areas (“RPAs”). The Digital Gateway development covers numerous intermittent and perennial streams and other water resources, including Little Bull Run, Catharpin Creek, and Lick Branch, all of which currently provide significant wildlife habitat.

29. With the approval of the Rezoning, this vast array of cultural, historical, and natural resources is destined for decimation or, at the very least will be inextricably interwoven with, behemoth data center structures and an intricate tangle of electric power lines and other infrastructure needed to connect at least twelve 75-ft tall “by right” substations to the 33+ data centers. The location of power lines cannot be approximated because the Rezoning applications provided no such details.

30. Prior to the Rezoning, the land in the Digital Gateway CPA Area was primarily zoned A-1 Agricultural (minimum 10-acre parcels) with some of the land zoned SR-5, semi-rural residential. Some or all of the parcels in the Digital Gateway CPA Area are located within the Rural Area (Rural Crescent) boundary.<sup>10</sup>

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<sup>8</sup> Staff Report, p. 26 of 1419

<sup>9</sup> Preservation of forest systems is vital to protecting water quality (e.g., allowing greater infiltration of stormwater, intercepting and removal of runoff pollutants, replenishing aquifers, etc.), maintaining wildlife habitat, sequestering carbon, improving air quality, protecting property values, among many other benefits. Staff Report, p.p. 920 & 937 of 1419

<sup>10</sup> In 1998, the County Board created the Rural Area, also known as the “Rural Crescent.” It covers approximately 117,000 acres containing agricultural, open space, forestry, and large-lot residential land uses, as well as occasional small-scale convenience retail centers and community facilities. Among other

31. Even before the DG rezonings, the Prince William County Zoning Ordinance (“ZO”) already had created areas appropriate for data center development in what is called the Data Center Opportunity Zone Overlay District. The rural and semi-rural land that is the subject of the Rezoning is not in the Overlay District and is incompatible with any data center use, let alone a colossal conglomeration of 33 or more data centers.

32. Section §32-509.01 of the ZO states that the intent of the Overlay District is to “attract and advance high-tech industrial development while limiting negative impacts to communities.” Under ZO §32-509.06, data centers are prohibited in agricultural, residential, and PMR districts, such as the Plaintiffs’ properties and the properties in the Digital Gateway CPA Area, which comprise the Rezoning.

33. In November of 2022, it was already evident to the Board that the data centers built in close proximity to residential districts were overwhelmingly problematic for County residents who live near them. The complaints, which continue to this day, center chiefly around the residents being subjected to round-the-clock noise caused by the 24/7 air conditioning that is necessary for the operation of the data centers.

34. Although the Board has not publicly made available any statistics on how many data centers are currently operating in the County, or are in various stages of development (either by right or pursuant to Board approvals that have already occurred), on information and belief, around the time of the November 2022 BOCS adoption of the CPA, there were over 50 million square feet of data centers operating, approved and/or under by-right development in Prince William County.

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purposes, the Rural Crescent has been used as a smart growth tool to protect the Occoquan Reservoir Watershed. In December 2022 the Board updated the County’s long-range land use plan to eliminate the Rural Crescent protections.

35. In the 13 months since the passage of the Digital Gateway CPA, that number has significantly increased, most recently with the approval, on November 28, 2023, of seven to nine new data centers in Devlin Technology Park. That approval brings the County's total estimated data center square footage, either in use or approved, to well over 53.2 million square feet.

36. Despite the fact that the Board's own paid consultants predict a need for data centers of **only 48 million square feet over the next 20 years**<sup>11</sup> and despite the documented devastating effects of data centers on the quality of life of residents of Prince William County who live near them, and their property values, the Board demonstrated an irrational determination to disregard its professional consultants' recommendations by approving an additional 22.3 million square feet of inadequately vetted Digital Gateway data centers.

37. The November 2023 BOCS election was a referendum on the Digital Gateway data centers. The pro-data center Board Chair lost her party's bid to run again. Both parties fielded a candidate for Chair whose platform was to put the brakes on the data center proliferation outside of the data center Overlay District, at least until the County conducts further analysis of the data center industry, including its effects on nearby residents and parks and other natural resources, and until the County's greatest resource—its residents—could be adequately protected. In fact, the new Board Chair has reiterated her unwavering opposition since the November election.

### **The Unlawful Adoption of the Digital Gateway CPA Set the Stage for the Unlawful Approval of the Rezoning**

38. From the beginning, the Digital Gateway initiative has been steeped in controversy and shrouded under the cloak of the nondisclosure agreements ("NDA's") that the County has signed with QTS and Compass.

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<sup>11</sup>Targeted Industry Land Need Analysis, Prince William County Virginia May 2022 ("Camoin Report"), p.4.

39. Through it all, the Board has put the corporate interests of the data center developers above the advice of their own professional planning staff, the Planning Commission, and outside professional advisors and consultants, and most distressingly above the interests of county residents such as the Plaintiffs who, with the December 13 Rezoning Approvals have been sentenced to suffer the negative effects of their new data center industrial complex neighbors.

40. In May of 2021, Mary Ann Ghadban (“Ghadban” or “CPA Applicant”), a property owner acting as agent for other property owners (the “CPA Applicant Group”), submitted a request for a Comprehensive Plan Amendment for approximately 800 acres of land to be designated for data center use.

41. However, almost immediately, by Board Resolution No. 21-445, the Board expanded Ghadban’s original 800 acres to include approximately 197 parcels, comprising approximately 2,139 acres (“Digital Gateway CPA Area”).

42. Although Ghadban’s application began as a concurrent rezoning request,<sup>12</sup> at some point the application morphed into a simple comprehensive plan amendment without a rezoning. The re-characterization occurred at least in part at the direction of the Board.<sup>13</sup> The Board did not provide any comment or invite public input on its decision to so direct the re-characterization of the private applicant’s re-zoning application.

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<sup>12</sup> The June 2, 2021 receipt for the application fee indicates she paid for a “Comp Plan Amendment Concurrent with REZ.”

<sup>13</sup> On or about September 3, 2021, the Ghadban/CPA Applicant Group filed an Application for Long Range Map Changes, stating that they desired to be included “within the proposed amended Data Center Overlay District and upcoming amendments to the Comprehensive Plan.” However, shortly thereafter in a November 2, 2021 letter entitled “Submission of Post Initiation Materials for Comprehensive Plan Amendment (CPA #2021-00004),” Christopher Consultants (on behalf of the CPA Applicant) stated, “This Comprehensive Plan Amendment (CPA), by design **and BOCS direction**, is separate and distinct from the County’s Zoning Text Amendment (ZTA) of the Data Opportunity Zone Overlay District.” (Emphasis added). Neither the September 3 nor the November 2, 2021 submission mentioned a concurrent rezoning.

43. Nonetheless, throughout the CPA review process, although there was no concurrent rezoning, Ghadban was referred to as “Applicant.” And throughout the process she served as a representative of the CPA Applicant Group and had a seat at the table that enabled the data center Compass and QTS to substantively shape the Digital Gateway CPA to conform with their development plans.<sup>14</sup>

44. By the summer of 2022, long before the Digital Gateway CPA was adopted by the Board, QTS and Compass had already submitted their rezoning applications (“First Submissions”) to the Prince William County Planning Office (“Planning Office”). By mid-July of 2022, the two QTS applications were distributed by staff for review by various agencies.<sup>15</sup> Similarly, Compass’s rezoning application was distributed for agency review in early August of 2022.

45. On September 14-15, 2022, the Planning Commission held the Digital Gateway CPA public hearing. The packet of information the Planning Commission received for the meeting included a letter dated September 9, 2022, submitted to the Chair of the Planning Commission by counsel QTS and Compass (“September 9 Letter”).

46. The September 9 Letter indicated the Developers previously filed with the County three rezoning applications, and they were waiting for the Board’s adoption of the CPA. The September 9 Letter provided, in redline form, precisely how the Developers wanted the CPA language changed.

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<sup>14</sup> On information and belief, the CPA Applicant participated in three or four rounds of planning reviews, consisting of meetings with the Staff that were followed up with suggested language and revisions to the CPA.

<sup>15</sup> These agencies included the Building Official, Community Development Manager, Conway Robinson State Park, County Archaeologist, Dominion Energy, Economic Development, Historical Commission, Land Development Case Manager, Long Range Planning, Manassas National Battlefield Park, Parks and Recreation, Service Authority, Transportation Department, US Fish & Wildlife, VA Environmental Quality, VDOT Fairfax, Watershed Management.



47. After an all-night hearing ending in the early morning of September 15, 2022, in its Resolution No. 22-085, the Planning Commission recommended approval of the CPA, incorporating verbatim the language and changes as submitted in Exhibit A to the Developers' September 9 Letter.

48. After the meeting concluded, a public outcry occurred with respect to the Planning Commission's consideration, and immediate adoption, of the recommendations in the September 9 Developer Letter, which some of the Commissioners stated they had not received and had not reviewed and that was not made available to the public until after the Planning Commission hearing.

49. After the Planning Commission hearing, the County attempted to convince the public that the CPA Applicant was not an applicant, had never been an applicant, that the County was fully in charge of the CPA, and that the County itself was actually the "Applicant."

50. On November 1, 2022, the County Board commenced the public hearing at 7:30 p.m. The public hearing concluded on November 2, shortly before 10 a.m.

51. At the conclusion of the public testimony, which continued overnight and into the following morning, Chair Wheeler proceeded directly to consideration of the CPA. Despite at least one supervisor making requests to discuss points raised by the public during the overnight hearing, the Chair did not permit additional questions to be put to County planning staff, nor did the Chair allow time for any discussion of the public testimony among Board Members.<sup>16</sup>

52. Instead of dutifully undertaking to resolve outstanding questions concerning the largest development in the County's history, as raised by Applicant presentations and public

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<sup>16</sup> Indeed, when Supervisor Lawson stated that she wished to address some questions to the Planning Staff based on some of the comments that she had heard during the public testimony, Chair Wheeler would not permit it, despite her assurances (prior to the public testimony portion of the meeting) that she would allow such questions at the close of the public hearing.

testimony over the previous 24 hours, Supervisor Angry immediately moved to approve the CPA, and presented a series of amendments on which he said he had “worked with” Vice Chair Margaret Franklin, Supervisor Kenny Boddy, and Supervisor Andrea Bailey to create. The amendments had been prepared prior to the public hearing and, upon information and belief, were not provided to either Supervisor Lawson or Supervisor Vega.<sup>17</sup>

53. Chair Wheeler’s refusal to permit any Board discussion of the public hearing comments converted what might otherwise have been a meaningful opportunity for public input into the decision-making process, as required by Section 15.2-2204 of the Virginia Code, into a “check the box” exercise where the public input had no relevance to the Board’s decision on the CPA.<sup>18</sup>

54. In fact, the Board maintains that it is not obligated to listen to or consider comments made by the general public at a public hearing. As the County Attorney’s Office wrote in its Reply Brief concerning our original challenge to the CPA, “[t]he Virginia Code does not require the Board to listen to and consider the comments [made at a public hearing]. If the General Assembly intended to impose such a requirement it would have done so.” Consistent with that claim and as demonstrated by the circumstances of the CPA public hearing itself, the Board could not possibly have had sufficient time and opportunity to have considered the comments made at the public hearing before adopting the CPA.

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<sup>17</sup> Notably, the Gainesville Magisterial District, in which the proposed PWDG is located, was unrepresented on the Board at this time, with its elected Supervisor, Peter Candland, barred from participating in any discussion or votes regarding the PWDG.

<sup>18</sup> As one Gainesville resident characterized the public hearing, “They [the Board] just simply waited for the public comment period to exhaust itself and almost immediately voted to approve the project as though it was a checklist exercise and they already knew what they were going to do.” <https://insideclimatenews.org/news/10022023/virginia-data-centers-amazon-prince-william-county> (Exhibit 2 hereto, p. 4).

55. All but one of the Plaintiffs herein have appealed the Board's adoption of the CPA, *inter alia*, on the ground that the Board violated the statutory public hearing requirement set forth in Section 15.2-2204 Virginia Code, by failing to listen to and consider the comments of the general public made at that hearing, and that, as a consequence, the CPA itself is void *ab initio*. That appeal is currently pending before Judge Willet in this Court in Docket No. CL 22-10052.<sup>19</sup>

**The Board's Rushed Rezoning Review Schedule and Problematic Public Hearing Process  
regarding the Digital Gateway Rezoning**

56. From the start, the Digital Gateway Rezoning process has been embroiled in the same controversies that plagued the adoption of the Digital Gateway CPA.

57. Transparency, which should be the hallmark of a local government charged with making zoning decisions promoting the health, safety and general welfare of the residents by assuring "that residential areas be provided with healthy surroundings for family life"<sup>20</sup> has been significantly impaired by the NDAs the County has signed with QTS and Compass.

58. Not only has the process lacked transparency, but the process also has been devoid of reasoned decision-making. The process itself has been driven more by political expediency and satisfying deep-pocketed developers' demands before the Chair left office, than it has been a process calculated to serve the public interest. The Chair insisted that the BOCS hold the hearing (and subsequent vote) without delay because QTS and Compass had a right to have their application heard within a year of submitting them. Never mind that the applications themselves (as described more fully below) were far from complete, and are still, even after the vote to approve, woefully incomplete.

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<sup>19</sup> Plaintiff Yackel was not a Plaintiff in the lawsuit challenging the Digital Gateway CPA.

<sup>20</sup> §§15.2-2200 & 15.2-2283 Va. Code.

59. Instead of taking a well-reasoned deliberate approach to listen to (and not just provide a microphone for a hearing) those County residents most affected by the development's potential negative effects, the Chair instead forced a vote on all three complicated and controversial Rezoning for political expediency and the convenience of Compass and QTS.

60. On the heels of the passage of the Digital Gateway CPA, in January of 2023, QTS and Compass filed their Second Submissions containing hundreds of pages of documents, their first sets of proffers, and significant addition of acreage to the Compass and Digital Gateway North proposals.<sup>21</sup>

61. On information and belief, most routine rezonings in Prince William County typically require at least three submissions and a final submission which functions to clear up typographical errors and similar loose ends prior to the final draft of the staff report.

62. Yet, in January of 2023, the Board Chair and the developers began pushing for a May 2023 Board hearing for the most unprecedented, atypical, complex and multifaceted set of interrelated rezoning applications that had ever been filed with the County.

63. This push came despite clear indications from Staff that the January 2023 applications themselves were not yet even complete, and that due to review schedules and lead times, a May 2023 Board hearing would not allow for proper vetting, analyzing the proposals and drafting the staff reports for the Planning Commission and Board hearings on the Rezoning.

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<sup>21</sup> Compass's January 2023 Second Submission had 198 pages, including 23 pages of the first draft of Compass's proffers. Compass added more land to its Rezoning and for the first time added a list of waivers it was requesting. Similarly, QTS submitted a 206-page updated application including 38 pages of draft proffers and more land to the Rezoning. Although the January 2023 Digital Gateway South Second Submission did not add new land to that Rezoning, it did have 184 pages of material, including 34 pages of proffers. Additionally, it included a 650-page Traffic Impact Study.

64. In fact, the deficiencies identified by the Staff in the developers' Second Submissions prompted the need for Third Submissions. Those Third Submissions were distributed to the reviewing agencies at the end of May 2023 with comments due July 24.

65. Meanwhile in late July,<sup>22</sup> a "perfect storm" was brewing. The Board Chair and the developers redoubled their efforts to schedule the Rezoning as soon as possible. At around the same time, Staff were determining from their own review and the reactions of the reviewing agencies beginning to trickle in that the Third Submissions were so deficient that a Fourth Submission would be required from QTS and Compass, presenting a problem for reliably scheduling the Rezoning for hearing.

66. The impetus for the rush to schedule the Rezoning for hearing was twofold: the pro-Digital Gateway Board Chair Wheeler had lost her party's primary in June. Both parties fielded a candidate opposed to the Digital Gateway and that change in the Board's composition rendered uncertain the outcome of any Board vote on the Digital Gateway conducted after December 31, 2023. Moreover, some of the landowners under contract with QTS were attempting to terminate their contracts that contained a clause allowing termination if the Board did not schedule the hearing by August 15, 2023, with the hearing actually taking place by December 30, 2023.<sup>23</sup>

67. On information and belief, a contract termination by these QTS property owners would jeopardize not only QTS's Digital Gateway project, but possibly Compass' concurrently processed rezoning as well.

68. QTS contacted Board Chair Wheeler in late July 2023 and insisted that the QTS rezonings be placed on the Board's agenda.<sup>24</sup>

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<sup>22</sup> Compass submitted a 116-page Third Submittal, QTS submitted a lengthy submittal as well.

<sup>23</sup> Memorandum Opinion, GW Acquisition Co. LLC v. Pageland Limited Liability Company, et al. p. 6 7. (Exhibit 3 hereto). On information and belief, Compass had a similar provision in its contract.

<sup>24</sup> Calabrese email (Exhibit 4 hereto).

69. On July 30, 2023, Chair Wheeler, without discussing the matter with the rest of the Board, emailed the County Executive and stated that she was scheduling the QTS rezonings for hearing at the November 21, 2023 BOCS meeting.<sup>25</sup> The Planning Commission Hearing was tentatively scheduled for October 11.

70. Meanwhile, Staff members were diligently analyzing the applications and the reviewing agency comments and on August 11, the Staff sent a 116-page missive to Compass, listing the deficiencies that would need to be addressed in the Fourth Submissions and Staff sent a similarly detailed document to QTS for both of its rezonings.

71. On August 30, 2023, in an effort to develop a schedule for review of the rezoning applications and ultimate drafting of a staff report for the three Rezoning applications to accommodate what Planning Office called Applicants' "aggressive public hearing timeline," the Planning Office sent to the County Executive, Christopher Shorter, several options, with the preferred one being to push back the dates "to allow adequate time for the 4<sup>th</sup> review to be incorporated into the staff reports before scheduling any public hearing."<sup>26</sup>

72. Because Staff was reviewing the Rezoning applications concurrently, even though Compass may not have asked the Chair to schedule its application along with the QTS Applications, Board treated the scheduling in lockstep and always scheduled them together.

73. In September 2023 Staff tried to stop the moving target created by the developers' continued attempts after the Fourth Submissions (filed by the Applicants at the end of August) to further revise their proposals and proffers. Staff informed the Applicants that due to the "aggressive" hearing schedule, the applicants could not submit changes during the report drafting

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<sup>25</sup> See *id.* and Exhibit 5 hereto.

<sup>26</sup> Exhibit 6 hereto.

process while the Staff were attempting to analyze the submitted material and distribute it to reviewing agencies

74. The Planning Commission meeting was moved from October 11 to November 8, 2023. At some point, the Board meeting was moved from November 21 to December 12, 2023, the penultimate scheduled meeting of the lame duck Board.

75. On October 27, 2023 the Staff produced for the Planning Commission a 574-page Compass Staff Report, as well as a Digital Gateway South Staff Report of 647 Pages and a 457-page Digital Gateway North Staff Report -- all analyzing the Fourth Submissions and the August 25, 2023 Proffers.

76. As it was, the timing was so truncated that many agencies were not able to comment on the Fourth Submission. And, as it turned out, the Fourth Submission suffered from major deficiencies which in essence required a Fifth Submission, and a further final submission to clear up any last minute inconsistencies and typographical errors, which would have been the case if the applications were undergoing the typical rezoning planning review process.

77. One of the staff reviewers incisively characterized the breakneck application review schedule that was orchestrated to make sure the lame duck Board heard the Rezoning at their penultimate meeting of the year. He stated: "This project moved around pretty fast. I mean it's been in our office for one year and two months. I've seen Dunkin Donuts [rezonings] last longer in the process than this."<sup>27</sup>

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<sup>27</sup><https://www.pwcva.gov/departments/board-county-supervisors/live-video-briefs-archives> timestamp. 6:10:34.

78. In the Staff Reports, Staff recommended that the Planning Commission **recommend denial of all three Rezoning**s, based upon the extensive deficiencies in the revised applications.<sup>28</sup>

79. On November 1, just six days before the November 8, 2023 Planning Commission hearing, Compass submitted a **Fifth Submission** consisting of **1,326 pages**, including significantly revised proffers, and QTS submitted a Fifth Submission of **2,357 pages** for Digital Gateway North and **2,370 pages** for Digital Gateway South, which both included significantly revised proffers as well.

80. Given the chaos imposed upon it with over 6000 pages of amendments and proffers in the Fifth Submission, the ensuing Planning Commission Hearing was an unsurprisingly shambolic affair. Staff pointed out the deficiencies based on the Fourth Submissions, while the Applicants touted the advantages of the Fifth Submissions, which neither the staff, the reviewing agencies, the Commissioners nor the public had had time to review.

81. Notwithstanding these impediments, the Commissioners did their best to absorb the information overload.

82. Amid the confusing clash of current and outdated facts and significant revisions to complicated proffers, Commissioner Fontanella made an observation that illuminated the vast gulf between the expectations the Planning Commission had for the Digital Gateway when it recommended that the Digital Gateway CPA be approved in 2022, and the reality of the Digital Gateway Rezoning's being proposed by the Applicants.

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<sup>28</sup> These deficiencies for all three Rezoning's included, but were not limited to,: lack of building footprint and site layout; lack of proffered elevations; inconsistency with the Comprehensive Plan; failure to locate electrical infrastructure on the property; too much flexibility in proffers, thereby allowing for Applicant to make substantive changes to the project after BOCS approval; and various other proffer deficiencies, including proffers that were not sufficiently specific, thereby creating issues concerning enforcement of those proffers.



83. Commissioner Fontanella noted that all the parks envisioned in the CPA were missing. The representative from Compass stated that the parks were the Board's vision and that none of the parks were part of the Compass proposal.<sup>29</sup>

84. The Planning Commission hearing carried on the unfortunate new "tradition" of overnight Digital Gateway hearings. The Planning Commission hearing began at 2:00 p.m. on November 8 and did not conclude until nearly 24 hours later at after 1 p.m. on November 9, 2023. The Planning Commission voted to recommend **denial of all three Rezoning**s.

85. As the Prince William Times reported: "The 6-2 vote came after three attempts by Commissioner Richard Berry (Gainesville) to defer a planning commission vote until after the county's professional planning office had a chance to review thousands of changes to the Digital Gateway rezoning applications submitted only a week ago by developers QTS Data Centers and Compass Datacenters. 'We need to provide (the staff) time to do their review and analysis,' Berry said."<sup>30</sup>

86. With a little over a month left before the scheduled Board hearing and vote, the Rezoning's never received full staff and reviewing agency review of the Fourth Submissions, let alone the Fifth Submission. Needless to say, the typical final submission was never filed on any of the Rezoning's.

87. Between the November 9 Planning Commission Vote and the BOCS hearing on December 12, 2023 the reckless rush to approve the proposals, however deficient and ill-vetted, continued.

88. Compass submitted yet more proffer revisions on November 28 and QTS submitted new sets of revised proffers for each of its rezoning's on November 29.

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<sup>29</sup> Exhibit 7 hereto.

<sup>30</sup> *Id.*

89. The Staff Reports for the December 12 hearing were not posted until Thursday December 7, 2023 in the Agenda Package, just 5 days before the hearing and vote on December 12. The Staff Reports (**totaling 1, 419 pages**), attached hereto as Exhibit 1, addressed to the extent their limited analysis could, the November 28 and November 29 proffers. The Supervisors had barely more than a weekend to review the Staff's analysis.

90. The Staff again recommended denial based upon major deficiencies in all three applications.

91. The first Board notice advertising the December 12 hearing was published in the Washington Post on Saturday December 2, 2023, followed by a second notice on December 5, and a third notice on Saturday December 9. Except for the date of publication, each notice was identical. Exhibit 8 hereto.

92. The Board failed to publish its public notices on time in accordance with Virginia law and the Prince William County zoning ordinance.

93. After the notice error was discovered, at the Board's December 5 hearing, a motion to cancel and reschedule the December 12 meeting, failed. That motion would have allowed the Rezoning (the only items on the December 12 agenda) to be properly readvertised.

94. Thus, the majority of the Board members voting on that rescheduling motion decided to forge ahead with the defectively advertised December 12 Board meeting date.

95. On December 10, just two days before the December 12 Board hearing, QTS submitted a new set of proffers for Digital Gateway North and Digital Gateway South, superseding the proffers it had just submitted on November 29.

96. On December 11, just one day before the Board Hearing, Compass submitted yet another set of proffers, superseding the proffers it had just submitted on November 28.

97. On December 11, QTS submitted a letter stating that QTS had contracted for 65 acres of land for \$30,000,000 in a part of the Digital Gateway CPA Area that was not part of the QTS rezoning applications, but which land QTS would donate to the County for a park if only the Board would approve the QTS rezonings the next day.

98. The hearing began at approximately 10 a.m. on December 12. Once again, the Applicants touted changes to their proposals that Staff had not had a chance to review and analyze.

99. At approximately 10 a.m. on December 13, 2023, a full 24 hours after the meeting had begun, the public testimony concluded, whereupon the Applicants came back into the hearing room armed with **yet more substantive proffer revisions** to introduce to Board Members, all of whom had been up all night.

100. The irony was not lost on those residents who had also stayed up all night. One of the final speakers, Erica Tredinnick, warned of the dangers wrought by “quick choices with big consequences” if the Board were to make its decision after 24 hours with no sleep. She stated that 24 hours without sleep is the cognitive equivalent of a blood alcohol level of 0.10, which is significantly above the legal limit for drunk driving of 0.08 in most states.<sup>31</sup>

101. Yet the Applicants and the sleep-deprived Board pushed on, with the Applicants back at the wheel.

102. The new proffer revisions had been worked on by Applicants during the overnight public testimony portion of the meeting.

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<sup>31</sup> <https://www.pwcva.gov/departments/board-county-supervisors/live-video-briefs-archives> time stamp 23:23:40-23:24:22;. An article posted on the Centers For Disease Control website cites the same statistics. <https://www.cdc.gov/niosh/work-hour-training-for-nurses/longhours/mod3/08.html>.

103. Supervisor Lawson acknowledged all the scrambling and confusion and questioned how proffers submitted on the fly, including the ones coming in on December 10 and 11 could be properly vetted by staff.<sup>32</sup>

104. Supervisor Weir (whose district contains the massive Digital Gateway), stated that these proffers (both the December 10 and 11 proffers as well as these new December 13 revisions) are “hitting me at 10:30 in the morning.”<sup>33</sup> He further noted that under Section 32.700.43 (3) of the Zoning Ordinance, substantive proffer changes like these December 13 changes, as well as the December 10 (QTS) and December 11 (Compass) proffers require the Rezoning to be sent back to the Planning Commission.

105. Indeed, given the complexities of the Rezoning, when asked if a proffer revision solved an issue that her department (Watershed Management) was concerned about, Julia Flanagan stated that she could not sign off on the proffer. She stated: “I’ll start by saying that, as Supervisor Weir has already said, these were received early this morning. We’ve had very little time to look at them, and, typically with proffers, in our experience, we have to read them multiple times to truly understand their impact. So I don’t think I can give you a thorough answer to what we think this may mean; I can only give you a very preliminary answer, and I’m reluctant to do that.”<sup>34</sup>

106. None of the proffer revisions caused the Staff to rescind their denial recommendations on all three Rezoning.

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<sup>32</sup> <https://www.pwcva.gov/department/board-county-supervisors/live-video-briefs-archives> 24:33:40

<sup>33</sup> <https://www.pwcva.gov/department/board-county-supervisors/live-video-briefs-archives> timestamp 24:06

<sup>34</sup> <https://www.pwcva.gov/department/board-county-supervisors/live-video-briefs-archives>, timestamp 24:34:00-24:34:48.

107. Supervisor Angry made a motion to approve the Rezoning. And Supervisor Boddeye asked QTS to change the FAR proffer in Land Bay C in Digital Gateway South from .36 FAR to .25 FAR.<sup>35</sup> Less than three minutes later, QTS counsel returned and stated he had received approval to change the proffer. The motion was amended to include the new proffer change.

108. The meeting ended on December 13, 2023, with the approval of all three Rezoning and the three Proffers dated December 13, 2023, with four Supervisors voting yes, three voting no and Supervisor Boddeye abstaining.

**The Impact of The Rezoning on The Value of Plaintiffs' Properties  
and Plaintiffs' Health and Quality of Life**

109. Plaintiffs' properties either abut the Digital Gateway CPA Area or are in close proximity to it. Thus, their properties are distinguished from those owned by the general public and the particularized harms that they will suffer and have already suffered because of the Board's approval of the Rezoning are not harms suffered by the public generally.

110. Data centers are industrial uses and are incompatible with the low-density residential, agricultural and semi-rural adjacent land use such as those of Plaintiffs for the reasons articulated below.

111. Indeed, these data centers are so incompatible with low-density residential property that, on April 4, 2022, Catharpin Valley Estates, Oak Valley's immediate neighboring 215-acre community, requested inclusion in the PW Digital Gateway CPA because it would otherwise directly abut the Digital Gateway CPA Area, which is highly incompatible with its existing low-density residential properties of one home per 10-acre lot.

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<sup>35</sup> Under Article 1, Part 100 of the zoning ordinance, the floor area ratio (FAR) is defined as "the ratio yielded by dividing the gross floor area of all buildings on a lot by the total area of the lot."

## **Visual Impacts**

112. Data centers are enormous and unsightly and these 33+ Compass and QTS buildings will not be any exception. The final locations of these structures, the façades of these buildings and even the heights of the individual buildings and the number of them in each Land Bay have not been included on the Master Zoning Plans (“MZP”) for each Rezoning are subject to change by the developers. However, no 85-foot tall building covered in “earth tone” paint <sup>36</sup> can be masked by trees, particularly when those immature trees are freshly planted on clear-cut and re-graded land.

113. There is an intricate web of electrical infrastructure required to connect the 33+ data centers with the twelve substations. The developers are not proffering to install this infrastructure inside the Limits of Disturbance (“LOD”). Therefore, to the extent any old growth trees are available in the “buffer” zones to shield the data centers (and the substations) from view, those trees are subject to removal so that this infrastructure can be installed.

114. Although Compass and QTS both submitted viewshed studies, the studies did not consider the views from the neighboring properties where Plaintiffs Jensen, Medina, Rohrer, Oak Valley, Mirkes, Donegan, Pyle, Wall, Bradshaw and Hermansen are located. Instead the view studies were focused on views from the Battlefield and, to a lesser degree, from the Heritage Hunt community.

115. Based on the limited information Developers have provided about the locations of the buildings, Plaintiffs Jensen, Medina and Roher will see the data centers in Land Bay 1 (Compass) and Land Bay C North (QTS). Due to the topography of his property in relation to the proposed Compass Land Bay, particularly during winter when trees are bare of leaves, Plaintiff

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<sup>36</sup> Compass Proffer 17; Digital Gateway South Proffer 23; Digital Gateway North Proffer 20.

Jensen will have a clear line of site between his home and the data centers. Oak Valley residents, including Plaintiffs Mirkes, Donegan, Pyle, and Wall, will overlook data center landscapes in OTS Land Bay A North and Compass Land Bays 1, 2, 3, 5 and 6. Plaintiffs Bradshaw and Hermansen will be subjected to views of data centers in Compass Land Bay 4 and Land Bay B North (QTS).

116. Plaintiffs Yackel and Chartrand reside in Heritage Hunt. The Yackel Property is less than 50 feet from a designated QTS land bay, yet QTS conducted no studies near his home. based on the minimal descriptions so far provided and based on the topography between the Yackel Property and QTS South Land Bay A and Compass Land Bay 6, when standing on his deck Mr. Yackel will see the top of the buildings with full line-of-sight with the buildings' rooftop chillers.

117. Plaintiff Chartrand, although not as close to Compass Land Bay 6 or the proposed QTS South data centers as the Yackel Property, will likely see data centers in both Compass Land Bay 6 and the closest data centers in QTS South Land Bay A.

118. Staff pointed out, with respect to the viewshed studies, there remains a "level of uncertainty as to what the final impacts to viewsheds will be once the project is fully built out" because of the developers' lack of commitment to landscape buffers, the lack of site layouts and building footprints, and the undisclosed location of the electrical infrastructure on the property that will serve the facilities in each land bay, such as transmission lines.<sup>37</sup>

119. In the Digital Gateway, 12 substations have been approved in these Rezonings. As great a blight on the landscape as data centers may be, they cannot compare with the unsightliness of their necessarily accompanying electric substations. According to the

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<sup>37</sup> Staff Report p. 509 of 1419 (Digital Gateway South). The same analysis applies to Compass.

developers' proffers, these structures - comprised of transmission voltage switching, transformer equipment and other associated facilities - will be up to 75 feet tall. The only visual remediation offered or required in the proffers is a 12-foot fence.

120. The locations of the twelve substations, like virtually everything else proffered by the developers, are subject to change. But according to the information available, Plaintiffs Jensen, Medina, and Rohrer will likely see, at a minimum, the substation depicted in Compass Land Bay 1 in the MZP and possibly QTS Land Bay C North. Plaintiffs Bradshaw and Hermansen will be able to see the substations in Compass Land Bay 4 and QTS Land Bay B North.

121. Data centers prioritize physical security the final proffers of all three data center Rezonings confirm that there will be security lighting.<sup>38</sup> While security lighting may be virtually unnoticeable in an urban setting, the light emanating at night from the data center security lighting across/over 1,790 acres of largely clear-cut land in this semi-rural/agricultural area will be particularly visible to Plaintiffs.<sup>39</sup>

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<sup>38</sup> See Compass Proffer 25, which provides for "continuous and ongoing maintenance of landscaping to minimize concealment or overgrown areas, keep shrubbery and trees trimmed to not interfere with security lighting" And Digital Gateway North Proffer 30, and Digital Gateway South Proffer 33 which state: "keep shrubbery and trees trimmed to not interfere with security lighting and to allow common observation from the street or buildings." While the Digital Gateway North and South proffers mention parking and streetlights being aimed downward, they mention nothing about security lighting.

<sup>39</sup> Although all of the Plaintiffs will experience the illumination from the projects as a whole because of their proximity to the Digital Gateway, Plaintiffs Jensen, Medina, and Rohrer's properties to the north will be illuminated by the security and other lights in Compass Land Bay 1 and 1 A, QTS Land Bay A, B and C (North). Plaintiffs Bradshaw and Hermansen to the east will be most affected by Compass Land Bay 4 and QTS Land Bay C and D (North). Plaintiffs Yackel and Chartrand will be most affected by illumination from QTS Land Bays A and B (South and Compass Land Bay 6). Oak Valley residents, including Plaintiffs Mirkes, Donegan, Pyle, and Wall will be most affected by the illumination from Compass Land Bay 2,3 and 5 and QTS North Land Bay A.



### **Impacts to Well Water**

122. The impervious surfaces created by the proposed 22.3 million square feet or more of Digital Gateway data center buildings, and attendant parking lots travelways and walkways, reduce the recharge of groundwater and introduce a variety of pollutants onto and into the ground. These circumstances can cause serious risk to the quality of the groundwater and can lead to a variety of health issues because of the resulting water pollution.<sup>40</sup> Plaintiffs Jensen, Medina, Rohrer, Bradshaw and Hermansen who rely on well water will suffer adverse impacts to their well water from the impervious surfaces and toxic runoff from the data centers.

123. The impacts on the wells can include both water quantity (the ability to recharge the local wells, such as those belonging to Plaintiffs surrounding the project) and water quality (runoff pollutants contaminating the water). A hydrogeologic study could have ascertained the degree of risk and proposed mitigating strategies for any impacts to surrounding wells, and groundwater but, on information and belief, such a study was never requested by the County and in any event, neither Developer has conducted such a study.

### **Noise**

124. In addition to being eyesores and causing water and light pollution, data centers make very noisy neighbors. Like all data centers, noise generated by these data centers primarily will come from the elaborate fan and chiller systems needed to dissipate the considerable heat generated by the rows and rows of servers, switches and other computer equipment housed within.

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<sup>40</sup> On August 2, 2022, the Board, in Resolution. No. 22-397 requested that the Northern Virginia Regional Commission conduct a Water Study to assess the “potential changes in loading of nutrients and sediment associated with development in the Occoquan Watershed to include the Comprehensive Plan Update Pathway to 2040, revisions to the Data Center Opportunity Zone Overlay District, and the then proposed Prince William Digital Gateway Comprehensive Plan Amendment.” This study has never been completed.

125. Because data centers strive for minimum downtime, they operate 24 hours a day, seven days a week, and the noise-generating cooling systems that service these data centers operate on that same schedule.

126. All three Rezoning include noise attenuation proffers that state the noise level will be kept to a maximum nighttime decibel level of 55 decibels and a maximum daytime level of 60 decibels.<sup>41</sup> These proffered levels merely reflect the allowable levels of daytime and nighttime noise articulated in the current county noise ordinance. In short, the developers' proffer was to be as noisy as legally allowed.

127. Because no data center complex currently exists at the size or scope of that contemplated under the Rezoning, quantitative analysis and modeling present a reasonable approach to assessing the effects the proposed development will have upon noise levels in and around the Digital Gateway.

128. Computational analytic modeling, based on noise measurements in and around the Digital Gateway and provided to Plaintiffs, conservatively predicts that Digital Gateway data centers will produce noise sufficient to increase the **daytime** noise Plaintiffs currently experience to at least between 65 and 70 decibels, which is significantly in excess of the maximum permissible noise in the proffers (and the noise ordinance).

129. Accordingly, the data centers will not be able to comply with the developers' own noise proffers. It is inconceivable that the developers did not recognize that fact from the

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<sup>41</sup> For example, Digital Gateway North Proffer 43 states "Any noise which emanates from any operation, activity, or source on the Property... between the hours of 7:00 a.m. and 10:00 p.m. weekdays and from 9:00 a.m. to 10:00 p.m. on Saturdays, Sundays, and legal holidays shall be subject to the following maximum permissible sound level: 60 dBA when measured at the Property boundary of any ...residential use." (nighttime noise proffer) and 55 dBA during the rest of the time (daytime noise proffer. Digital Gateway South contains identical language in Proffer 46 and Compass proffers to the same decibel levels in Proffer 41.

beginning. Even though required by the CPA, Compass did not provide a Noise Study with its Application. Although QTS did comply with the CPA and provide a noise study, in several respects that study is inaccurate at best, and misleading at worst. The QTS study does not include in its analysis noise generated by substations and does not include noise generated from regularly scheduled diesel generator testing. Noise described in the QTS noise study does not appear to include noise from all QTS data center buildings (North and South). And no data center building noises were included from Compass data center buildings.

130. Prince William County's Great Oak community, which is a residential use in proximity to an existing Amazon data center, illustrates the reality of what the Plaintiffs face: data centers' negative impacts on residents' health and quiet enjoyment of their properties, the decreased marketability of their homes, and diminution in property values. The controversy over the relentless health-destroying noise that the residents of Great Oaks are experiencing is well documented, as is the data center operator's inability to adequately mitigate that noise.

131. A resident of Great Oak was quoted as saying that the sound of the Amazon data center is "like being on a tarmac with an airplane engine running constantly, . . . [e]xcept that the airplane keeps idling and never leaves."<sup>42</sup> The County and the owner of the data center near Great Oak have been unable to remedy the Great Oak noise on a permanent basis.

132. Should the Digital Gateway development be allowed to proceed, it is not unreasonable to expect similar noise levels. Where noise levels are expected to exceed the county's maximum noise levels on a sustained 24/7 basis, it is unreasonable to expect the

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<sup>42</sup>*In Northern Virginia a Coming Data Center Boom Sounds a Community Alarm*, Inside Climate News (Aman Ashar, Feb. 10, 2023), <https://insideclimatenews.org/news/10022023/virginia-data-centers-amazon-prince-william-county/> (Exhibit 1 D, p. 1).

Plaintiffs and other surrounding residents to repeatedly contact the police and the County to enforce the noise ordinance and the noise limits in the proffers, when to do so will be to no avail.

133. The Great Oak experience echoes the experience of residents across the county who have chosen their homes and neighbors because of their quiet residential nature, only to have their quiet enjoyment destroyed by the Board's inexorable rush to build data centers wherever space allows. The noise from these and many other data centers is inconsistent with residential life, which is one of the reasons why the Board in 2016 created the industrial-centered original Data Center Overlay District and why Overlay Districts in general are not sited near residential areas.

134. Because of their need to minimize downtime, data centers, including those contemplated by Compass and QTS in the Digital Gateway, will include an expansive system of backup generators powered by diesel fuel. Backup generators are a source of data center noise because the generators will operate even when there is no emergency or backup need.

135. Backup diesel generators must be regularly tested, nonetheless, neither QTS nor Compass have disclosed how often and how long the Digital Gateway generators will be tested. Lacking any information on the topic from Compass or QTS, Plaintiffs rely on metrics from the much smaller data center near the Great Oak community to attempt to understand and extrapolate the potential impact on them.

136. Based on the Digital Gateway square footage, the two Rezoning would include approximately 2,670 diesel generators. If the Digital Gateway data centers were to test their generators on a rolling basis once a month for 30 minutes, the noise and the pollution from generators would potentially be 24/7, with diesel generator testing ongoing virtually around the clock.

137. A third source of data center noise for these Rezonings is the construction noise. Although construction during the proffered hours of construction is exempt from noise ordinance enforcement, the Plaintiffs will nonetheless suffer from this added noise. If the data centers are at maximum noise levels during the day, the construction noise will be additive to that, and the resulting noise will be intolerable.

138. While a normal construction project might take a year or less, the Digital Gateway buildout is expected to take between 10 and 15 years as projected by Compass and until 2030 as projected by QTS. Thus, the Plaintiffs will have to suffer over a decade or more of noise from data center construction, as well as enduring the noise generated by the data centers themselves.

139. The trucks coming to and from data center facilities at all hours of the day and night will also cause noise. Moreover, they will add to the diesel fumes already being expelled each day by generator testing and operation.

### **Quality of Life Impacts**

140. The proposed data center development will likely negatively and irreparably impact the quality of Plaintiffs' lives, including the quiet use and enjoyment of their homes and their outdoor amenities such as decks, patios, pools and yards. Data center noise, including constant generator testing and the fumes such testing emits, will inhibit Plaintiffs' ability to even open their windows.

141. Assuming for the sake of argument that the data centers operate under their maximum proffered decibel levels, an assumption we disagree with, the noise impact of the data centers will still seriously affect the Plaintiffs when the noise is under the 55 decibel level (nighttime) and 60 decibel level (daytime).

142. Plaintiffs have consulted a human factors expert who has studied the impact of environmental factors such as noise and stress on human performance and behavior

143. First, the noise ordinance (and the proffers) set decibel levels for tolerable noise levels for *intermittent* noise (such as car horns, train whistles, and the like). The data center noise, on the other hand, is constant 24/7 noise that affects people differently than intermittent noise.

144. Second, unlike intermittent noise, the 24/7 noise will add to the “noise floor “ (*i.e.* the general background noise one is exposed to on a continuous basis). The higher the noise floor, the more likely the noise is to cause stress on individuals, depending on their particular sensitivity to noise with the consequence that nearby residents will tend to close their windows in an effort to keep out the noise and will be inhibited from using their outdoor amenities

145. For example, Plaintiff Pyle has an adult son with autism and a severe aversion to noise. The Pyles chose their home in Oak Valley to escape the noisier environs of Fairfax County. The son’s sole recreational activity involves spending quiet time outside in their backyard, particularly in their pool. Without this simple calming pleasure, obliterated by data center noise, Ms. Pyle and her family will be forced to move again to escape unwanted noise. The kinds of disruption presented by the Digital Gateway development to the well-ordered and considered lifestyle that the Pyles selected when they chose to live in this specific location, are likely to lead to self-injury and intensely negative behaviors on the part of their son, especially should the family be forced to leave their home because of the negative environmental changes brought about by the Digital Gateway.

146. Plaintiff Medina moved to the U.S. to pursue a lifelong dream to own a horse farm and raise horses. He purchased his property for the specific purpose of fulfilling that dream,

and that dream is being realized on the land he currently works adjacent to the proposed Compass development. The proximity of the powerlines, substations and noisy data center buildings to his farm will all but kill his livelihood and the way of life he has created,.

147. Plaintiff Jensen is a beekeeper and currently manages a 25-hive apiary on his property. The Digital Gateway development placed adjacent to his property will mean a significant loss of forage area available to his bee colonies. Moreover, the constant noise generated from the data centers, their generators and the supporting substations will also have a negative effect on the colonies.<sup>43</sup>

148. Prolonged exposure to the 24/7 data center noise will cause stress to all of the Plaintiffs, their families and many others in close proximity to the data centers. Serious health effects from continuous exposure to noise include chronic sleep deprivation, difficulty with concentration, and increases in stress-related conditions such as auto immune diseases, hypertension and cardiovascular disease.

149. Exposure to the persistent noise generated by nearby data centers at the scale contemplated under the Rezoning will adversely impact physical and mental health and dramatically lower the quality of life of Plaintiffs and nearby residents.

#### **Immediate diminution in property values**

150. Real estate agents familiar with the residential real estate market in the Gainesville/Bristow/Haymarket area are experiencing buyer resistance when considering listings of homes, like those of Plaintiffs, located in close proximity to the proposed data centers.

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<sup>43</sup> See, e.g., <https://thehill.com/changing-america/sustainability/conservation/470339-how-power-lines-are-bugging-bees/#:~:text=Honeybees%20provide%20%2415%20billion%20in,contribute%20to%20colony%20collapse%20disorder>

151. Plaintiff Oak Valley is already aware of multiple specific situations in its community in which a potential buyer chose another community, not near the Digital Gateway, over Oak Valley because of the proximity of Oak Valley to the Digital Gateway CPA Area. A decline in the residential real estate values also means a decline in the price Oak Valley could command for any of its HOA Parcels.

152. Indeed, any reasonable purchaser of real estate in close proximity to the Digital Gateway area, such as the residences of the Plaintiffs, necessarily would take into account the adverse impact of nearby data centers in determining the price he or she is willing to pay for such property.

153. Accordingly, it is the opinion of local real estate professionals that, with the well-publicized experience of other local residents subjected to the noise and other harmful effects attributed to living near data centers, as discussed above, the passage of the Digital Gateway CPA , by itself, caused Plaintiffs an **immediate, present diminution in their residential real estate values**. This is a harm that they were experiencing despite the fact that the Rezoning themselves had not yet occurred. The harm is a direct result of the inextricable linkage between the CPA and the Digital Gateway Rezoning. Now that the Rezoning themselves have been approved, will only grow.

154. In light of the foregoing, the Plaintiffs are distinguished from the general public who are not located in proximity to the Digital Gateway. This diminution in property values presently being experienced by the Plaintiffs because of the adoption of the Digital Gateway CPA and now the Rezoning, is a non-trivial pecuniary harm that is not a burden suffered by the public at large.



## COUNT I

### **I. THE BOARD'S DIGITAL GATEWAY REZONING WAS VOID *AB INITIO* BECAUSE THE BOARD'S PUBLISHED NOTICE OF ITS INTENDED ACTION WAS INVALID AND DID NOT COMPLY WITH THE REQUIREMENTS OF VA. CODE §15.2-2204(A) OR PRINCE WILLIAM COUNTY ZONING ORDINANCE §32-700.60(1).**

155. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

156. The public notice of the Board's intended adoption of the three Digital Gateway Rezoning at its December 12, 2023 meeting was published in *The Washington Post* on December 2, 5, and 9, 2023. These notices did not satisfy the requirements of Code §1.2-2204(A) or Prince William County Zoning Ordinance ("PWCZO") §32-700.60(1).<sup>44</sup>

157. Satisfaction of these statutory and ordinance requirements is a legal prerequisite to the adoption of a planned rezoning. Accordingly, the Board's failure to satisfy each of these requirements with respect to its December 12, 2023 Digital Gateway Rezoning renders that action *ultra vires* and void *ab initio*.

#### **A. The Notices Published on December 2 and 5, 2023 Were Invalid.**

158. Both Virginia law and the PWCZO require that the relevant documents concerning a planned rezoning be available for public inspection. Section 15.2-2204(A) Va. Code requires that any "[p]lan or ordinances, or amendments thereof" . . . shall identify the place or places within the locality where copies of the proposed plans, ordinances or amendments may be

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<sup>44</sup> Each of the three resolutions adopted by the Board with respect to the Digital Gateway rezonings (Ord. Nos. 23-57, 23-58, & 23-59, contained the following language: "**WHEREAS**, a Board public hearing, duly advertised in a local newspaper for a period of two weeks, was held on December 12, 2023 – December 13, 2023, and interested citizens were heard." In fact, as demonstrated below, this statement is false. The two-week requirement specified by Virginia law and the PWCZO was not satisfied.

examined.” Section 32-700.60 of the PWC Zoning Ordinance contains similar language. It states that “[n]otice of amendments or Special Use permits need not be advertised in full, but may be advertised by reference, provided that the place in the case where copies of such amendments or Special Use Permits may be viewed shall be included in the notice.”

159. The advertised public notice, published in the *Washington Post* on December 2, 5, and 9, 2023, stated that “[a]ll meeting materials are posted online when the agenda is published, and **a copy** of all staff reports, proposed resolutions and ordinances, and other documentation **will be available for review by the public** in the office of the Clerk of the Board at One County Complex Court, Prince William, Virginia, 22192.” (Emphasis added)

160. Notwithstanding the requirements of Virginia law and the PWCZO, copies of the staff reports, proposed resolutions, ordinances and other documentation were not available for inspection on Monday, December 4, 2023 at the office of the Board Clerk, the first business day after publication of the first public notice on Saturday, December 2, 2023. *See* Attached Declaration, attached hereto as Exhibit 9.

161. Nor were they available on December 5, 2023, the date of the second publication of the public notice. Indeed, these materials were not available for public inspection at the Board Clerk’s Office until Thursday, December 7, 2023, four business days after the publication of the December 2 notice and two business days after publication of the December 5 notice.

162. Because the referenced materials were not available at the Board Clerk’s Office as of the date of the publication of the public notices on December 2 and 5, those notices were invalid. Accordingly, the Board’s Digital Gateway rezoning was *ultra vires* and void *ab initio*, even assuming that the advertised public notices otherwise satisfied the timing requirements of §15.2-2204(A) and PWCZO §32-700.60(1), which, as set forth below, they did not.

**B. The Published Notice Did Not Satisfy the Timing Requirements of §15.2-2204(A) Va. Code.**

163. Virginia law contains very specific requirements concerning the timing of the advertised public notice of a planned rezoning.

164. Section 15.2-2204(A) Va. Code provides that:

[T]he governing body [may 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 . . .

165. Section 15.2-2204 (A) further specifies that:

As used in this subsection, “two successive weeks” means that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publication.

166. The first publication of the public notice concerning the December 12, 2023 meeting on the Digital Gateway Rezoning took place in *The Washington Post* on December 2. The second occurred on December 5, three days later. These two publications, only three days apart, did not satisfy the statutory requirement that the first and second publication of the public notice be at least six days apart. Thus, the public notice given by the Board concerning its planned rezoning of the Digital Gateway at its December 12, 2023 violated the requirements of Section 15.2-2204(A) and, as such, was *ultra vires* and void *ab initio*.

**C. The Published Notice Did Not Satisfy the Timing Requirements of Prince William County Zoning Ordinance §32-700.60(1).**

167. Section 32-700.60(1) PWCZO contains the same requirement as Va. Code §15.2-2204(A), that there be at least six days of separation between the first and second publications of the public notice. Accordingly, for the same reasons as stated above, the public notice published

with respect to the December 12, 2023 Board meeting concerning the Digital Gateway failed to satisfy this requirement of the PWCZO.

168. Section 32-700.60(1) contains an additional requirement. It specifies that the public hearing shall be held “not less than five days nor more than 21 days after the second advertisement shall have appeared.”

169. Even assuming *arguendo*, that the December 9, 2023 publication is considered a second advertisement (which would potentially satisfy the six-day separation requirement from the first announcement published on December 2), the December 9 publication does not satisfy the requirement that it be published at least five days before the public hearing.

170. Because the published public notice failed to satisfy the requirements of Section 32-700.60(1) of the PWCZO, the Board’s Digital Gateway rezoning, adopted at the meeting that began on December 12, 2023, was *ultra vires* and void *ab initio*.

## COUNT II

### **THE MASTER ZONING PLAN APPROVED BY THE BOARD VIOLATED THE PRINCE WILLIAM COUNTY ZONING ORDINANCE AND THE COMPREHENSIVE PLAN.**

171. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

172. By failing to provide the location of the buildings, structures and electric transmission corridors (collectively “Site Layouts”) on the Master Zoning Plan (“MZP”) approved by the Board for each of the Rezoning on the MZP for each of the three Rezoning, the MZP for each Rezoning is inconsistent with the Digital Gateway CPA and the Comprehensive Plan and violates the zoning ordinance.

173. The MZP is the plan that the County site plan Staff reviewers consult to determine whether the site plans submitted by the developer meet the specifications approved by the Board for the projects. It is the MZP and the proffers that will govern the construction of this massive, complex and unprecedented 22.3 million square feet of data centers.

174. As set forth in §32-280.02 of the PWCZO, a master zoning plan is supposed to demonstrate how the rezoning proposal “provides a planned cohesive development and achieves the purpose of planned development by ensuring efficient use of property, efficient traffic circulation, **and preservation of open space and sensitive environmental and historic features.**” (emphasis added)

175. Under §32-700.23, the MZP must be “prepared using a convenient scale” and must include elements required by the Planning Director, “based upon the **size, intensity, scope and impacts of the proposed development.**” (Emphasis added).

176. Section 32-700.23(4) specifies, *inter alia*, that the MZP “shall include the following: (a) Information required for general development plans as described in section 32-700.21.”

177. In turn, §32-700.21(7) provides that the MZP shall include “A schematic land use plan, at a **scale of one inch equals 100 feet or less**... showing ... all **proposed major open space areas**; the approximate location of all proposed community and public facilities and the proposed plan for all major sanitary sewers, water systems and storm water management and drainage improvements and **the location of all buildings and other structures.**” (Emphasis added).

178. Accordingly, improvements must be drawn to scale on the MZP, and the location of the data center buildings and the electric transmission infrastructure must be shown on the MZP, particularly when required by the Planning Director, as they were with these Rezoning.

179. The developers did not provide compliant MZPs.

180. To the contrary, both developers jointly submitted a document called a “Master Corridor Plan” (“MCP”).<sup>45</sup> The MCP looks like a slick travel brochure, lacking any of the requisite detail that would be included in an actual land use planning document.

181. While the MZPs are prepared and certified by civil engineers and are binding on the developers, the MCP is an artist’s drawing. It is not an engineering plat, has no engineer’s certification stamp, and has virtually no measurements in it. The proffers for all three Rezoning state that the MCP is provided merely for “illustrative purposes.”

182. Certainly, by the time of Staff’s comments on the Third Submission, the developers understood that Site Layouts on the MZP were required.<sup>46</sup> Indeed, with a project of this scope, it would have violated sound planning practice for the Planning Office not to require Site Layouts on the MZPs.

183. Likewise, the Planning Commission Staff Reports issued under the direction of the Acting Director of Planning, which functioned as a review of the Fourth Submissions for all

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<sup>45</sup> The MCP is found in attachment D to each Staff Report.

<sup>46</sup> The August 11, 2023 letter transmitting Staff’s Third Submission review comments to Compass states “Site layouts. What is proposed on the MZP is not consistent with the CPA policies that encourage the depiction of site layouts. The Applicant is encouraged to revise the MZP to provide a detailed site layout. The Zoning Ordinance also requires the above information to be provided: Sections 32-280.02, 32-700.23, 32-700.21.” The identical comments were transmitted to QTS in the August 11, 2023 letters transmitting the deficiencies in the Third Submission, (page 6 of the letter to QTS for Digital Gateway North and page 8 of the letter for Digital Gateway South). While Staff uses the word “encourage” the Digital Gateway CPA DGCD 1.1 uses the word “require.”

three Rezoning, reiterated that these Site Layouts were required on the MZP, and made clear that the transmission infrastructure needed to be included.

184. The importance for a Site Layout requirement in this complex set of Rezoning on a 1,760-acre environmentally sensitive site cannot be overstated.

185. As Staff stated: “By not including proposed transmission line corridors on the MZP, ... these transmission corridors may be located in areas identified to preserve forests and sensitive environmental resources and cultural resources, the perimeter buffers required by the [Design & Construction Standards Manual], and the supplemental landscaping areas shown on the MZP.”<sup>47</sup>

186. Other reasons articulated in the Staff Reports for requiring the Site Layouts on the MZP include ensuring enforceability of the MZP (rather than Staff attempting to interpret and enforce the vague artist sketches in the MCP)<sup>48</sup> and utilizing site layouts for the viewshed analyses.<sup>49</sup>

187. Failure to include site layouts is not only inconsistent with the above-referenced zoning ordinance provisions, but it is also inconsistent with the Comprehensive Plan and the CPA policies.

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<sup>47</sup> Staff Report, p. 543 of 1419.

<sup>48</sup> For example, with regard to the Fifth Submittal of Digital Gateway South, Staff stated that “The Applicant **did not revise the MZP to depict building locations**. Instead, the Applicant proffered “**substantial conformance**” to the MCP for specific pages associated with Typical Land Bays related to building layouts, footprints, orientation, electric infrastructure areas, and the point of access. While the revised proffer is an improvement from the 4th submittal, the proffer associated with site layouts does not meet the requirements of the Zoning Ordinance Sections 32-280.02 and 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. As proposed, the County may end up with a general conformance, regardless of the “substantial conformance to the MCP” being proffered. ... 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 to some form of conformance.” Staff Report, p. 507-508 of 1419. (emphasis added).

<sup>49</sup> See, e.g. Staff Report, p. 9 of 1419

188. Specifically, The Digital Gateway CPA DGPU: POLICY 1 states: “Ensure high-quality development ...that utilizes context sensitive design considerations to ensure development respects existing adjacent uses and historic viewsheds.”

189. To this end, DGCD 1.1 includes this condition that must be met by each application: “**Require** generalized development plans and master zoning plans submitted with applications for rezonings, special use permits, and public facilities to include limits of disturbance, site layouts, colored architectural elevations....” (emphasis added). The Comprehensive Plan LU5.1 states that “master zoning plans submitted with applications for rezoning” should include “proposed layouts and architectural elevations for all non-residential projects”.

190. Despite many opportunities during the review process to revise the MZPs, none of the submissions of either Compass or QTS complied with the requirements of Staff, the Acting Director of Planning, the Comprehensive Plan, the Digital Gateway CPA, or the Zoning Ordinance itself.

191. Without an MZP that complies with the PWCZO, the Board has approved each of the Rezonings in violation of their own ordinance.

192. The MZPs, as approved, violate the PWCZO and the approvals of the Rezonings by the Board are thus *ultra vires* and void *ab initio*.



### COUNT III

#### **SECTION 32-404.05.1 OF THE PRINCE WILLIAM COUNTY ZONING ORDINANCE WAS UNREASONABLE AS APPLIED TO THE WAIVER OF THE SUP REQUIREMENTS FOR SUBSTATION AND DATACENTERS OUTSIDE OF THE OVERLAY ZONE**

193. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

194. Section 32-201.11 (2) of the PWCZO provides that “Electric Substations may be located in any zoning district within the Data Center Opportunity Zone Overlay District, subject to the public facility review requirements of the Code of Virginia, § 15.2-2232 and this chapter. Electric substations may be permitted by Special Use Permit within any zoning district outside of the Data Center Opportunity Zone Overlay District.

195. Similarly, PWCZO section 32-402.23(3); Section 32-402.33(3) and Section 32-403.23(3) require data centers to apply for a Special Use Permit in the O(H), O(M) , and the (M-2) zoning districts, respectively, if the data centers outside the Overlay District. Compass has requested a waiver of all three of these provisions. QTS has requested a waiver of Section 32-402.33(3) (“collectively “SUP Waivers”).<sup>50</sup>

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<sup>50</sup> It is apparent from the SUP waiver requests that the properties subject to the Rezoning were rezoned into a number of districts as reflected in the waiver requests as well as the O(F) district and the PBD district. Yet the MZP does not set forth the boundaries of any zoning district—even the PBD District. This violates requirements of PWCZO 32-700.20 which requires, *inter alia*, proposed zoning district lines be drawn and submitted with the application. The MZP is the engineering plat submitted by the developers. There are no zoning district lines so it appears the same properties have multiple overlaying district designations in violation of §15.2-2280 governing the classification of zoning districts and §15.2-2282, governing the uniform application of zoning districts. and therefore these Rezoning are void *ab initio*.

196. Section 32-402.31(3) lists the uses by right in the O(M) district and data centers are not among them. has requested a modification of this provision to permit data centers by right. (“O(M) Modification”). In effect this functions as a waiver of an SUP as well

197. QTS also asked for a “modification” to “permit solar energy facilities by-right”<sup>51</sup> (“Solar Energy Modification”).

198. Staff did not address the Solar Energy Modification, or even point out its existence. The Board has no authority to make solar energy facilities “by right” though a “modification” when there is no underlying ordinance that is being modified. Hence the approval of this modification by the Board was ultra vires and is void ab initio.

199. Staff did not support the SUP Waivers or the O(M) Modification because the SUP, if filed, would have required the information that the Developers refused to submit with the Rezoning, such as site layouts.

200. Given the pivotal nature of the site-specific data needed for the Rezoning such as building and transmission line locations, the SUP waiver was not justified.

201. Moreover, the fact that Section 32-404.05.1 allows the Developers to avoid providing critical information that is necessary to the Staff’s evaluation of Rezoning projects of the scope and size and complexity and these Digital Gateway Rezoning, renders § 32-404.05.1 unreasonable as applied.

202. Additionally, the SUP inquiry the Board must make is not the same inquiry the Board makes when it evaluates a rezoning. Both approval processes are needed in order to thoroughly evaluate the data centers and the substations.

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<sup>51</sup> Staff Report pp. 576 of 1419( Digital Gateway North) and 1123 of 1419 (Digital Gateway South).

203. As distinguished from a rezoning, the SUP inquiry is more focused on the surrounding uses, such as Plaintiffs' residential uses ,

204. Section § 32-700.54. entitled "Matters to be considered in reviewing an application for a Special Use Permit". directs to Board to delve into matters such as such as "traffic, noise, light, hours of operation," and to take into account the "the character of the existing area, including existing structures and structures under construction, existing public facilities and public facilities under construction."

205. This inquiry – focused on neighboring uses and the effect noise and hours of operation have on those neighboring uses (such as the Plaintiffs' quality of life), makes it important for the data centers and the 12 substations to undergo the SUP process., as well as the zoning process.

206. The SUP process and the rezoning process is not fungible.

207. Because of the SUP waivers, these waivers, the fact that the 12 substations under the Rezoning are preapproved, and the crucial impacts to the surrounding area, including Plaintiffs<sup>52</sup> homes and the added noise they will bring to the mix will not be vetted at the time the substations need to be built.

208. Plaintiffs and other surrounding neighbors would have a right to vet those substation proposals and challenge them under an SUP to make sure they were protected.

209. On information and belief, some data center rezoning applicants in Prince William County have undergone the SUP and rezoning process concurrently and that is what is envisioned by the applicable provisions of the PWCZO at issue here. There is no reason QTS and Compass could not have proceeded with both the SUP and the Rezoning concurrently.

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<sup>52</sup> Cross reference standing section

Because Section 32-404.05.1 was used to circumvent the purposes of the SUP review, that ordinance was unreasonable as applied. Plaintiffs request the Court to rule that the use of Section 32-404.05.to grant the SUP waiver was unreasonable as applied and that the SUP waivers are invalid.

#### **COUNT IV**

#### **THE BOARD VIOLATED VIRGINIA CODE SECTION 15.2-2284 AND FLOUTED THE DIGITAL GATEWAY CPA IN APPROVING THE REZONINGS.**

210. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

211. Section 15.2-2284 of the Virginia Code requires that zoning ordinances, which include the approvals of the Rezonings at issue here “be applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses... the conservation of natural resources, the preservation of flood plains,...the preservation of agricultural and forested land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality:

212. The site-specific Digital Gateway Comprehensive Plan Amendment, CPA #2021-00004 adopted November 1-2, 2022 is under challenge in the Circuit Court of Prince William County and is *void ab initio* for the reasons set forth in that lawsuit. Plaintiffs do not concede that Digital Gateway CPA is valid and enforceable. However, assuming *arguendo* that the provisions of the Digital Gateway CPA were valid, the Board’s approved Rezonings are inconsistent with the CPA in significant and substantial ways as set forth below.

213. Moreover, the Board’s approved Rezonings are inconsistent with and violate in significant and substantial ways the general Comprehensive Plan, as revised and adopted

December 13, 2022 (i.e., after the adoption of the Digital CPA).<sup>53</sup> Those provisions cited herein, are not under challenge in the Circuit Court Digital CPA lawsuit.

214. Section 32-280.01(4) of the PWCZO which addresses the Planned Business District (the zoning district that is the subject of all three Rezoning) provides that “planned development districts are generally intended to be consistent with and implement the intent, goals, objectives, policies and action strategies of the Comprehensive Plan.”

215. The comprehensive plan shows the County’s recommendations for the development of the land within its jurisdiction. Virginia Code §15.2- 2223.

216. As a guide, the comprehensive plan does not supersede the **existing** zoning designation and the associated PWCZO provisions for a particular parcel, such as the Digital Gateway CPA Area. Until the Rezoning were approved, the existing Digital Gateway Area, was zoned at a very low density: A-1 (Digital Gateway North and South), and A-1 and S-R 5 (Compass).

217. Because the areas, including where Plaintiffs reside, are similarly low-density zoning districts (A-1, the SR1-C and PMR), it is particularly important that the Rezoning were carefully evaluated by the Board for consistency with the comprehensive plan with regard to protecting the Plaintiffs (and their property values) from this inherently incompatible industrial

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<sup>53</sup> After the Digital Gateway CPA was adopted in November 2022, the Board updated its Comprehensive Plan. As stated on the County website <https://www.pwcva.gov/departments/planning-office/prince-william-county-comprehensive-plan>, “[a]t its December 13, 2022 meeting, the Prince William County Board of County Supervisors approved a major update to the County’s Comprehensive Plan, which guides the future growth, redevelopment, and preservation of the County as well as investments in future public infrastructure through the year 2040. The updated Comprehensive Plan includes a new shared vision for Land Use, Housing, Mobility, Electrical Utility Services, and Sanitary Sewer throughout the County.

data center use. Yet, the Board ignored the advice of their professional planning staff on these important comprehensive plan issues.

218. Merely because the comprehensive plan allows a particular use, such as data centers, does not mean that data centers have a blank check to flout the guardrails set up by the Digital Gateway CPA to protect the surrounding community where Plaintiffs' properties are located, as well as residents of the County more broadly.

219. For each of the Rezonings, the Staff found an overwhelming number of inconsistencies in identical Comprehensive Plan sections: Community Design, Cultural Resources, Environment, and Electrical Utility Services.<sup>54</sup> These inconsistencies were so significant that they formed one of the chief bases for the Staff recommending denial of all of the Rezonings.

220. Most of the Community Design inconsistencies identified by Staff for both Compass and QTS stem from the fact that Compass and QTS were unwilling to put the site layouts and the transmission infrastructure locations on the MZP, or to proffer that the electric infrastructure will be located in the Limits of Disturbance ("LOD").

221. This steadfast refusal to do so means that the buffers and the natural resources are at risk, in contravention of the goals not only of the comprehensive plan but also of the purpose and intent of the PBD district as set forth in PWCZO §32-404.01, which purpose includes to "(5) preserve trees and other environmental amenities" and to "(7) promote the efficient use of utilities and infrastructure."

222. With respect to Cultural Resources, Digital Gateway CPA DGCR 1.2 provides that "because of the overall historical and cultural sensitivity of the area, County staff should

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<sup>54</sup> Staff Report, pp. 22 - 75 of 1419 Compass; 520 - 575 of 1419 Digital Gateway South; and 1077 -1138 of 1419, Digital Gateway North.

require rezoning...applicants to provide a Phase I cultural resource studies with the first submission of their application. If warranted, County staff should require the applicant to conduct a Phase II evaluation during review of the land use application. If a site or sites is determined significant, the **first treatment option should be to preserve the resource in place with consideration for access to the public.** “(Emphasis added).

223. Neither QTS nor Compass complied with staff’s repeated requests that they do the Phase II studies as **required** during the rezoning review. Instead, Proffer 8 (Compass) and Proffer 10 (Digital Gateway North and South) would require a Phase II evaluation, if at all, during the site plan phase.

224. This will mean that contrary to DGCR 1.2 “in place” preservation of significant sites will not occur because the Developers will want to take full advantage of their square footage (FAR).

225. With respect to the Environment section of the Comprehensive Plan and Digital Gateway CPA, the overriding concern, among the many listed by Staff, in all three Rezoning staff reports was the insufficiency of Natural Open Space (“NOS”). With the target of 30 percent NOS for each Rezoning site, Compass only provided 16.9 percent, Digital Gateway South had only provided 21 percent and Digital Gateway North had only provided 14.8 percent.<sup>55</sup>

226. Finally, the lack of information on the MZP concerning the location of the transmission lines was the principal concern of Staff as it related to the Electrical Utility Services Plan.

227. Despite the foregoing examples of the inconsistencies with the Comprehensive Plan, along with the countless additional inconsistencies cited by Staff in the Staff Reports, the

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<sup>55</sup> Staff Report, pp.54 of 1419, Compass; 557of 1419, Digital Gateway South; and 1105 of 1419, Digital Gateway North.

Board ignored the advice of staff, the Planning Commission and most of its reviewing agencies and approved the Rezoning. In so doing, the Board ignored Section 15.2-2284 of the Virginia Code.

228. The sheer number comprehensive plan inconsistencies, many of which show a failure to preserve agricultural and natural resources, demonstrate that data centers, at least those approved by the Board in these Rezoning, are an incompatible land use in the Digital Gateway CPA Area. And thus the approvals of the Digital Gateway for the data center industrial uses as set forth in the Rezoning, result in a violation by the Board of the Virginia Code Section 15.2-2284.

229. Accordingly, Plaintiffs request the Court to declare the Board's actions approving the Rezoning were *ultra vires* and void *ab initio*.

## COUNT V

### **THE BOARD'S APPROVAL OF THE COMPASS DECEMBER 13 PROFFER AND ITS REZONING APPLICATION VIOLATED VIRGINIA LAW AND THE PRINCE WILLIAM COUNTY ZONING ORDINANCE AND, ACCORDINGLY, WAS *ULTRA VIRES* AND VOID *AB INITIO*.**

230. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

231. As set forth below, the Compass Proffer was amended in material and substantial ways **after** the public notice for the Digital Gateway rezoning had been published, as well as after the public hearing on the Digital Gateway rezoning had commenced before the Board. Even though these amendments violated relevant provisions of the Virginia Code and the Prince William County Zoning Ordinance, they were accepted and approved by the Board. Because the Board's action accepting and approving the Compass proffer violated Virginia law and several



provisions of the PWCZO, the Board's actions were *ultra vires* and void *ab initio*. Consequently, the Board's approval of the Compass rezoning applications also was *ultra vires* and void *ab initio*.

**A. The Relevant Legal Requirements of Virginia Law and the PWCZO**

232. Virginia Code §15.2-2303 (A) provides that:

A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption .... as a part of an amendment to the zoning map of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance, when such conditions shall have been proffered in writing, **in advance of the public hearing....** The governing body may also accept amended proffers **once the public hearing has begun if the amended proffers do not materially affect the overall proposal.**

(Emphasis added).

233. Thus, Virginia law prohibits the Board from accepting amended proffers after the public hearing has begun, if the amendment would result in a material change to the overall proposal.

234. Section 32-700.41(2) of the PWCZO also addresses the issue of amendments to proffers after the public hearing has begun. It states that:

In the case of an application for a zoning map amendment.... **No 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).

235. Section 32-700.43(3) of the PWCZO further provides that:

Once 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.** In such a case, the process described in section 32-700.42 of this chapter shall apply. The Board of County Supervisors shall determine whether a change is substantial.

(Emphasis added).

236. In addition, §32-700.30(2) PWCZO is relevant. That section states in pertinent part, that “[e]very proffer statement shall state that the applicant proffers that use and development of the property shall be in **strict accordance with the proffered conditions.**”

(Emphasis added).

**B. Substantial and Material Changes Were Made to the Compass Proffers.**

237. Several substantial and material changes were made to the Compass proffer after the publication of the public notice concerning the hearing on December 2, 5, and 9, 2023 and after the public hearing began on December 12, 2023.

238. Among the substantial and material changes made to the Compass Proffers after the public notice for the hearing had been issued and/or the hearing had begun were the following:

- In Paragraph 6 of its Revised Proffer dated December 11, 2023, dealing with Building Footprints, Compass changed its obligation to design the footprint layout in each Land Bay from “substantial conformance with the “Typical Landbay Compass Datacenters” to “general conformance with the building footprints shown on pages 48 through 532 of the MCP.”
- In Paragraph 27 (A)(1) of its Revised Proffer dated December 13, 2023, Compass for the first time committed to “provide a minimum of 149.5 acres of Natural Open Space<sup>56</sup> on

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<sup>56</sup> “Natural Open Space” is defined in Article 1 of the PWCZO as follows:

the Property upon completion of the entire Development.” *See* Exhibit 13 hereto, p. 14 of 41.

- In addition, in its Proffer submitted on December 13, 2023, Compass added a commitment to “require the entity or entities purchasing power from the applicable public utility (i.e., NOVEC) [to] include as part of its Power Purchase Agreement (“PPA”) or equivalent a commitment that a minimum ten percent (10%) of the electricity purchased come from clean or renewable energy sources to the extent such sources are commercially-available . . .” *See* Exhibit 13 hereto, ¶ 37, p. 20 of 41.

**1. The December 11, 2023 Change From “Substantial Conformance” to “General Conformance” With Respect to Building Footprints**

239. This change from “substantial conformance” to “general conformance” reduced the obligation of Compass to comply with the building footprints shown in the MCP and made those specifications less readily enforceable. As such, this is a substantial change.

240. Because the Revised Proffer was submitted on December 11, prior to the scheduled date of the public hearing on December 12, it is not subject to those provisions

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Natural open space shall mean open space with natural resource benefits within the boundaries of a development such as native forests; topographic features; critical habitats for threatened and endangered species and species of special concern; natural creeks, streams and lakes; and natural wetlands that are set aside as an area to remain undisturbed during development and in perpetuity for the preservation of the natural resources contained therein and for the passive use and enjoyment of the residents of the development and/or the public at large. This definition is not to be construed to prohibit non-destructive activities, such as reforestation and stream restoration, specifically designed to improve the quality of the existing resource contained therein. This definition is intended to exclude areas where activities have destroyed any natural habitat in an attempt to create a man-made habitat (e.g., removal of tree cover to create a wetland). To be considered as natural open space the open space so considered must be conveyed, with appropriate restrictions as to use, to a bona fide homeowners association or other entity that would maintain the natural open space in perpetuity.

restricting proffer amendments during the public hearing. However, because it was submitted after the dates of the notices for the public hearing were published (December 2, 5, and 9), it is subject to §32-700.43(3) PWCZO, which provides that any substantial change in the application submitted after the date of public notice must be referred back to the planning commission for further consideration and recommendation.

241. Because the Revised Proffer amended the Compass application in a substantial way after publication of the notice for the public hearing, and the Compass application was not referred back to the Planning Commission as required by §32-700.43(3), the Board was without legal authority to approve either the Proffer or the Compass rezoning application as a whole. Accordingly, its approval of the Compass rezoning application was *ultra vires* and void *ab initio*.

## **2. Compass's Commitment to Provide 149.5 Acres of Natural Open Space**

242. In its Revised Proffer of December 13, 2023, submitted during the course of the public hearing on the Digital Gateway Rezonings, Compass committed to provide 149.5 acres of Natural Open Space upon completion of the entire Development.

243. In contrast to “Open Space,” which is defined in the PWCZO as “the area within the boundaries of a development that is intended to provide light, air, view and/or a quality or general appearance of openness, and is designed for scenic, recreational, privacy, or environmental purposes,” Natural Open Space is intended to be preserved in its natural state and is “set aside as an area to remain undisturbed during development and in perpetuity for the preservation of the natural resources.”

244. Accordingly, the commitment to preserve 149.5 acres in its natural state is a substantial revision of the Compass Proffer that materially affects Compass's overall proposal.

As such, pursuant to Virginia Code §15.2-2303 (A), Compass's December 13 Revised Proffer should not have been accepted or approved by the Board. The Board's actions to the contrary violated the Dillon Rule.

245. Moreover, because it was a substantial change, Compass's Revised Proffer of December 13 should have been remanded to the Planning Commission pursuant to §32-700.43(3) PWCZO and readvertised pursuant to §32-700.41.2 PWCZO.

246. Because the Board failed to comply with the above requirements of Virginia law and of the Prince William County Zoning Ordinance, its approval and acceptance of Compass's December 13 Revised Proffer and its approval of Compass's rezoning application were *ultra vires* and void *ab initio*.

### **3. Compass's Commitment to Require the Purchase of 10% of Electric Power from "Clean or Renewable Energy Sources"**

247. In Paragraph 37, of its Revised Proffer dated December 13, 2023, "Sustainability Measures," Compass made the commitment, for the first time, to require the entity purchasing electrical power for any of its data centers to require, in turn, that the electrical utility from which is purchases power to provide at least 10% of the purchased power from "clean or renewable energy sources to the extent such sources are commercially available as of the date of the Power Purchase Agreement."

248. Data centers consume enormous amounts of electricity to power their operation. Thus, a commitment to provide 10% of that electrical power from clean or renewable energy sources constitutes a substantial revision of the Compass Proffer, which will have a material effect on the overall proposal. Compass submitted this proposal as part of its Revised Proffer on December 13, after the beginning of the public hearing. Pursuant to the provisions of Virginia

Code §15.2-2303 (A), the Board should not have been accepted Compass's Revised Proffer. The Board's acceptance and approval of Compass's Revised Proffer with this substantial change violated §15.2-2303 (A) and was inconsistent with the Dillon Rule.

249. Moreover, since this substantial revision took place after the public hearing on the rezonings had begun, the Revised Proffer should have been readvertised pursuant to §32-700.41.2 of the PWCZO—but it was not.

250. In addition, because it was a substantial change that occurred after publication of the public notice, the Proffer also should have been remanded to the Planning Commission pursuant to §32-700.43(3) PWCZO, but it was not.

251. For these reasons, the Board's approval of the Proffer, without remand to the Planning Commission, was *ultra vires* and void *ab initio* as was, consequently, the Board's approval of Compass's Rezoning Application.

**C. Compass's December 13, 2023 Proffer Violates §32-700.30(2) PWCZO.**

252. Section 32-700.30(2) PWCZO requires that “[e]very proffer statement shall state that the applicant proffers that **use and development** of the property shall be in **strict accordance** with the proffered conditions.” (Emphasis added).

253. Compass's Revised Proffer of December 13 does not contain this required language.

254. Rather, it states “that the **development** of the Property shall be in strict accordance with the following conditions (“Proffers”) . . .”

255. Significantly, and contrary to the requirements of §32-700.30(2), Compass's Proffer contains no commitment with respect to the use of the Property. The stated commitment applies only to the *development* of the Property.<sup>57</sup>

256. Compass's refusal to pledge that the use of the Property will be in strict accordance with the Proffers has significant implications for interpretation and enforcement of the terms of the Proffers. Specifically, Compass has not agreed to strictly comply with any of the terms of the Proffer that relate to the use, as opposed to the development, of the Property.

257. This means, for instance, that Compass has not agreed to strictly adhere to the provisions of Paragraph 43 of the December 13 Proffer, dealing with noise attenuation. Noise emanating from the use and operation of data centers is one of the Plaintiffs' primary concerns. Compass's failure to commit to strictly adhere to the terms of the Proffer concerning the use of data centers has significant, and adverse, consequences for Residents and others who may be located in close proximity to a Compass data center.

258. Moreover, although Compass uses the term "strict accordance" on page 1 of its December 13 Proffer, the term never again appears in the Proffers. Rather, the terms "substantial conformance" appears repeatedly. In one instance, discussed above, the term "general conformance" is used in connection with building footprints.

259. Thus, with respect to the Master Zoning Plan, Paragraph 1 of the Compass Proffer states that "[t]he Property shall be developed in **substantial conformance** with the [Master

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<sup>57</sup> The omission of the word "use" was obviously intentional. Previous iterations of the Compass Proffer contained that the statement "that the development of the Property shall be in accordance with the following conditions ("Proffers") . . ." The only change made in this statement in the December 13 Proffer was to add the word "strict." At no time did the Compass Proffer state that the **use and development** would be in accordance with the Proffers.

Zoning Plan].” Significantly, it does not state that the Property will be developed in “strict accordance” with the Master Zoning Plan.

260. The same is true with respect to the Building and Site Layouts. Paragraph 6, “Building Footprints”, specifies that “The Applicant shall design the layout of its buildings in each Land Bay in substantial conformance with the Typical Landbay Compass Datacenters shown on pages 48 through 53 of the [Master Corridor Plan] . . .” However, it does not state that the Land Bay layout will be in “strict accordance” with these requirements.

261. Indeed, as noted above, Paragraph 6 further provides that The Applicant shall design each Land Bay, not in strict accordance or substantial conformance with the building footprints shown on pages 48 through 53 of the MCP, but rather only in **general conformance** with those requirements.

262. The “substantial conformance” and “strict accordance” standards are significantly different. Under a “substantial conformance” standard, an applicant is not be required to be in absolute compliance with all of the terms of its proffer. Rather, it is required to act in such a way that in all likelihood it will not fail to comply with the proffer requirements. In contrast, a “strict accordance” standard means that compliance with the all the terms of the proffer is required.<sup>58</sup>

263. The single mention of the “strict accordance” standard on page 1 of the Proffers, and then only in reference to the development – and not the use – of the property, is undermined by the fact that in the remainder of the Proffers Compass uses the term “substantial conformance” (and in one instance only “general conformance), thereby establishing “substantial conformance” as the applicable standard rather than the “strict accordance” standard as required by §32.700 PWCZO

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<sup>58</sup> See <https://www.lawinsider.com/clause/strict-adherence>;  
<https://www.lawinsider.com/clause/substantial-compliance>.



264. Moreover, as previously noted, Compass's December 13 Proffer fails to pledge "strict adherence" to the Proffered conditions for the use of the Property, as required by §32-700.30 PWCZO.

265. Accordingly, because the Compass Proffer violates §32-700.30, the Board's approval of it and the Compass rezoning application was *ultra vires* and void *ab initio*. The Board lacks the power to approve a proffer that violates the plain requirements of its own ordinance.

266. Moreover, the use of the terms "substantial conformance" rather than the more objective term "strict accordance" required by §32-700.30 mean that the Proffers will be much more difficult or impossible to enforce, as has been pointed out repeatedly by Staff.

267. Proffer conditions or standards that are so vague or flexible as to be effectively unenforceable not only violate the requirement that the use and development of the property be in "strict accordance" with the proffered conditions, but they are also unreasonable.

268. Virginia Code § 15.2-2303 (A) provides that "A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption .... as a part of an amendment to the zoning map **of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance.**" (Emphasis added).

269. Moreover, §32-700.30 PWCZO specifies that "[a]ny applicant for a zoning map amendment (rezoning) may, as part of his application, proffer reasonable conditions concerning the use and development of his property . ." If the proffered conditions are not sufficiently specific and enforceable, they are not "reasonable."

270. Thus, because they do not contain sufficiently specific and enforceable standards and a commitment to comply with them "in strict accordance with the proffered conditions," the

Compass Proffer also violates the requirement of §32-700.30(1) that those conditions be “reasonable.”

271. For this reason as well, the Board exceeded its powers and acted *ultra vires* in approving the Compass Proffer, which was in violation of the Prince William County Zoning Ordinance and Virginia Code §15.2-2303(A). The Board’s actions approving the Compass December 13 Proffer and its rezoning application were *ultra vires* and void *ab initio*.

#### **COUNT VI**

#### **THE BOARD’S APPROVAL OF THE QTS DECEMBER 13 PROFFERS AND ITS REZONING APPLICATIONS VIOLATED VIRGINIA LAW AND THE PRINCE WILLIAM COUNTY ZONING ORDINANCE AND, ACCORDINGLY, WAS VOID *AB INITIO*.**

272. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

273. As set forth below, the QTS Proffers were amended in material and substantial ways **after** the public notice for the Digital Gateway rezonings had been published, as well as after the public hearing on the Digital Gateway rezonings had commenced before the Board. Even though these amendments violated relevant provisions of the Virginia Code and the Prince William County Zoning Ordinance, they were accepted and approved by the Board.

274. The same legal standards apply here as in the previous section concerning Compass. Because the Board’s action accepting and approving the QTS proffers violated Virginia law and several provisions of the PWCZO, the Board’s actions were *ultra vires* and void *ab initio*. Consequently, the Board’s approval of the QTS rezoning applications also was *ultra vires* and void *ab initio*.

**A. Substantial and Material Changes Were Made to the QTS Proffers.**

275. Several substantial and material changes were made to the QTS proffers after the publication of the public notice concerning the hearing on December 2, 5, and 9, 2023 and after the public hearing began on December 12, 2023.

276. Among the substantial and material changes<sup>59</sup> made to the QTS Proffers after the public notice for the hearing had been issued and/or the hearing had begun were the following:

- The December 11, 2023 letter to Chair Wheeler from Nick Blessing of QTS,<sup>60</sup> which was submitted after the public notice had been published, stating that QTS would give to the County 65 acres of park area that it intended to purchase for a total price in excess of \$30 million in the event its rezoning application was approved. This letter was, in fact, a proffer and represented a material and substantial change in the QTS proposal.
- The Floor Area Ratio (“FAR”) for Land Bay C in Digital Gateway South was reduced from .36 to .25 after the beginning of the public hearing. Upon information and belief, this change resulted in a reduction of approximately 472,787 square feet in the size of the data centers to be located in Land Bay C. This represented a substantial and material change in the QTS proffer for Digital Gateway South.
- In addition, in its proffer revisions submitted on December 13, 2023 during the hearing, QTS changed its statement at the beginning of its proffers with respect to both Digital Gateway North and Digital Gateway South from its previous statement that “the use and development of the Property **shall be in substantial conformance**” with the Proffer

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<sup>59</sup> Additional substantial and/or material changes are identified in the letters from QTS to the Board explaining the changes in the December 10 and December 13 Proffers.

<sup>60</sup> See Exhibit 10 hereto.

conditions to “the use and development of the Property shall be **in strict accordance**” with the Proffer conditions.

**1. The December 11, 2023 Letter from QTS to Chair Wheeler was a Proffer That Represented a Substantial Change in Both QTS Proposals.**

277. Although Mr. Blessing characterized his December 11, 2023 letter to Chair Wheeler on behalf of QTS as “not a proffer,” that is demonstrably incorrect.<sup>61</sup>

278. The Virginia Supreme Court has characterized proffers as “voluntary commitments made by landowners in order to facilitate approval of conditional zoning and rezoning requests by ameliorating the impact of development of their property on the local infrastructure and the character and environment of adjoining land.” *Rowland v. Town Council of Warrenton*, 298 Va. 703, 717 (2020).

279. That precisely describes Mr. Blessing’s December 11 letter. It was a voluntary commitment by QTS to purchase parkland on behalf of the County in the event that the Board “decide[d] to take favorable action on [QTS’s] South and North rezonings.” Moreover, it was intended to be binding. The letter states that QTS has a “contractual obligation” to purchase 65 acres of park area in the event of favorable action by the Board on the QTS rezoning applications. Regardless of the name that Mr. Blessing chose to give that letter, it was unquestionably a proffer with a material and substantial impact on the QTS proposal.

280. Moreover, the letter was specifically addressed and discussed by counsel for QTS during his presentation on the two QTS Rezonings at the Board Meeting.

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<sup>61</sup> Even assuming *arguendo* that the letter did not constitute a proffer, which Plaintiffs do not concede, the representation to the County that QTS would donate 65 acres of parkland, valued at over \$30 million, constituted a substantial amendment to the QTS rezoning application.

281. Because the letter was submitted to the Board on December 11, prior to the scheduled date of the public hearing on December 12, it is not subject to those provisions restricting proffer amendments during the public hearing. However, because it was submitted after the dates of the notices for the public hearing (December 2, 5, and 9), it is subject to §32-700.43(3) PWCZO, which provides that any significant change in the application submitted after the date of public notice must be referred back to the planning commission for further consideration and recommendation.

282. Because the letter amended the QTS proffers in a substantial way after publication of the notice for the public hearing and the QTS application was not referred back to the Planning Commission as required by §32-700.43(3), the Board was without legal authority to approve the QTS rezoning applications (both North and South). Accordingly, its approval of the QTS rezoning applications was *ultra vires* and void *ab initio*.

## **2. The Reduction in the FAR for Digital Gateway South was a Substantial and Material Change in the Proffer Made After the Public Hearing Began.**

283. During the public hearing, QTS agreed to reduce the FAR for Land Bay C in the December 13 QTS Proffer for Digital Gateway South from .36 to .25. Upon information and belief, this change resulted in a reduction, at a minimum, of approximately 472,000 square feet in the size of the data centers in Digital Gateway South. Such a substantial change “materially affected the overall proposal” for Digital Gateway South within the meaning of §15.2-2303 (A) and thus constituted a violation of that statute.

284. Moreover, because it was a substantial change, it should have been remanded to the Planning Commission pursuant to §32-700.43(3) PWCZO and readvertised pursuant to 32-700.41.2 PWCZO. Accordingly, even assuming *arguendo*, that the Board’s acceptance and approval of the QTS December 13, 2023 Proffer for Digital Gateway North was permissible

(which Plaintiffs do not concede), the Board's acceptance and approval of the QTS Proffer for Digital Gateway South was *ultra vires*, in violation of §15.2-2303(A), and void *ab initio* under the Dillon Rule and under the above-cited provisions of the PWCZO.

**3. The Change in QTS's Proffer Commitment for both Digital Gateway South and Digital Gateway North from "Substantial Conformance" to "Strict Accordance" was a Substantial and Material Change Made in QTS's December 13, 2023 Proffers.**

285. Section 32-700.30(2) PWCZO prescribes a "strict accordance" standard for "every proffer" – a standard that QTS failed to satisfy with respect to each of its proffers, except for the initial commitment on page 1 of QTS's most recent proffers, which were submitted on December 13, 2023, during the Board's public hearing on the Digital Gateway rezonings. The previous QTS proffers used the term "substantial conformance" rather than "strict accordance".

286. The "substantial conformance" and "strict accordance" standards are significantly different. Under a "substantial conformance" standard, an applicant is not be required to be in absolute compliance with all of the terms of its proffer. Rather, it is required to act in such a way that in all likelihood it will not fail to comply with the proffer requirements. In contrast, a "strict accordance" standard means that compliance with the all the terms of the proffer is required.<sup>62</sup>

287. Thus, the change from the "substantial conformance" standard in the QTS December 10, 2023 Proffer to the "strict accordance" standard specified in the QTS December 13, 2023 Proffer was a material change within the meaning of Virginia Code §15.2-2303 (A) with respect to the QTS Proffers for both Digital Gateway South and Digital Gateway North.

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<sup>62</sup> See <https://www.lawinsider.com/clause/strict-adherence;>  
[https://www.lawinsider.com/clause/substantial-compliance.](https://www.lawinsider.com/clause/substantial-compliance)

288. For the same reason, it also constituted a “substantial change” within the meaning of the PWCZO provisions cited above. Because this change materially affected QTS’ overall proposals, pursuant to §15.2-2303(A) those Proffers should not have been accepted. Accordingly, the Board’s acceptance and approval of both of those Proffers violated §15.2-2303(A). Thus, those approvals were *ultra vires*, in violation of §15.2-2303(A), and were void *ab initio* under the Dillon Rule.

289. Moreover, because the change was substantial, it also violated the provisions of §32-700.41.2 PWCZO, in that the Proffers should have been readvertised – but they were not. As a consequence, the Board’s approval of the QTS proffers also violated §32-700.41(2). In addition, because it was a substantial change that occurred after publication of the public notice, the Proffers also should have been remanded to the Planning Commission pursuant to §32-700.43(3), but they were not.

290. The Board is required to adhere to the requirements of its own ordinances. Accordingly, for these additional reasons, in view of its failure to comply with the applicable provisions of the Prince William County Zoning Ordinance, the Board’s action was *ultra vires* and void *ab initio*.

**C. QTS’s December 13, 2023 Proffers Violate §32-700.30(2) PWCZO and Va. Code §15.2-2303 (A).**

291. Section 32-700.32 PWCZO requires that “[e]very proffer statement shall state that the applicant proffers that use and development of the property shall be in **strict accordance** with the proffered conditions.” (Emphasis added).

292. Although QTS's December 13 Proffers for the Digital Gateway North and South both use the term "strict accordance" on page 1 of the two sets of Proffers, the term never again appears in the Proffers. Rather, the term "substantial conformance" appears repeatedly.

293. Thus, with respect to the Master Zoning Plan, both QTS Proffers state that "the Property shall be developed in **substantial conformance** with the [Master Zoning Plan]." Exhibit 11, p. 2. Significantly, they do not state that the Property will be developed in "strict accordance" with the Master Zoning Plan.

294. Similarly, the two Proffers state that "[t]he building elevations shall be in **substantial conformance** with the building elevations as shown on Page 34, 35 and 36 of the [Master Corridor Plan] . . ." (Emphasis added). They do not say that the building elevations shall be in "strict accordance" with the referenced building elevations." (Exhibit 11, p. 16).

295. The same is true with respect to the Building and Site Layouts. This section of the two Proffers specifies that "[t]he Applicant shall design each Land Bay in **substantial conformance** with the building layouts, footprints, orientation, electric infrastructure area and the points of access as depicted in the QTS Land Bays reflected on pages 44, 45, 46 and 47 of the [Master Corridor Plan]." It does not state that they shall be designed in "strict accordance" with those designated layouts, footprints and orientation.

296. The single mention of "strict accordance" on page 1 of the Proffers is undermined by the fact that for the remainder of the Proffers QTS uses the term "substantial conformance," thereby establishing "substantial conformance" as the applicable standard rather than the "strict accordance" standard required under §32-700.30 PWCZO.



297. Accordingly, because the QTS Proffers violate §32-700.30, the Board's approval of them was void *ab initio*. The Board lacks the power to approve a proffer that violates the plain requirements of its own ordinance.

298. Moreover, the use of the term "substantial conformance" rather than the more objective term "strict accordance" required by §32-700.30 means that the Proffers will be much more difficult or impossible to enforce, as has been pointed out repeatedly by Staff. *See e.g.*, Attachment H with respect to the QTS and Compass Proffers in the Staff Report.

299. Proffer conditions or standards that are so vague or flexible as to be effectively unenforceable not only violate the requirement that the use and development of the property be in "strict accordance" with the proffered conditions, but they are also unreasonable.

300. Virginia Code § 15.2-2303 (A) provides that " A zoning ordinance may include reasonable regulations and provisions for conditional zoning as defined in § 15.2-2201 and for the adoption .... as a part of an amendment to the zoning map **of reasonable conditions, in addition to the regulations provided for the zoning district by the ordinance.**

301. Moreover, §32-700.30 PWCZO specifies that "[a]ny applicant for a zoning map amendment (rezoning) may, as part of his application, proffer reasonable conditions concerning the use and development of this property ..." If the proffered conditions are not sufficiently specific and enforceable, they are not "reasonable."

302. Thus, because they do not contain sufficiently specific and enforceable standards and a commitment to comply with them "in strict accordance with the proffered conditions," the QTS Proffers also violate the requirement of §32-700.30(1) that those conditions be "reasonable."

303. For this reason as well, the Board exceeded its powers in approving the QTS Proffers, which were in violation of the Prince William County Zoning Ordinance and Virginia Code § 15.2-2303 (A). The Board's action in doing so and in approving the QTS rezoning applications was, therefore, void *ab initio*.

## COUNT VII

### **THE BOARD'S DECISION APPROVING THE DIGITAL GATEWAY REZONING WAS *PER SE* ARBITRARY AND CAPRICIOUS.**

304. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

305. The Board's decision to approve the rezoning applications of Compass and QTS<sup>63</sup> is a classic example of arbitrary and capricious decision-making. On that basis, as elaborated upon below, the Court should declare the Board's decision to be *per se* arbitrary and capricious and, as a consequence, void *ab initio*.

306. Section 15.2-2284 Va. Code sets forth the following principles to be considered in drawing and applying zoning ordinances and districts:

Zoning ordinances and districts shall be drawn and applied with reasonable consideration for the existing use and character of property, the comprehensive plan, the suitability of property for various uses, the trends of growth or change, the current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies, the transportation requirements of the community, the requirements for airports, housing, schools, parks, playgrounds, recreation areas and other public services, the conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forested land, the conservation of properties and their values and the encouragement of the most appropriate use of land throughout the locality.

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<sup>63</sup> As previously noted, Compass filed one rezoning application and QTS filed two.

307. These factors, which are important to any reasoned zoning decision, are particularly important when considering an extraordinarily large project such as the Digital Gateway. But the Prince William County Board failed to take these factors into account and disregarded the recommendations of County Staff and the Planning Commission, that the rezoning applications for the Digital Gateway be denied – or at least slowed down so as to permit a more thoughtful analysis and consideration of the proposals.

308. Instead, the Board’s December 13, 2023 decision approving the Digital Gateway rezonings took place in the context of considerable political and public controversy, with but one goal in mind – to approve the Digital Gateway quickly before a change in the composition of the Board threatened the achievement of that goal. As previously noted in the Statement of Facts, the Board was under pressure from the Applicants to approve the rezonings before the composition of the Board shifted, as a result of the 2023 elections, in a manner that might prevent the rezonings from being approved.

309. Moreover, at least one applicant, QTS, was concerned that its rights to the subject property might contractually expire at the end of 2023. These factors combined to create a “rush to judgment” on the part of the Board and caused it to ignore negative recommendations from the Planning Commission and County Staff, who complained that they had not had sufficient time to properly evaluate the various submissions by the Applicants, who had concluded that the applications and Proffers were seriously deficient and lacking in important detail. The Board also ignored applicable legal requirements.

310. The net result was that the Board approved the three rezoning applications, including the December 13 Proffers submitted by QTS and Compass, without knowing whether it could legitimately do so in view of the applicable requirements of Virginia law and of the

PCWZO and without explaining why it was disregarding the reasoned recommendations from Staff and the Planning Commission that the rezoning applications be denied.

311. Because the Board did not know, and could not have known (because the Staff didn't know), the facts necessary to make those necessary legal judgments, and therefore did not make them, its approval of the rezoning applications and the associated Proffers was necessarily arbitrary and capricious *per se* and void *ab initio*.

#### **A. The Political Environment**

316. The rezoning process began with the Board's adoption of the Comprehensive Plan Amendment that authorized the agricultural area now known as the Digital Gateway to be rezoned for use by data centers. The Board's vote adopting the CPA was 5 -2. Supervisor Candland from the Gainesville District abstained because of a conflict of interest – he had decided to sell his property to the data center developers.

317. In December 2022, shortly after the November vote, Supervisor Candland resigned. On February 21, 2023, a special election was held to fill Supervisor Candland's vacant position. That election was won by Republican Bob Weir, who had run on a platform opposing data center development in rural and residential areas.

318. On June 20, 2023, then Board Chair Ann Wheeler lost the Democratic primary election to Deshundra Jefferson. One of the key issues in the race was Ms. Jefferson's opposition to the Digital Gateway, which had been championed by Ms. Wheeler.

319. In November 2023, Ms. Jefferson was elected Chair-at-Large, replacing Ann Wheeler.

320. In that same election, Tom Gordy was elected to replace Jeanine Lawson as the Supervisor from the Brentsville Magisterial District. During his campaign, Mr. Gordy announced

his opposition to the Digital Gateway project.

321. The cumulative effect of these elections was that the reconstituted Board, which took office in January of this year, appeared to have a 4-4 split on the issue of the Digital Gateway. Such a division of the votes would mean that if the Digital Gateway rezoning came up for a vote in 2024, the likelihood was that it would be defeated on a 4-4 vote. Thus, the change in political reality made it imperative that the proponents of the Digital Gateway obtain approval from the lame duck Board in 2013.

### **B. The Commercial Environment**

322. Under the Purchase and Sale Agreements between GW Acquisition Co., LLC (acting on behalf of QTS) and the landowners who agreed to sell their property for use in the Digital Gateway, the Digital Gateway rezoning needed to be scheduled by August 15, 2023 and to take place no later than December 30, 2023. *See* Exhibit 3 hereto.

323. This contractual deadline created even more pressure for the Board to act on the Digital Gateway rezonings by the end of 2023.<sup>64</sup>

### **C. The Chair's Action**

324. On July 28, 2023, Antonio J. Calabrese, Esq., Authorized Agent and Legal Counsel to QTS, emailed David McGettigan, Acting Director of Prince William County Planning,<sup>65</sup> reminding him of what he asserted was the one-year limitation on processing zoning

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<sup>64</sup> As stated in an online article by WTOP News Radio:

The rush to move the applications along through the approval process stems from deadlines the developers say they must meet. The political realities surrounding the project are also a critical wrinkle. The board's Democratic majority will hold into next year, but Deshundra Jefferson, the incoming chair, has been a staunch opponent of the project and has vowed to take steps to mitigate it and other similar data center projects once in power. Her ascendance, paired with Republican opposition to the project, could kill it should a vote be pushed to January.

*See* Exhibit 12 hereto.

<sup>65</sup> A copy of Mr. Calabrese's email also was sent to Hon. Ann Wheeler, Chair, Prince William County Board of Supervisors.

applications, “as dictated by the Virginia Code (Section 15.2-2286.A.7) [hyperlink omitted] as well as your own ordinance (Section 32-700-43) [hyperlink omitted].” Mr. Calabrese pointed out that the two QTS rezoning applications had been formally accepted for processing on July 11, 2022.<sup>66</sup> *See* Exhibit 4 hereto.

325. On Sunday, July 30, 2023, without checking with the County Attorney and relying solely on Mr Calabrese’s representation of the one-year requirement, Chair Wheeler emailed Christopher J. Shorter, County Executive, notifying him that she was scheduling the two QTS rezoning cases for public hearing by the Board of County Supervisors at their November 21, 2023 meeting. She noted that this date might be “slightly amended” to accommodate the vacation schedules of other members of the Board “and other issues that may arise.” *See id.*

326. Mr. Shorter acknowledged Chair Wheeler’s email with respect to the scheduling of the QTS applications by return email at 7:47 p.m. the same day. *See id.*

327. On Wednesday, August 16, 2023, Supervisor Bob Weir, in whose Gainesville District the Digital Gateway will be located, emailed Mr. Shorter, complaining that he had only been notified of the November 21 hearing date by Mr. Shorter on August 15. *See* Exhibit 5 hereto. He also stated that he thought that the County Attorney should have been consulted with respect to Mr. Calabrese’s asserted one-year deadline for the processing of the two QTS rezoning applications. *See id.*

328. By email of August 30, 2023 to Mr. Shorter from the Planning Office, the County’s planning staff pointed out the difficulties caused by “the Applicants aggressive public hearing

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<sup>66</sup> Mr. Calabrese’s email did not mention that §32-700.43(2) PWCZO also provides that “whenever an applicant shall make a change in his application, the one-year period shall run from the date the change is received by the Planning Director.” As noted above, in January of 2023, in response to the Board’s adoption of the CPA, QTS submitted a 206-page updated application, including 38 pages of draft proffers and adding more land to the proposed rezoning. Compass took a similar action. Pursuant to §32-700.43(2), this tolled the one-year period for action by the Board at least until January 2024.

time frames, which do not permit enough time for the 4<sup>th</sup> review to be completed nor included in the PC staff report.” *See* Exhibit 6 hereto.

329. Accordingly, Staff suggested “double advertising” the Planning Commission and Board hearings and holding them on the same meeting date, in order for the 4<sup>th</sup> review to be completed. *See id.* Staff suggested that a December 5 double advertised public hearing date might be feasible, although the Staff Memo pointed out that “we may not receive all agency comments on the 4<sup>th</sup> submittal within the requested 45-day review period, as technically VDOT has 90 days to review the revised TIA.” *See id.*

330. Finally, the Staff memo stated that “[t]o avoid all of the above scenarios, and uncertainty, it is recommended that the PC and BOCS public hearing dates be pushed back to allow adequate time for the 4<sup>th</sup> review to be completed and incorporated into the staff reports before scheduling any public hearing.” *See id.*

#### **D. The Planning Commission Meeting**

331. The Planning Commission meeting took place on November 8 – 9, 2023.

332. As noted in the Statement of Facts, prior to that meeting, the Staff produced a 574-page report on the Compass proposal and two separate reports (one of 647 pages and another of 457 pages) on the two QTS proposals. These reports were based on the Applicants’ Fourth Submission and the August 25, 2023 Proffers. Staff recommended denial of all the rezonings.

333. On November 1, 2023, just seven days before the scheduled Planning Commission hearing, Compass and QTS submitted their Fifth Submissions, numbering 1,326 pages for Compass and 2,357 and 2,379 pages respectively for the two QTS applications. Compass and QTS also submitted revised Proffers at the same time.

334. As noted in the Statement of Facts above, the Planning Commission meeting was “a

shambolic affair,” with Staff pointing out deficiencies in the Fourth Submission, and recommending denial, and the Applicants discussing the benefits of the Fifth Submission, including the most recent Proffers, which neither Staff nor the Planning Commission had yet had an opportunity to review. One staff member stated, as quoted in the Statement of Facts above, that he’d seen Dunkin Donuts rezonings last longer than the Digital Gateway rezoning process. Another staffer, Principal Planner Emilie Wolfson, who oversaw review of the Compass application, was quoted as saying “The amount of information we received . . . it’s unreasonable to ask staff to review that amount of information in a quarter of the time.” *See* Exhibit 13 hereto.

335. After an almost 24-hour long hearing, the Planning Commission recommended denial of all three rezoning applications.

#### **E. The Board Meeting**

336. After the Planning Commission meeting, Compass submitted revised Proffers on November 28 and QTS submitted revised Proffers for its two rezonings on November 29.

337. On December 10, two days before the scheduled Board meeting, QTS submitted revised Proffers for its two proposals, superseding the Proffers that it had submitted on November 29.

338. On December 11, one day before the Board meeting, Compass also submitted a revised Proffer.

339. On December 13, the second day of the Board meeting, both Compass and QTS submitted yet another set of revised Proffers.

340. The Staff Reports for the Board’s December 12 meeting were posted on Thursday, December 7, 2023. To the limited extent that they could, the reports addressed the November 28 and 29 Proffers. Needless to say, they did not address the Proffers of December 10 and 11, or of



December 13.

341. When asked by Supervisor Lawson at the Board's public hearing, whether the most recent Proffers contained any substantial and material changes, David McGettigan, Acting Planning Director, responded that he didn't know because the Proffers had not been vetted by Staff.

342. Thus, the Board did not know, and could not have known (because Staff didn't know) that the revised December 13 Proffers contained substantial changes that required the applications to be remanded to the Planning Commission and/or readvertised pursuant to §§ 32-700.41.2 and 32-700.43(3) of the PWCZO.

343. Moreover, the Board did not know, and could not have known (because Staff didn't know) that there was a material effect on the overall proposals, such that, pursuant to Va. Code §15.2-2303 (A), the revised December 13 Proffers should not have been accepted.

344. Nevertheless, the Board accepted the December 13 Proffers and approved the three rezoning applications, including the December 13 Proffers submitted by Compass and QTS. In so doing, the Board disregarded the recommendations of Staff and the Planning Commission that the rezonings be denied. The Board also acted without having Staff input on the most recent information submitted by the Applicants – the Proffers submitted on December 10, 11, and 13 – because it was not willing to give the Staff sufficient time to analyze this additional information.

345. Because the Board approved the rezonings in a rush to judgment without knowing whether that action was permissible under applicable Virginia law and the relevant provisions of the Prince William County Zoning Ordinance (which it was not), its approval of the rezonings was arbitrary and capricious and void *ab initio*.<sup>67</sup>

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<sup>67</sup> Moreover, the Board's approval of the three rezonings and the associated Proffers was arbitrary and capricious for the reasons stated in the preceding Counts of this Complaint.

## **PRAYER FOR RELIEF**

### **DECLARATORY RULING AND INJUNCTIVE RELIEF**

#### **A. For REZ 2022-00036 (Compass):**

346. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

347. There is an existing and active dispute concerning the authority of the Board to approve the rezoning application and related Proffer of Compass, and its actions in so doing, without complying with the relevant provisions of Virginia law and the Prince William County Zoning Ordinance, which adversely affects the Residents' use and enjoyment of their property, the value of their property, and their health and general welfare.

348. If injunctive relief is not granted, the resulting harm to Plaintiffs will be irreparable, and they have no adequate remedy at law.

WHEREFORE, for the foregoing reasons, Residents respectfully request that this Court grant the following relief:

- a. Declare that the public notice published on December 2 and 5, 2023 in connection with the Board's December 12, 2023 public hearing, was invalid and did not comply with §15.2-2204(A) Va. Code because the meeting materials for the Board's December 12, 2023 meeting were not available at the advertised location until Thursday, December 7, 2023 and that therefore the Board's action approving the Compass rezoning and the related Proffers was void *ab initio*.
- b. Declare that the public notice published on December 2, 5, and 9, 2023 in connection with the Board's public hearing of December 12, 2023, failed to comply with the requirements of §15.2-2204(A), and that the Board's action approving the Compass

rezoning applications and its related Proffers at that public hearing are therefore void *ab initio*.

- c. Declare that the public notice published on December 2, 5, and 9, 2023 in connection with the Board's public hearing of December 12, 2023, failed to comply with requirements of §32-700.60(1) of the Prince William County Zoning Ordinance and that the Board's action approving the Compass rezoning application and its related Proffers at that public hearing are therefore void *ab initio*.
- d. Declare that the Board's action approving the Compass rezoning application and its related Proffers failed to comply with the Prince William County Comprehensive Plan. and §15.2-2284 Va. Code.
- e. Declare that the Board's action approving the Compass rezoning application and its related Proffers are void *ab initio*, because they failed to comply with the Prince William County Comprehensive Plan. and §15.2-2284 Va. Code.
- f. Declare that the Board's action approving the Compass rezoning applications and its related Proffers violated the requirements of §15.2-2303 (A) Va. Code.
- g. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements of §15.2-2303 (A) Va. Code and that those actions are, therefore, void *ab initio*.
- h. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.41.2 of the Prince William County Zoning Ordinance.

- i. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.41.2 of the Prince William County Zoning Ordinance and that those actions are, therefore, void *ab initio*.
- j. Declare that the Board's action approving the Compass rezoning applications and its related Proffers violated the requirements Section 32-700.43(3) of the Prince William County Zoning Ordinance.
- k. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements Section 32-700.43(3) of the Prince William County Zoning Ordinance and that the action is, therefore, void *ab initio*.
- l. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.30(2) of the Prince William County Zoning Ordinance.
- m. Declare that the Board's actions approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.30(2) of the Prince William County Zoning Ordinance and is, therefore, void *ab initio*.
- n. Declare that the Board's action approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.30(1) of the Prince William County Zoning Ordinance.
- o. Declare that the Board's actions approving the Compass rezoning application and its related Proffers violated the requirements of §32-700.30(1) of the Prince William County Zoning Ordinance and that the action is, therefore, void *ab initio*.

- p. Declare that the Board's action granting a waiver to Compass to permit the construction and operation of data centers outside of the Data Center Overlay Zone without a Special Use Permit is invalid.
- q. Declare that the Board's action granting a waiver to Compass to permit the construction and operation of electrical substations without a Special Use Permit is invalid.
- r. Declare that the Board's approval of Compass's Rezoning was arbitrary and capricious and the Rezoning approval is void *ab initio*.
- s. Declare that the Master Zoning Plan for the Compass Rezoning violates County Ordinances, is invalid and that the Rezoning Approval based on that Master Zoning Plan is void *ab initio*.
- t. Enjoin the Board from taking any further action to implement its decisions approving the Compass rezoning applications and its associated Proffers.
- u. Award Plaintiffs their attorneys fees and court costs.
- v. Grant such other and further relief as the Court may deem just and proper.

**For REZ2022-00033 and REZ 2022-00032 (QTS Digital Gateway South and Digital Gateway North)**

349. Plaintiffs hereby incorporate by reference the foregoing in Paragraphs in the allegations in the Complaint as if fully realleged here.

350. There is an existing and active dispute concerning the authority of the Board to approve the rezoning applications and related Proffers of QTS, and its actions in so doing, without complying with the relevant provisions of Virginia law and the Prince William County

Zoning Ordinance, which adversely affects the Residents' use and enjoyment of their property, the value of their property, and their health and general welfare.

351. If injunctive relief is not granted, the resulting harm to Plaintiffs will be irreparable, and they have no adequate remedy at law.

WHEREFORE, for the foregoing reasons, Residents respectfully request that this Court grant the following relief:

- a. Declare that the public notice published on December 2 and 5, 2023 in connection with the Board's December 12, 2023 public hearing, was invalid and did not comply with §15.2-2204(A) Va. Code because the meeting materials for the Board's December 12, 2023 meeting were not available at the advertised location until Thursday, December 7, 2023 and that therefore the Board's action approving the QTS rezonings and the related proffers is void *ab initio*.
- b. Declare that the public notice published on December 2, 5, and 9, 2023 in connection with the Board's public hearing of December 12, 2023, failed to comply with the requirements of §15.2-2204(A), and that the Board's actions approving the QTS rezoning applications and its related Proffers at that public hearing are therefore void *ab initio*.
- c. Declare that the public notice published on December 2, 5, and 9, 2023 in connection with the Board's public hearing of December 12, 2023, failed to comply with requirements of §32-700.60(1) of the Prince William County Zoning Ordinance and that the Board's actions approving the QTS rezoning applications and its related Proffers at that public hearing are therefore void *ab initio*.

- d. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers failed to comply with the Prince William County Comprehensive Plan. and §15.2-2284 Va. Code.
- e. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers are void *ab initio*, because they failed to comply with the Prince William County Comprehensive Plan. and §15.2-2284 Va. Code.
- f. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §15.2-2303 (A) Va. Code.
- g. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §15.2-2303 (A) Va. Code and those actions are, therefore, void *ab initio*.
- h. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.41.2 of the Prince William County Zoning Ordinance.
- i. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.41.2 of the Prince William County Zoning Ordinance and that those actions are, therefore, void *ab initio*.
- j. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements Section 32-700.43(3) of the Prince William County Zoning Ordinance.
- k. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements Section 32-700.43(3) of the Prince William County Zoning Ordinance and that those actions are, therefore, void *ab initio*.

- l. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.30(2) of the Prince William County Zoning Ordinance.
- m. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.30(2) of the Prince William County Zoning Ordinance and are, therefore, void *ab initio*.
- n. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.30(1) of the Prince William County Zoning Ordinance.
- o. Declare that the Board's actions approving the QTS rezoning applications and its related Proffers violated the requirements of §32-700.30(1) of the Prince William County Zoning Ordinance and that those actions are, therefore, void *ab initio*.
- p. Declare that the Board's action granting a waiver to QTS to permit the construction and operation of data centers outside of the Data Center Overlay Zone without a Special Use Permit is invalid.
- q. Declare that the Board's action granting a waiver to QTS to permit the construction and operation of electrical substations without a Special Use Permit is invalid.
- r. Declare that the Board's approval of Compass's Rezoning was arbitrary and capricious and the Rezoning approvals are void *ab initio*.
- s. Declare that the Master Zoning Plan for the Compass Rezoning violates County Ordinances, is invalid and that the Rezoning Approval based on that Master Zoning Plan is void *ab initio*.



- t. Enjoin the Board from taking any further action to implement its decisions approving the QTS rezoning applications and its associated Proffers.
- u. Award Plaintiffs their attorneys fees and court costs.
- v. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

**OAK VALLEY HOMEOWNERS  
ASSOCIATION, INC.**

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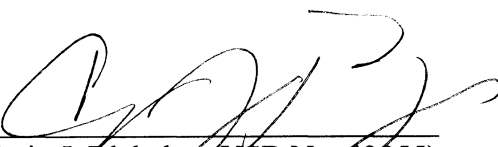
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