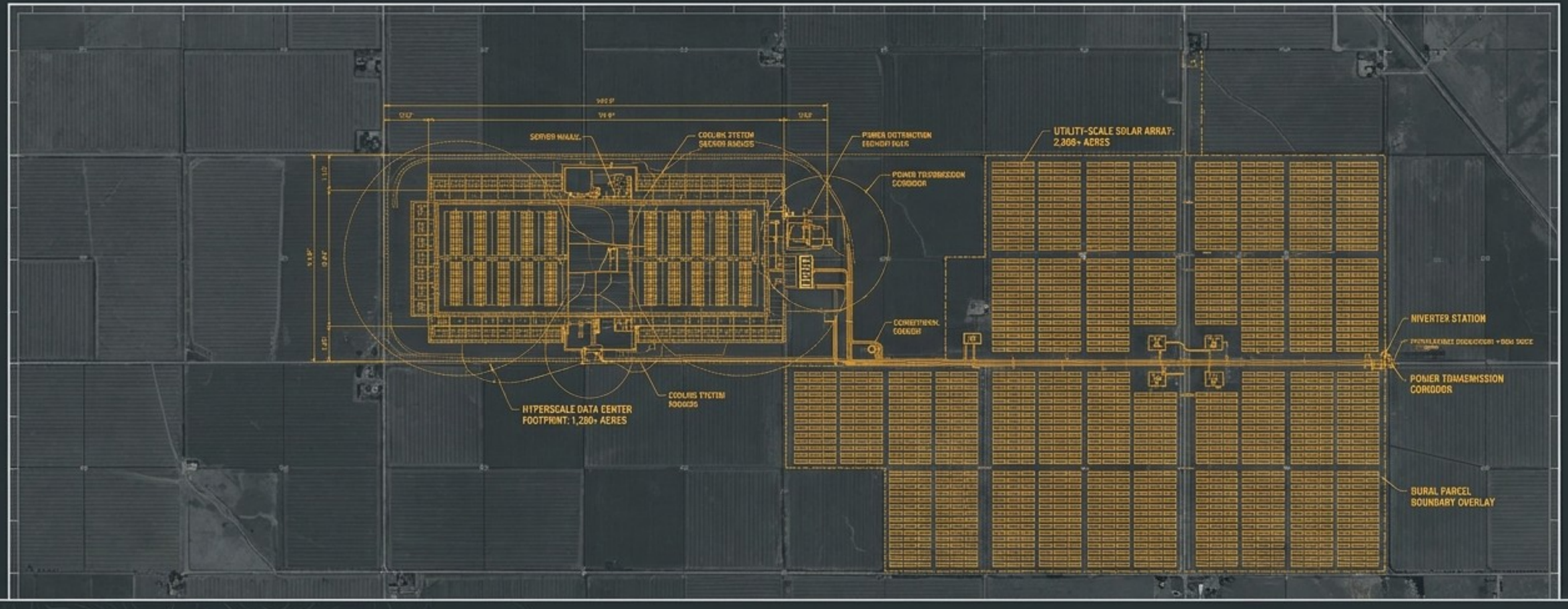
The Limits of the Right to Build

An analysis of property rights, uncompensated impacts, and the protection of rural communities.
Based on the documented findings of Jeff Pierson (Jerome County, Idaho).



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The Core Questions Before Local Government

Industry proposals rely on standard narratives of economic development. Local governments in a constitutional republic must address three foundational mechanics:

Documented Costs

Do large-scale energy and data center projects impose measurable financial and spatial costs on surrounding communities?

Documented Reality: Yes

Meaningful Notice

Do affected residents have a constitutional right to meaningful notice and public participation before these costs are imposed?

Legal Reality: Yes

Local Authority

Is limiting property development based on community impact a legitimate exercise of government authority?

Constitutional Reality: Yes

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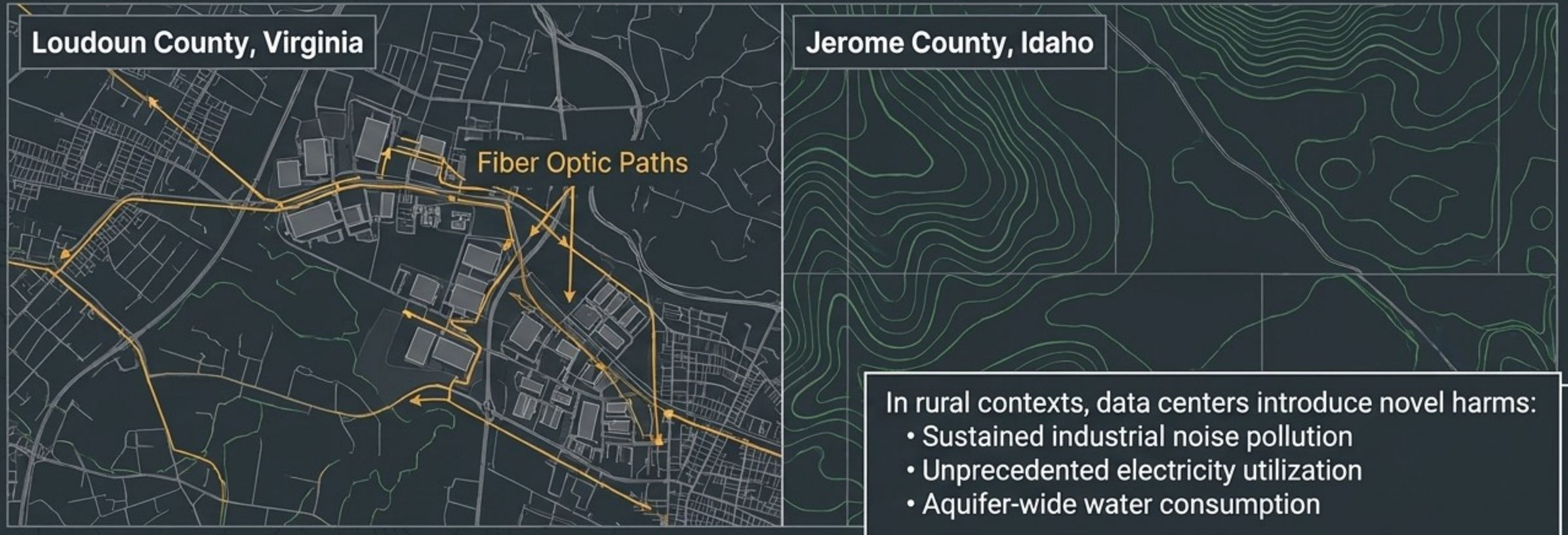
The Standard Playbook Versus Documented Reality

Developer Claim	Documented Reality
Massive property tax windfalls for local jurisdictions.	Developers immediately negotiate tax abatements and negotiated payments in lieu of taxes, reducing the tax burden by 50–90% for 10–20 years.
Complete utility independence and self-sufficiency.	Socialized transmission construction costs and immediate grid upgrades are borne by existing utility customers.
Permanent job creation and economic revitalization.	Speculative land value inflation locks out multi-generational farming, while permanent local employment remains minimal after initial construction phases.

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Context Dictates Impact for Hyperscale Data Centers

Developers frequently cite studies showing neutral property impacts in Northern Virginia. That market holds about 15% of the world's hyperscale capacity, with existing industrial character, dense fiber, and metropolitan labor. Those conditions do not exist in rural agricultural communities.

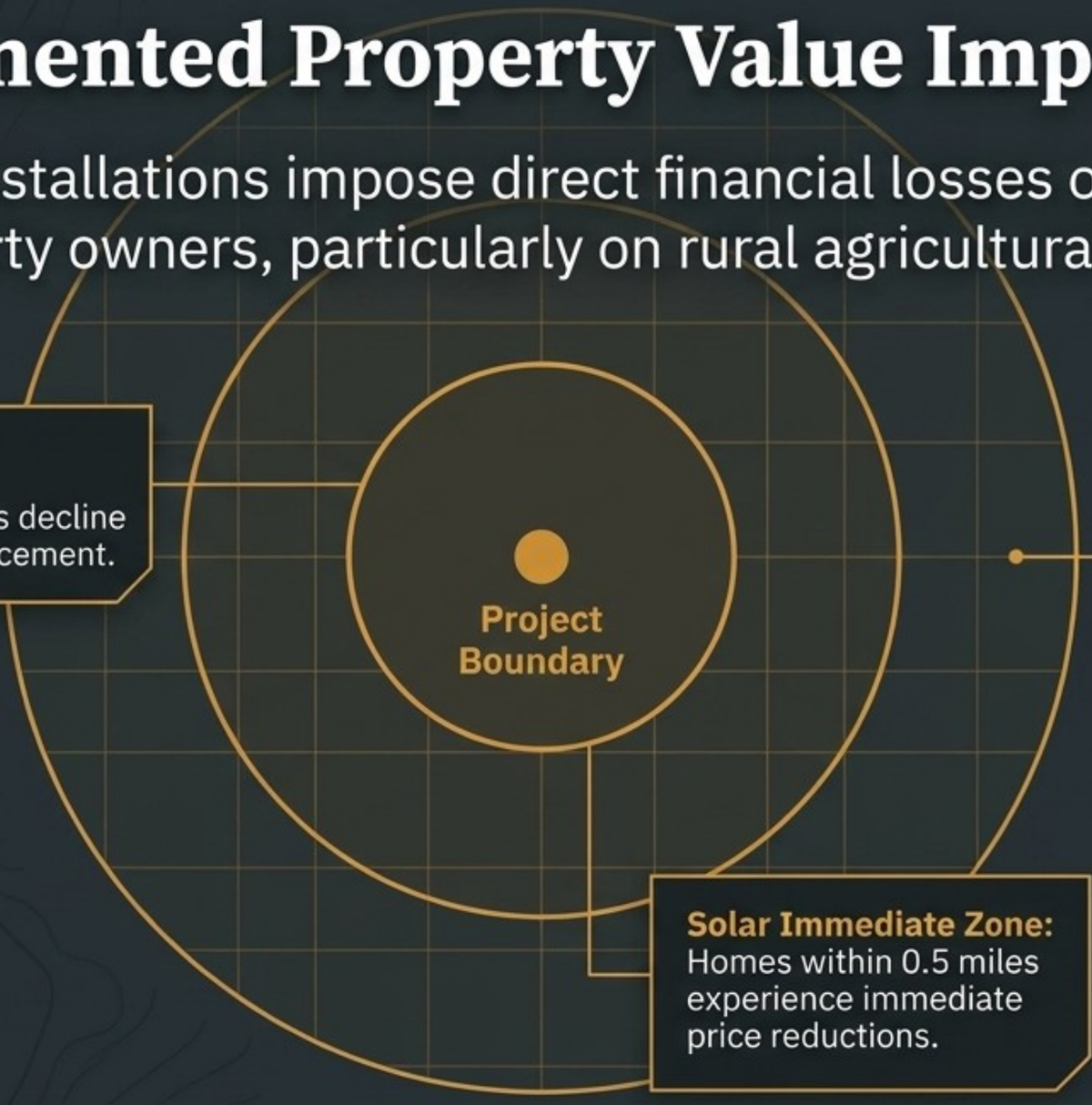


In rural contexts, data centers introduce novel harms:

- Sustained industrial noise pollution
- Unprecedented electricity utilization
- Aquifer-wide water consumption

The Documented Property Value Impact Radius

Utility-scale installations impose direct financial losses on neighboring property owners, particularly on rural agricultural land.



Wind Impact
(LBNL 2009–2023):
Values within 0.5 to 1.0 miles decline 5–10% upon project announcement.

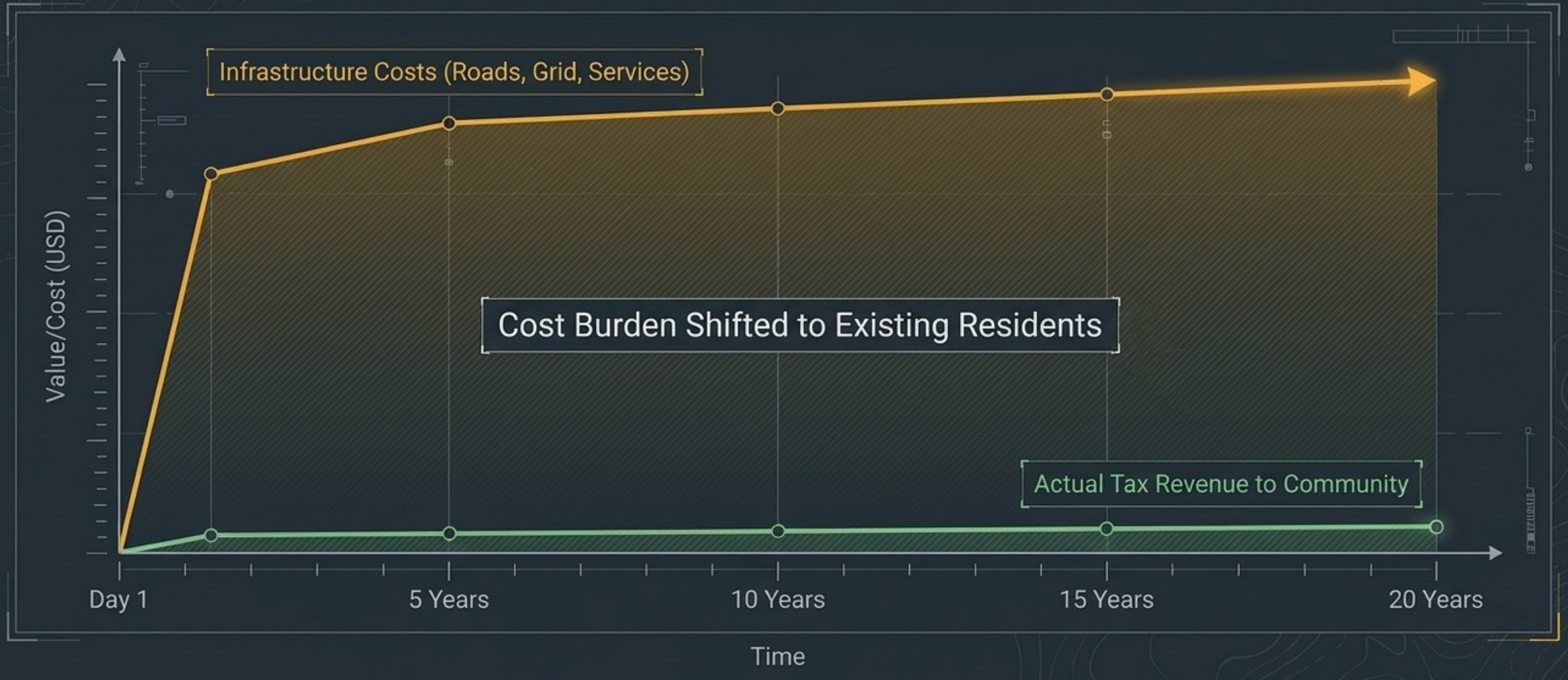
Solar Extended Zone
(LBNL 2023 & PNAS 2025):
Negative effects average 1.5% to 3.6% ($4,721 to $11,330 loss in 2019 levels) extending up to 3 miles.

Solar Immediate Zone:
Homes within 0.5 miles experience immediate price reductions.

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The Property Tax Illusion and Hidden Financial Strings

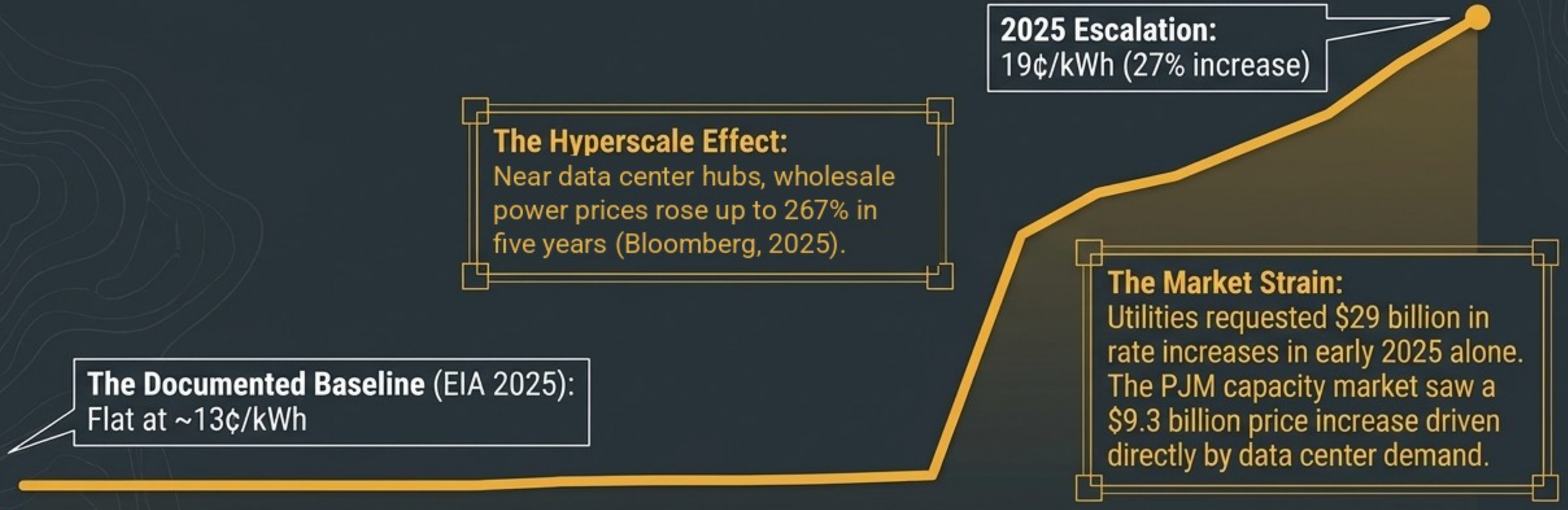
The projected assessment value of a facility does not equal immediate revenue. Through decades-long tax abatements and payments in lieu of taxes, unadjusted assessments are bypassed. The community receives a fraction of the projected revenue during the critical first decade. Simultaneously, the existing residents immediately bear the full cost of road maintenance, emergency service expansion, and speculative land inflation that raises agricultural lease rates and targets family farms.



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The Utility Rate Escalation Imposed on Residents

Utilities build new infrastructure to serve hyperscale demand and spread the costs to all utility customers. For rural households, this directly competes with fuel and farm inputs.



Regional Grid Strain and Interconnected Market Pressures

Federal Energy Regulatory Commission (FERC) dockets and California Independent System Operator (CAISO) records document severe transmission congestion and capacity shortfalls driven by hyperscale electricity demand.

Because the Western grid operates as an interconnected market, CAISO capacity shortfalls and FERC-mandated transmission construction directly threaten Idaho utility customers.

When regional demand outpaces supply, market-rate energy prices increase systematically, socializing the financial risk of private data centers across state lines onto local ratepayers.



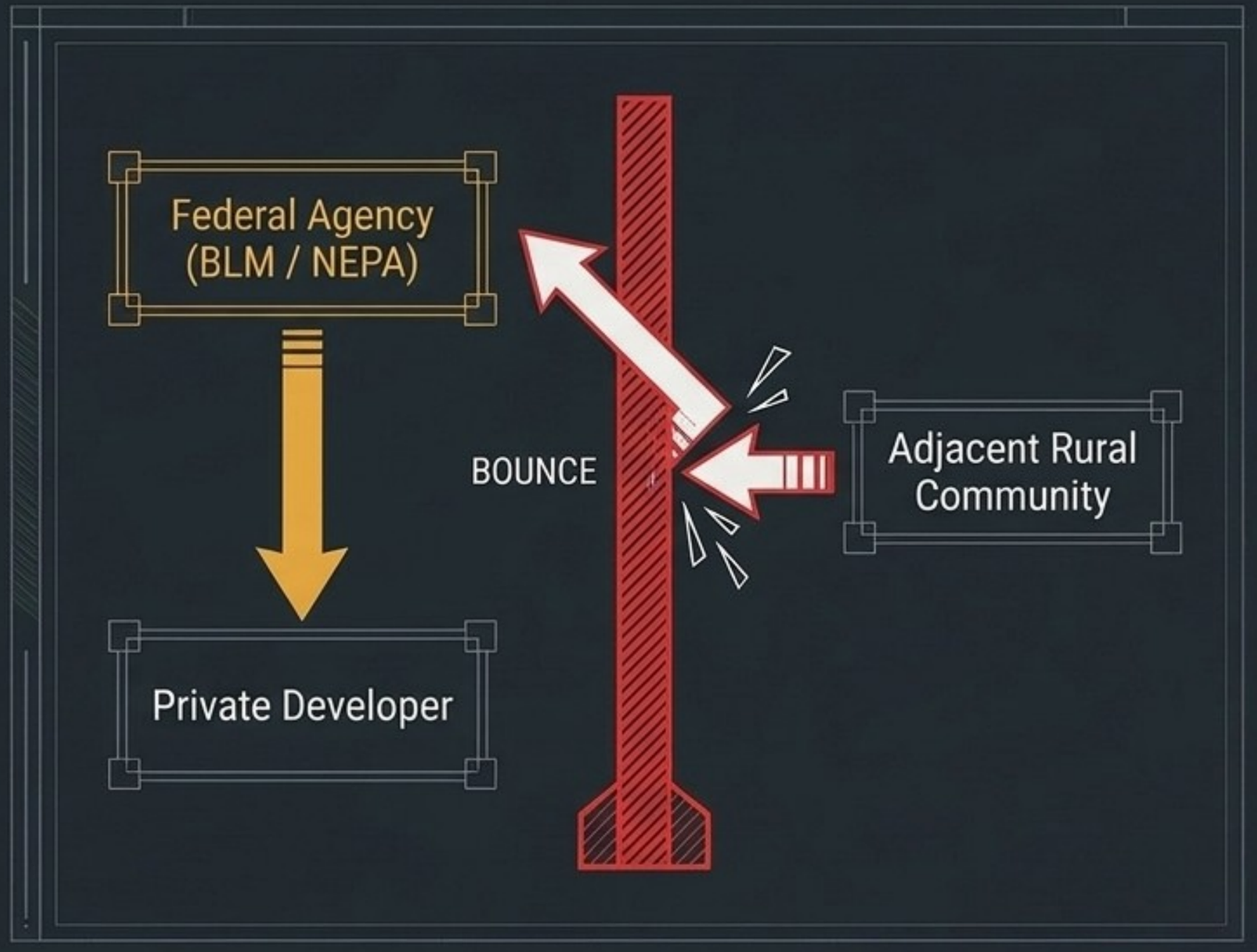
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The Shifting Burden of Development on Public Lands

When large-scale projects are proposed on federal public lands, the regulatory burden shifts entirely. The Bureau of Land Management (BLM) and National Environmental Policy Act (NEPA) processes frequently obscure the local impact.

While the federal government acts as the landlord, the severe limits on local zoning authority mean the adjacent private communities bear the uncompensated impacts of construction, traffic, and aesthetic degradation.

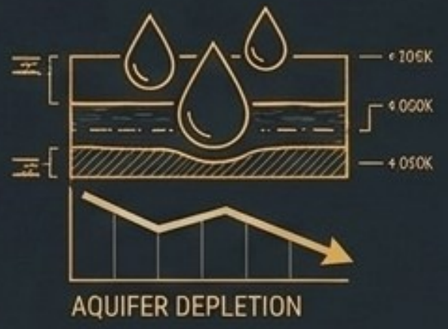
Residents consistently struggle to secure timely access to meaningful information within federal dockets, effectively nullifying their capacity to influence the outcome.



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The Cumulative Drain on Critical Resources

Evaluating individual projects in isolation obscures the compounded harm to the region's physical infrastructure. Financial gain to an applicant does not establish that harm to natural resources is acceptable.



Water

Unprecedented groundwater depletion threatening the Eastern Snake River Plain Aquifer (ESPA).

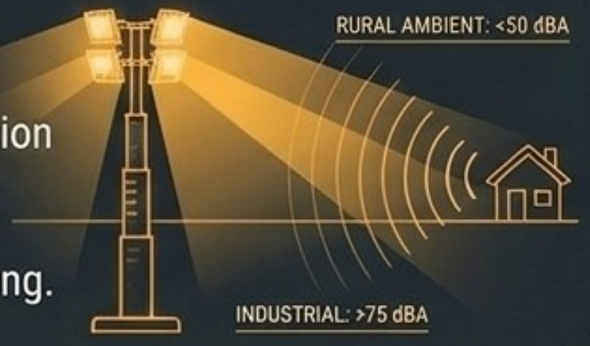


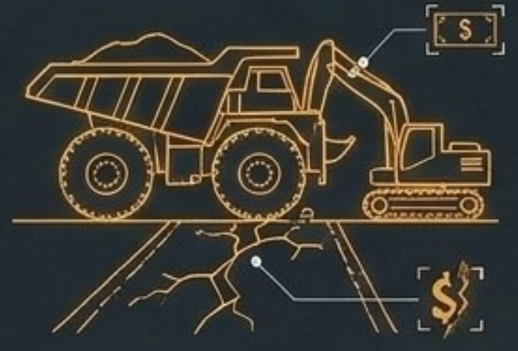
Ecology

Cumulative watershed interference and large-scale wildlife displacement.

Nuisance

Industrial noise propagation exceeding ambient rural levels, combined with pervasive industrial lighting.





Infrastructure

Heavy construction traffic degrading rural roadways faster than negotiated compensation can repair them.

The Conditional Nature of the Right to Build



Property development within a constitutional republic is not an absolute right. It is a conditional right exercised within a framework of public regulation.

> "The police power is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."
>
> Village of Belle Terre v. Boraas (416 U.S. 1, 1974)

Local authorities possess the constitutional mandate to protect the community from uncompensated impacts.

Diminution of Value is Not an Unconstitutional Taking

Unconstitutional Taking



Diminution of Value



The Penn Central test evaluates the economic impact, investment-backed expectations, and the character of government action.

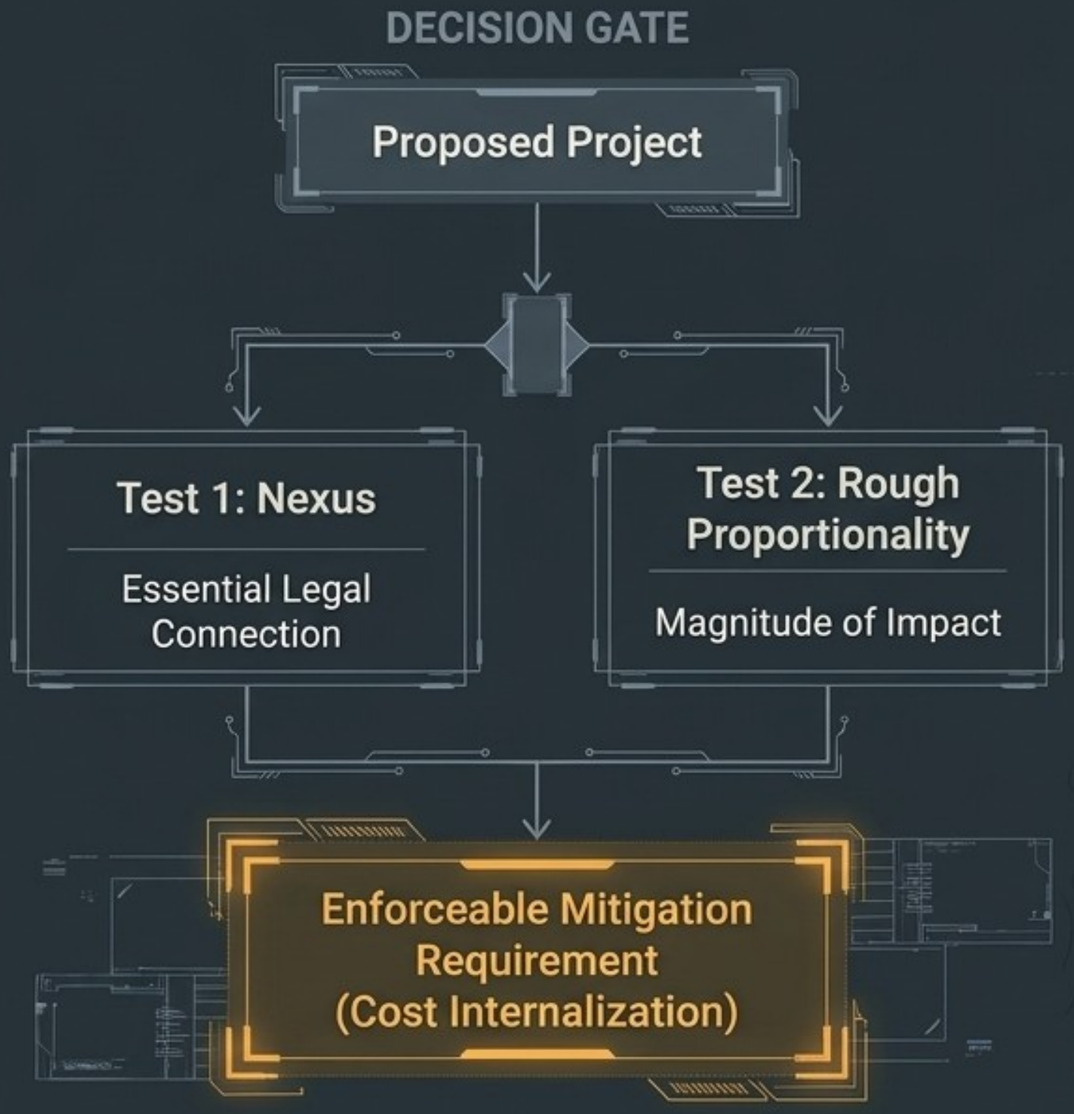
Penn Central held that a regulation is not a taking merely because it lowers a property's value or bars its most profitable use (Penn Central, 438 U.S. 104, 1978).

A developer has a right to reasonable economic use of their land, not the highest and best use. Denying a 400-MW solar installation on agricultural land simply declines to permit a particular use; the land remains fully viable for agriculture.

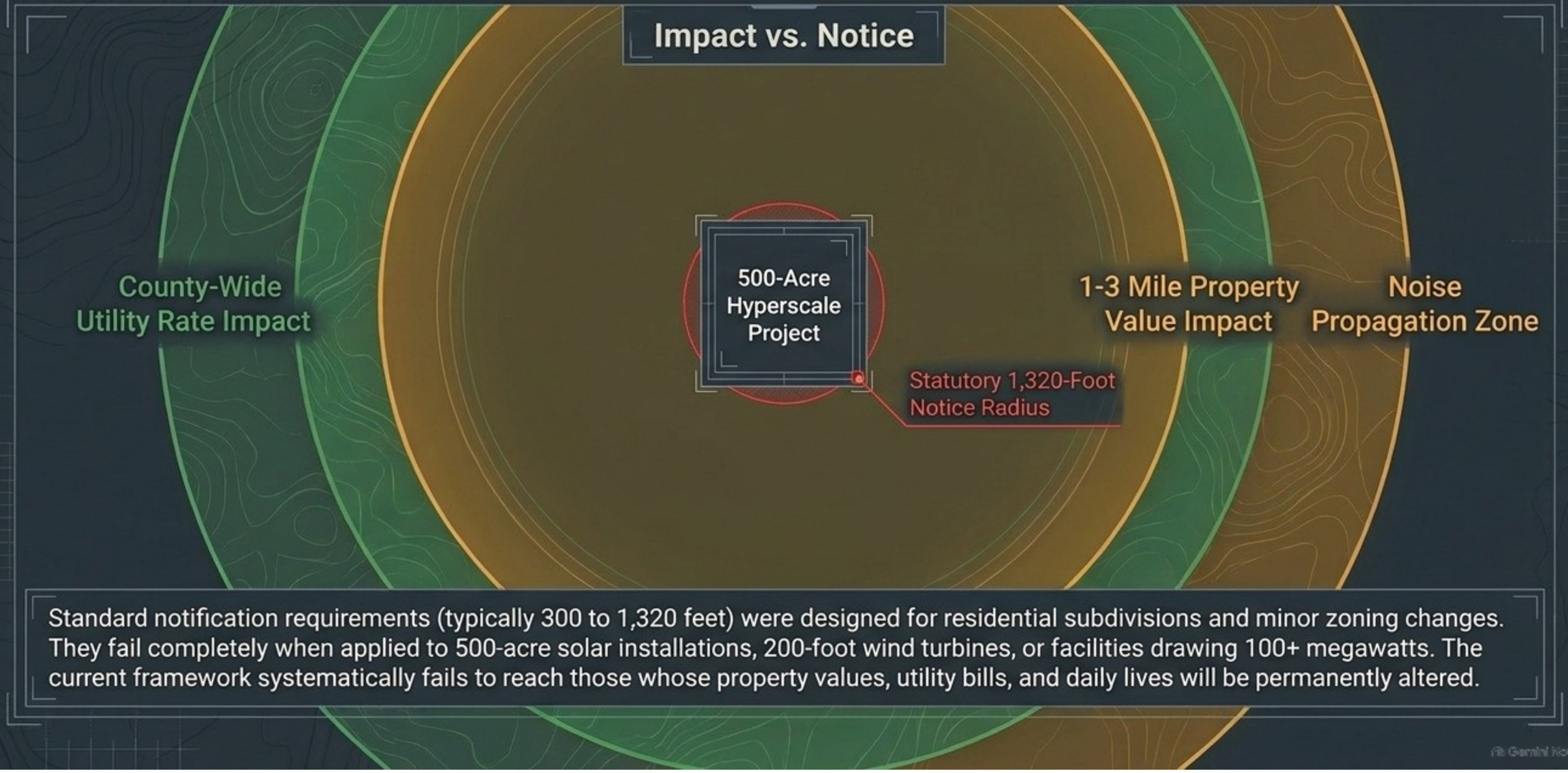
Nexus and Proportionality: Tools for Enforceable Rights

Under Nollan (1987) and Dolan (1994), governments cannot impose arbitrary conditions or functionally prohibit use without a rational basis.

However, they may require developers to internalize the actual costs they impose. If a data center requires $50 million in transmission upgrades, requiring the developer to bear that cost has strict constitutional proportionality. If a solar array creates measurable property value loss, mandating setbacks, screening, or financial compensation mechanisms has clear legal nexus.



The Severe Inadequacy of Current Notification



Standard notification requirements (typically 300 to 1,320 feet) were designed for residential subdivisions and minor zoning changes. They fail completely when applied to 500-acre solar installations, 200-foot wind turbines, or facilities drawing 100+ megawatts. The current framework systematically fails to reach those whose property values, utility bills, and daily lives will be permanently altered.

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The Mandate for Equal Protection and Informed Consent

Substantive restrictions rest on documented harm, but residents uniformly demand systemic process reforms. The JTown Beacon Community Survey (March 2026) establishes an undeniable mandate. Rights are not subject to utilitarian balancing, but these numbers establish the community's demand for informed consent.

90.8%

require that all county residents be notified when a large-scale energy facility is proposed.

93.8%

rate the preservation of agricultural land as important or extremely important.

93.7%

oppose allowing large-scale energy development in agricultural zones.

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The Proposed Standard: Matching Notice to Impact

If a project's impacts are systemic and county-wide, then notification must be systemic and county-wide. Full disclosure is the prerequisite for public participation, ensuring residents have timely access to influence the outcome.

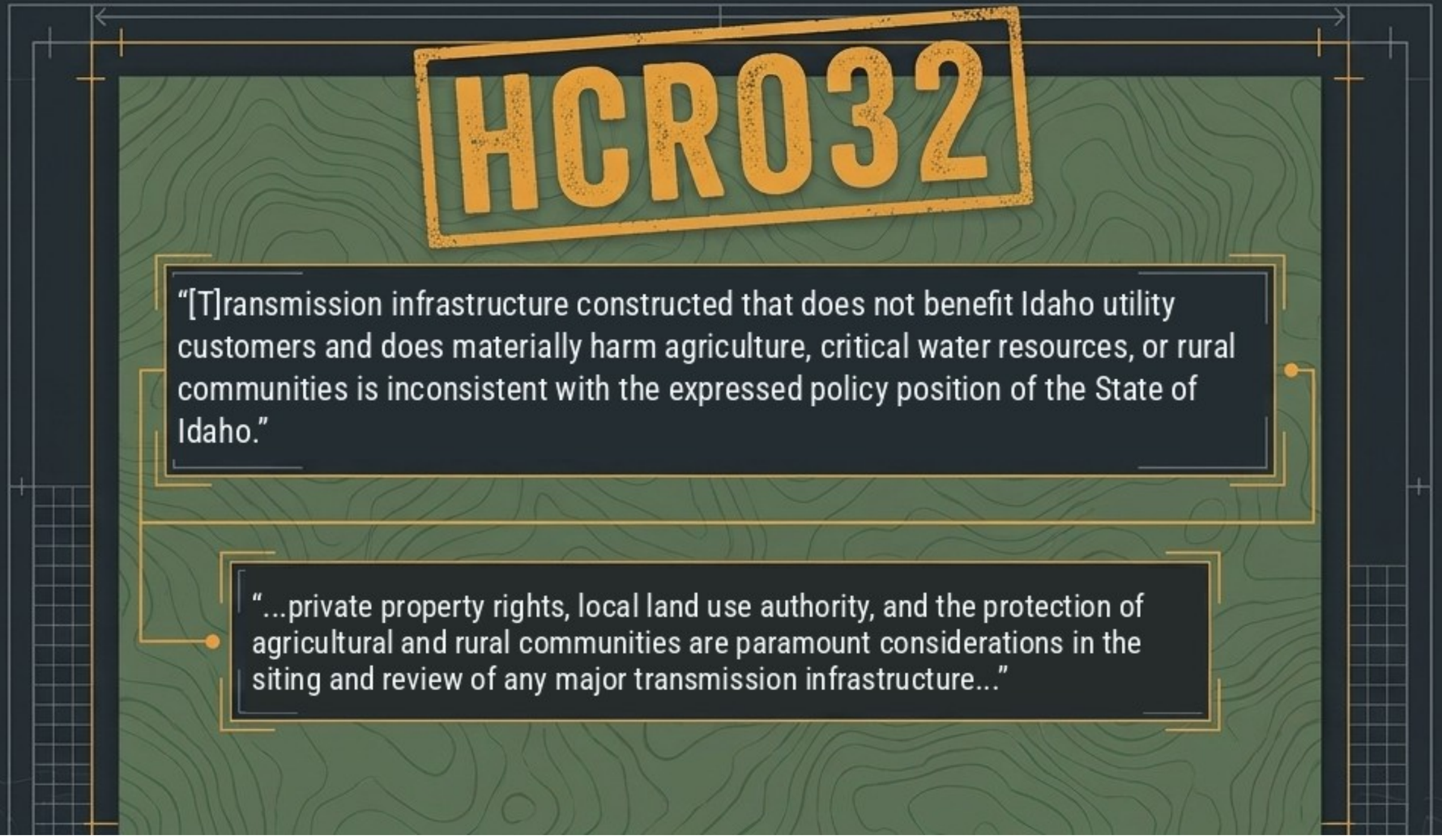
The Rule for Tier 2 and Tier 3 Projects:
Require county-wide written notification or notice to all property owners within twenty-five (25) miles of the project boundary, whichever is greater.

Maximum notification is not a burden on developers; it is the minimum prerequisite for a constitutional republic to function at the local level.

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State Legislative Precedent: Idaho HCR032

The Idaho Legislature applied similar principles to major transmission lines in House Concurrent Resolution 32 (HCR032), adopted March 25, 2026.



The Path Forward for Local Government

The current permitting process systematically advantages well-funded applicants over the communities that host their projects. The legal authority to correct this exists. The only remaining question is **political will**.

Issue	Action	Constitutional Basis
Undisclosed Footprints	☑ **Expand Notification.** Mandate 25-mile or county-wide notice so citizens understand the true footprint before a decision is made.	✓ Informed Consent
Cost Shifting	☑ **Demand Cost Internalization.** Implement objective standards requiring developers to bear 100% of the grid, infrastructure, and mitigation costs they impose.	✓ Nexus and Proportionality (Nollan/Dolan)
Absolute Property Rights Myths	☑ **Exercise the Police Power.** Ensure development serves the affected residents as much as it serves the developer.	✓ Protection of Quiet Seclusion (Belle Terre)

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Supreme Court of the United States: Village of Euclid v. Ambler Realty Co. (1926); Penn Central Transportation Co. v. City of New York (1978); Nollan v. California Coastal Commission (1987); Dolan v. City of Tigard (1994).

Idaho Legislature. (2026). House Concurrent Resolution 32.

Pierson, J. (2026). Position Paper: Property Rights & Community Notification. (Jerome County, Idaho).

Verification Limits: Projections regarding property tax revenue, regional capacity shortfalls, and applicant financial representations remain subject to independent verification.

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