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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

On Writ from Spartanburg County Court of Common Pleas
J. Derham Cole Jr., Circuit Court Judge
Civil Action No. 2026CP4203416

Concerned Citizens of Spartanburg County, Petitioner,

v.

Valara Holdings, LLC, Spartanburg County,
and Spartanburg County Administrator, Respondents.

APPENDIX

Frank Holleman III
Carl Brzorad
Catherine Wannamaker
Susie Carlson
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
(843) 720-5270

Attorneys for Petitioner

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APPENDIX A

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

CONCERNED CITIZENS OF)
SPARTANBURG COUNTY,)
)
)
Plaintiff,)
)
v.)
)
VALARA HOLDINGS, LLC,)
SPARTANBURG COUNTY)
and SPARTANBURG)
COUNTY ADMINISTRATOR,)
)
Defendants.)
_____)

Case No. 2026CP4203416

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this amended complaint upon the subscriber, at the address shown below, within fifteen (15) days after service hereof, exclusive of the day of such service, and if you fail to answer the amended complaint, judgment by default will be rendered against you for the relief demanded in the amended complaint.

s/ Catherine Wannamaker
Catherine Wannamaker
Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
(843) 720-5270
cwannamaker@bellsouth.net

Attorney for Plaintiff

Charleston, South Carolina
August 12, 2026

**IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

CONCERNED CITIZENS OF
SPARTANBURG COUNTY,

Plaintiff,

v.

VALARA HOLDINGS, LLC,
SPARTANBURG COUNTY, and
SPARTANBURG COUNTY
ADMINISTRATOR,

Defendants.

Case No. 2026CP4203416

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Concerned Citizens of Spartanburg County (“Plaintiff”) brings this suit because Valara Holdings, LLC (“Valara” or “the Data Center”) has unlawfully filed two Minor Land Development permit applications—and Spartanburg County is unlawfully processing these Minor Land Development permit applications, separately—for an almost \$3 billion¹ massive and destructive data center campus in direct violation of the County’s Unified Land Management Ordinance (“ULMO”). *See* Ex. 1.

2. The Data Center is without question a Major Land Development under the ULMO. It is the second most expensive investment in South Carolina history, and its plans include 500,000 square feet of new building construction, a power yard, internal roads, and other infrastructure. Upon information and belief, this is the most expensive development in the history of Spartanburg

¹ Max White, *Computing Center Coming to Spartanburg County with \$2.8B Investment, Second Largest in SC History*, POST & COURIER (Apr. 21, 2025), <https://perma.cc/F8WZ-MBTJ>.

County.

3. Valara is rapidly building the Data Center and power plant at a site on South Pine Street in Spartanburg in the middle of multiple residential neighborhoods where Plaintiff's members have lived for decades. The project is causing—and will continue to cause—devastating impacts for the surrounding community.

4. The images below show the massive construction being undertaken by Valara all while Valara has obtained only one “Minor” permit for the “Phase 1” “redevelopment” and “repurposing” of an existing Kohler industrial site.





5. Despite this massive construction, Valara has filed two separate permits for only Minor Land Development projects. Valara has been allowed by Spartanburg County to advance this project through the County’s abbreviated Minor Land Development permitting process without Planning Commission review, and without appropriate notice and public participation despite the dramatic scope and impacts of this project.

6. Meanwhile, while Valara’s second “Minor Land Development” permit remains under review, Valara is actively constructing its sprawling Data Center and 450-megawatt gas-fired power plant that will emit harmful air pollution, clear many acres of trees, and fundamentally alter the character of surrounding neighborhoods. For context, 450 megawatts is enough energy to power every home in Spartanburg County—and then some.

7. Processing this permit as two separate Minor Land Development projects violates

multiple provisions of law. These violations eliminate government accountability and transparency and deprive the public, Plaintiff, and its members of rights provided by the ULMO and South Carolina law for Major Land Developments, including rights to (1) attend the public meeting of the Planning Commission; (2) submit comments and materials to the Planning Commission and its members; (3) learn about the Data Center from materials published with the agenda of the upcoming Planning Commission meeting under the Freedom of Information Act, at the public meeting, and during the Planning Commission's review; (4) make comments during any comment period at the Commission meeting; (5) attend and participate in any public hearing held by the Planning Commission; (6) a public vote by the Planning Commission on the application, and (7) an explanation by the Planning Commission for its decision.²

8. Valara and the County have unlawfully bifurcated and split the permitting process for this Data Center in two, thereby initially withholding from the public the true size of this proposed Data Center. Valara and the County are attempting to process the massive Data Center *twice* as a Minor Land Development without full and transparent review of the entire project as a Major Land Development.

9. In July 2025, Valara filed a Minor Land Development permit for only a portion of this Data Center development. This application disclosed simply that the project would “repurpose” and “redevelop” an existing Kohler industrial facility built in 1957.³ Valara disclosed that “[t]o accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required,” along

² See SPARTANBURG CNTY. PLAN. COMM’N RULES & PROCS. (2024), available at <https://www.spartanburgcounty.gov/DocumentCenter/View/14302/Rules-of-Procedure---Spartanburg-County-Planning-Commission---2024?bidId=> (Exhibit 2).

³ Spartanburg County, Citizen Self Service, Permit No.: DEVELOPPER-0426-1062, <https://perma.cc/277K-WTYM>.

with some “associated exterior development.”⁴

10. The County processed and approved the application as a Minor Land Development even though, as they both now admit, Valara and the County knew the true size of the development was many times larger than the development disclosed in the initial application.

11. Valara and the County thus avoided full Planning Commission review. As a result, the rights of the Plaintiff, its members, and the public were eliminated, with a clear disregard for the actual size of the development Valara planned to impose on the residents of the surrounding community and the County.

12. On April 6, 2026, Valara applied for a second Minor Land Development permit. The County is again processing the application as one for a Minor Land Development, despite the now known massive scale and impacts of the Data Center development, evident from the photos above. Although this permit is still “in review,” Valara continues construction and grading activities outside of those covered by its first Minor Land Development permit. For example, Valara is conducting land disturbance and grading activities, including adding an additional approximately 70 acres of land clearing on July 28, 2026, without a Land Development permit to cover these activities.⁵ These construction activities are irreparably harming the landscape and the rights of Plaintiffs’ members and constitute a violation of the ULMO.

13. Plaintiff therefore seeks an order from this Court declaring (1) that the County must require Valara to obtain a Major Land Development permit, (2) that Valara’s first Minor Land Development permit was a violation of the ULMO because the development is major, not minor, (3) that Valara’s second Major Land Development permit cannot be issued because it is a violation of the ULMO in that the development is major, not minor; and (4) that Valara has violated the

⁴ *Id.*

⁵ Spartanburg County, Citizen Self Service, Permit No.: LANDISTPER-0226-0900, <https://perma.cc/7S4R-M72P>.

ULMO by commencing structural alterations, construction, redevelopment, and grading, and clearing activities without obtaining the required Land Development Permit for the second phase of the project. The Court should issue an injunction prohibiting the County from processing or approving any Minor Land Development permit for this major project. The Court should also enjoin Valara from continuing any erection, construction, reconstruction, alteration, conversion, clear-cutting, excavating, and grading activities at the Valara site until all required permits are issued, including a Major Land Development Permit.

JURISDICTION AND VENUE

14. This Honorable Court has subject matter and personal jurisdiction over the parties to this action.

15. Venue is proper in Spartanburg County because the questions, actions, or controversies at issue in this case arise in Spartanburg County, including the site of the Data Center, Valara's two separate applications for Minor Land Development permits for one massive facility, and the County's failure to require Valara to apply for a Major Land Development permit. Further, Spartanburg County is a defendant in this action.

16. The ongoing construction of the Valara facility underscores the immediacy of the controversy and the need for judicial intervention. Judicial review is necessary now to prevent the denial of the rights of the Plaintiff, its members, and the citizens of Spartanburg County to ensure that construction of the Data Center does not continue without the necessary approvals required by the ULMO.

17. Timely review by this Court can ensure that the County complies with its own ordinance before Valara engages in further development of the Site and that the Plaintiff, its members, and the citizens of Spartanburg County are afforded their procedural and substantive

rights before any permit is issued. *See Crescent Homes SC, LLC v. CJN, LLC*, 445 S.C. 164, 183 (S.C. Ct. App., 2024) (“The [Declaratory Judgment] Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship.”) (quoting *Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462, 466 (S.C. 2004)).

PARTIES AND STANDING

A. Plaintiff

18. Concerned Citizens of Spartanburg County is an association of individuals living and owning property near the proposed Data Center in Spartanburg, South Carolina.

19. Plaintiff has statutory, constitutional, public importance, and associational standing to seek and obtain the declaratory and injunctive relief sought herein.

20. Concerned Citizens’ mission is to protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center. Concerned Citizens seeks to achieve this mission by preventing harm to the environment, health, safety, and surrounding communities from the proposed Data Center, requiring Valara to thoroughly disclose the environmental impact, negative health consequences and energy requirements of their proposal, and requiring Valara to halt operation of the Data Center and power plant. Concerned Citizens include members who live adjacent to and near the Data Center, who are affected by the ongoing construction, who are and will be affected by the existence of this massive Data Center in this residential community, and who desire to and would participate in the process provided by the review of a Major Land Development permit application. Concerned Citizens and its members therefore have a direct, concrete, and particularized interest in the

outcome of this litigation.

21. Members of Concerned Citizens include, among other individuals, Mark Felk, Ricky Heath, and Kip Darwin.

22. Mr. Felk and his wife reside and own a home at 1005 Oak Creek Drive, just 1,500 feet from the Site where the proposed Data Center is being constructed. Mr. Felk is deeply concerned about the Data Center proposal and ongoing construction at the Site. Mr. Felk has lived at his home since 1995 and has always enjoyed the peace and solace he experiences there. Unfortunately, his once-dream home has now become a nightmare due to ongoing construction and eventual operation of the Data Center.

23. Mr. Felk is harmed by the lack of transparency surrounding the proposal because he is not able to understand the full scope of what is being proposed, what is being approved, or the full scope of harmful impacts. Not knowing this information causes Mr. Felk significant concern and takes away from his peace and solace. Mr. Felk is also being harmed by the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site, and will be harmed by the significant activities associated with the Data Center, including noise, air, light, and water pollution. He specifically feels that the County's actions have denied him the opportunity to receive full information concerning this proposal, have his voice heard on this proposal, including by denying the opportunity to submit information to the Planning Commission and give public comment, and feels that he has not been provided full information to understand the County's land use decisions for the Data Center.

24. Mr. Heath and his wife reside and own a home at 1009 Oak Creek Drive, also across South Pine Street from the Data Center and, like Mr. Felk, he is already being impacted by ongoing construction at the Site and is worried about the host of environmental, health, and

community impacts that the Data Center will bring.

25. Mr. Heath has lived in Spartanburg, and at his home near the Site, for over 20 years. Mr. Heath first learned about the proposed Data Center in 2025. He did not come to understand the full scope of the proposal—particularly, the Data Center’s significant onsite power generation—until earlier this year in 2026.

26. Mr. Heath is currently being harmed by development activities at the Site, specifically, the tree clearing and loss of wildlife habitat that is occurring and which he has historically valued about the Site. In addition to the harm Mr. Heath is experiencing from the development itself, he is deeply concerned about how the Data Center operations will impact him and the lack of transparency surrounding the proposal. The abridged permitting process associated with two separate Minor Development Permits has denied Mr. Heath any opportunity to provide comments on the proposal, attend meetings of public officials, or fully understand the decision-making process of the County. Mr. Heath is very concerned about the harm he will experience from the air pollution and noise pollution during operation of the Data Center, and the water use required by the Data Center.

27. Mr. Darwin owns a home and resides with his family at 3 Matchlock Commons in a neighborhood across South Pine Street from the Data Center. Like Mr. Felk and Mr. Heath, Mr. Darwin is deeply troubled by the impact the Data Center and Power Plant will have on his use and enjoyment of his property and his quality of life.

28. Mr. Darwin has lived in Spartanburg his entire life, with the exception of the three years he spent in Columbia during law school. Mr. Darwin has lived in his current home since 2004. Mr. Darwin is very concerned about how the Data Center’s development will harm him and his use and enjoyment of his home. He is concerned that the noise pollution and air pollution from

operation of the onsite power plant will harm his health, his family's health, and his quality of life. Mr. Darwin is also harmed by the lack of transparency surrounding the facility and the fact that the public has not been adequately informed about the full scale of the Data Center or the full scope of impacts these facilities will have on the surrounding neighborhoods. If Valara were required to go through the more public Major Land Development permitting process, he would participate in every opportunity available.

29. For these reasons, Concerned Citizens of Spartanburg County and its members have a significant interest in ensuring the Data Center complies with all applicable local, state, and federal law, including the ULMO, that Valara does not continue to proceed with its plans, and that the County not process the Data Center's permit application without the requirements and review applicable to Major Land Developments. If the County does require Valara to seek a Major Land Development permit, the harms of Concerned Citizens' members would be addressed, particularly because Major Land Development permits provide a more transparent review process and many rights to citizens of Spartanburg County, as set out above.

30. If the County does require Valara to seek a Major Land Development permit, Concerned Citizens' members would engage in the public process, including by submitting written comments, attending Planning Commission meetings, reviewing documents published by the Planning Commission, taking advantage of any opportunity to provide oral public comment, and reviewing any decision by the Planning Commission. Participation in this public process could alter whether, and how, this project is approved and could result in the imposition of meaningful conditions on the development to minimize harm to Plaintiff's members.

31. Defendant Spartanburg County, South Carolina is a county government and body politic created under and subject to the laws of South Carolina.

32. Here, the rights of Plaintiff and its members are affected by the County's failure to properly implement its obligations under the ULMO. As set out above, the way that Valara and the County have managed and implemented these Minor Land Development applications is denying the Plaintiff, its members, and citizens of Spartanburg County the rights and benefits associated with Spartanburg County Planning Commission review, including the transparency and information provided by the public process of the Commission, the information provided with the publication of the Commission's agenda, the right to attend the Planning Commission meeting where the Major Land Development application is reviewed, the right and opportunity to submit comments to the Commission and its members in advance of their review and vote on the application, the opportunity to speak at any public comment period during the Commission meeting, the right to participate in any public hearing held by the Commission, the right to public deliberation and a vote by the Commission on the application, and the right to an explanation by the Commission of its decision on the application. *See* Ex. 2; S.C. Code Ann. § 6-29-1150(B). More, the County and Valara's violations of the ULMO are resulting in special damages to members of Concerned Citizens of Spartanburg County because ongoing construction, reconstruction, alteration, conversion, and grading activities are occurring before *all* appropriate permits, including a Development Permit for the second phase of the site, have been issued.

B. Defendants

33. The Spartanburg County Administrator, or its designee, is tasked with administering the requirements of the ULMO, including processing applications and administering permits.

34. Valara Holdings is a limited liability company, incorporated in Delaware, that conducts business in South Carolina. Valara is responsible for the construction and operation of

the data center that is the subject of this action.

LEGAL BACKGROUND

35. Plaintiff seeks a declaratory judgment and permanent injunction under S.C. Code Ann. § 15-53-30, Rule 57, SCRCP, and S.C. Code Ann. § 6-29-950(A) to resolve one or more actual cases and controversies between and among the parties to this case—namely, a declaration that the Valara Data Center and power plant may not be approved, permitted, or constructed as a “minor” land development, and an injunction prohibiting the permitting, construction, and/or operation of the facility unless and until the required Major Land Development permit is lawfully sought and obtained by Valara.

A. The Declaratory Judgment Act

36. The Declaratory Judgment Act provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. The Act specifically authorizes “[a]ny person . . . whose rights, status, or other legal relations are affected by a . . . municipal ordinance” to “have determined any question of construction or validity arising under the . . . ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.” *Id.* § 15-53-30. “The existence of another adequate remedy does not preclude a judgement for declaratory relief in cases where it is appropriate,” Rule 57, SCRCP, and “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or appropriate.” S.C. Code Ann. § 15-53-120.

37. In passing the Act, the Legislature expressly declared it a “remedial” statute whose “purpose is to settle and afford relief from uncertainty and insecurity with respect to

rights, status and other legal relations. It is to be liberally construed and administered.” S.C. Code Ann. § 15-53-130.

B. The Comprehensive Planning and Enabling Act

38. The South Carolina Local Government Comprehensive Planning and Enabling Act of 1994 (“Planning Enabling Act”) provides that “No permit may be issued or approved unless the requirements of . . . any ordinance adopted pursuant to [this chapter] are complied with.” S.C. Code Ann. § 6-29-950(A).

39. The Planning and Enabling Act further provides an explicit cause of action for adjacent and neighboring landowners to sue over violations of ordinances like the ULMO, which was adopted pursuant to the Planning Enabling Act. The Act provides that:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, . . . an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation[.]

S.C. Code Ann. § 6-29-950(A).

C. The ULMO

40. In accordance with the Planning Enabling Act, S.C. Code Ann. § 6-29-310 *et seq.*, Spartanburg County utilizes its ULMO to govern development and land use decisions. Ex. 1.

41. The purposes of the ULMO include “promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare,” “providing adequate light, air, and open space,” and “facilitating the creation of a convenient, attractive, and ecologically sensitive areas.” *Id.* Preamble.

42. The ULMO requires a permit “to develop or alter the use of land.” Ex. 1 §§ 1.01, 1.02, 1.13. The Spartanburg County Administrator, or its designee, is tasked with administering

the requirements of the ULMO, including processing applications and administering permits. Ex. 1 § 1.01.

43. Property owners wishing to develop land, including “all land use and development activity” covered by the ULMO, must apply to the County for a permit to develop or alter the use of land. Such applications are classified into two categories: minor or major land development. Ex. 1 § 1.02.

44. The ULMO states that a minor land development is “any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development.” Ex. 1 § 1.02(2). Exhibit A to the ULMO identifies examples of minor land developments, including signs, single family dwellings, and temporary uses. Ex. 1 at 5.

45. An application for minor land development requires only staff-level review, and no public notice, prior to approval. Ex. 1 at 4.

46. In contrast, a Major Land Development “*includes but is not limited to* commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.” Other examples of Major Land Developments include storage and distribution facilities for asphalt and fuel products, waste management facilities, and asphalt plants. Ex. 1 at § 1.02(1) (emphasis added).

47. An application for a Major Land Development must go through the Spartanburg County Planning Commission prior to approval. Members of the Planning Commission are appointed by the elected Spartanburg County Council. This public process allows for the Planning Commission to fully review the application and impose conditions on the development. It also provides a critical opportunity for public comment, engagement, and information.⁶

⁶ See generally Ex. 2.

48. The Planning Commission is required to set out the grounds for its approval or disapproval of a Major Land Development. S.C. Code Ann. § 6-29-1150(B). Any record of all actions taken on development plans must be maintained as a public record. *Id.*

49. The ULMO prevents the commencement of construction on a project before all necessary approvals are issued.

50. For example, the ULMO provides that “[n]o building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.” *See* Ex. 1 § 1.07.

51. The ULMO also provides that “[n]o building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.” *See id.*

52. This includes the requirement to obtain a Land Development Permit before construction, excavation, clearing, or grading may commence. The ULMO clarifies that an overall Development Permit is required before any “building, other structure or land shall be used” or before any “building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance has been issued by the Planning Department staff” *Id.* § 1.13.

STATEMENT OF FACTS AND DISCUSSION

A. The Valara Data Center

53. Upon information and belief, the public at large first learned of Valara’s Data Center in early 2025 when the Post and Courier reported that Spartanburg County Council had

held an initial reading and vote to approve a tax break for “[a]n undisclosed company,” referred to under the code name “Project Moc-1.”⁷

54. The Post and Courier further reported that then-Councilman David Britt stated that the project was “not a data center”⁸ and would “not use more power than the site’s existing facility.”⁹ Upon information and belief, these statements were later contradicted by Valara’s own filings for various permits.

55. In April 2025, Spartanburg County approved a fee-in-lieu of tax (“FILOT”) agreement for the project.¹⁰

56. On July 11, 2025, Valara submitted an application for a Minor Land Development permit to Spartanburg County (“First Minor Land Development Permit”). The County issued the permit on August 27, 2025. The First Minor Land Development Permit described the project as:

Redevelopment of the former Kohler Industrial Plant, which currently consists of an existing Manufacturing/Industrial facility comprised of approximately 905,000 square feet of business space including a main plant, kiln, and separate utility facility. Development of the property began in 1957 with additions and modifications completed through 2006. The new developer, Valara Holdings LCC, intends to repurpose the existing facilities for the new MOC-1 High Performance Computer Center. To accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required, as well as the addition of associated exterior equipment.¹¹

57. The public later learned that this permit only covers “Phase I” of the Data Center’s construction—i.e., that Valara was segmenting its massive Data Center project into multiple phases

⁷ Max White, *Spartanburg County Could See a \$2.8 Billion Investment, One of the Largest Ever in SC. What to Know*, POST & COURIER (Feb. 18, 2025), <https://perma.cc/462Q-QQQD>.

⁸ Although Valara has referred to the facility as a “high-performance computing center,” upon information and belief, there is no meaningful difference between a high-performance computing facility and a data center in terms of potential environmental and community impacts, such as air pollution and noise pollution. “Data center” appears to be the colloquial and publicly familiar term for these facilities and thus this statement misled the public.

⁹ White, *supra* note 1.

¹⁰ Christian Boschult, *Spartanburg data center that got tax breaks wants 400 megawatt energy production increase*, POST & COURIER (Apr. 22, 2026), <https://perma.cc/5N4H-3H7B>.

¹¹ Permit No.: DEVELOPPER-0426-1062.

without a full public notice or review of any of them. Thereby, Valara and the County did not disclose the full extent of the Valara Data Center development or its full impact on the surrounding community and Spartanburg County.

58. Shortly after receiving this tax break and First Minor Land Development Permit from the County, Valara applied to the South Carolina Department of Environmental Services (“DES”) for a Clean Air Act permit authorizing air pollution from approximately 50 MW of onsite power generation.¹²

59. On July 18, 2025, DES issued a public notice announcing a comment period for Valara’s draft Clean Air Act permit.¹³ In the draft permit, DES explained that “[t]he facility will construct a data center” and “[t]his data center is powered by twenty-four 2103 kW natural gas generators[.]”¹⁴ Just two months later, on September 17, 2025, DES issued a final air permit authorizing construction for multiple gas-fired generators, totaling approximately 50 MW of power generation, and the associated air pollution.¹⁵

60. In December, just three months after receiving this initial air permit, Valara contacted DES about a modification to its air permit to authorize air pollution from an additional **400 MW** of onsite gas-fired generation at the Site.¹⁶ This represents an **eight-fold** increase over Valara’s original air permit.

61. On May 26, 2026, DES issued a public notice for the modified draft air permit. According to the draft permit DES issued for Valara’s 400-MW increase to its electric generating plant, the Power Plant’s onsite generation is estimated to emit approximately 220 tons per year

¹² Christian Boschult, *Spartanburg data center that got tax breaks wants 400 megawatt energy production increase*, POST & COURIER (Apr. 22, 2026), <https://perma.cc/5N4H-3H7B>.

¹³ Dep’t of Env’tl Servs., *Public Notice: Draft Air Synthetic Minor Construction Permit* (July 18, 2025) (Exhibit 3).

¹⁴ *Id.*

¹⁵ Dep’t of Env’tl Servs., *Draft Statement of Basis 1* (March 4, 2026) (Exhibit 4).

¹⁶ Boschult, *supra* note 10.

(“TPY”) of Nitrogen Oxides (“NO_x”), 201 TPY of Carbon Monoxide (“CO”), 158 TPY of Particulate Matter (“PM_{2.5}”), 9.5 TPY of Sulfur Dioxide (“SO₂”), 60 TPY of Volatile Organic Compounds (“VOC”), and 19 TPY of Hazardous Air Pollutants (“HAPs”), including 9.40 TPY of formaldehyde.¹⁷

62. Upon information and belief, these estimates, if correct, mean the Power Plant could be the *largest industrial source* of NO_x, CO, PM_{2.5}, SO₂, and formaldehyde in Spartanburg County based on a comparison to the U.S. Environmental Protection Agency’s 2020 National Emissions Inventory (“NEI”) Data.¹⁸ It could also be a top 10 source of particulate matter pollution in the entire state—far exceeding the last reported emissions of the former Kohler facility that operated on the Site, also according to the U.S. Environmental Protection Agency’s 2020 NEI Data.¹⁹

63. The pollutants associated with Valara’s proposed Power Plant pose serious public health risks. Formaldehyde is a known human carcinogen;²⁰ PM_{2.5} is associated with increased risks of heart attack, pneumonia, cardiovascular disease, stroke, and cancer;²¹ and NO_x contributes to ground-level ozone (smog) and respiratory harm.²²

64. Upon information and belief, the estimated air pollution associated with the Data Center is orders of magnitude more than that produced by the now-closed Kohler facility. For

¹⁷ Dep’t of Env’tl Servs., Draft Statement of Basis at 6–7.

¹⁸ See 2020 National Emissions Inventory Data Retrieval Tool, EPA, <https://perma.cc/57XN-T97F> (select “Facility Data,” then select “South Carolina” under “State,” “SC-Spartanburg County” under “State-County,” and “Nitrogen Oxides,” “Carbon Monoxide,” “PM_{2.5} Primary (Filt + Cond),” “Sulfur Dioxide,” and “Formaldehyde” under “Pollutant”).

¹⁹ See 2020 National Emissions Inventory Data Retrieval Tool, EPA, <https://perma.cc/57XN-T97F> (select “Facility Data,” then select “South Carolina” under “State,” select “PM_{2.5} Primary (Filt + Cond)” under “Pollutant”); see also EPA, 2020 National Emissions Inventory Data Retrieval Tool (select “Facility Data,” then select “South Carolina” under “State,” “SC-Spartanburg County” under “State-County,” and “2851 Southport Road” under “Street Address”) (listing PM_{2.5} emissions from Kohler facility formerly at the Site as approximately 3 TPY).

²⁰ Integrated Risk Information System Toxicological Review of Formaldehyde (Inhalation), at 2, EPA (Aug. 2024), <https://perma.cc/3HAQ-T88S>.

²¹ Particulate Matter (PM) Basics, EPA, <https://perma.cc/68EU-3FH3>.

²² Basic Information about NO₂, EPA, <https://perma.cc/MNL6-BQMV>.

example, the Data Center projected emissions, compared to Kohler's actual emissions, anticipate approximately 180 more tons per year of CO; 200 more tons per year of NOx; 150 more tons per year of PM_{2.5}; and 10 more tons per year of formaldehyde.²³

65. Upon information and belief, in addition to the air pollution, the Data Center will operate 24/7, producing significant noise pollution.

66. On April 6, 2026, Valara filed a second Minor Land Development application with the County ("Second Proposed Minor Land Development Permit"). In this second and currently pending "minor" land development application, Valara states that "Phase II improvements . . . consist of four (4) proposed buildings with [total] floor areas of approximately [500,000 square feet]."²⁴ It also includes "a power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements."²⁵ Apparently, the nondescript "power yard" referred to in the application is in fact a 450 megawatt power plant more than capable of powering every home in Spartanburg County.

67. The total development will cost almost \$3 billion and, upon information and belief, is the most expensive single development in Spartanburg County history.

68. Upon information and belief, Valara has begun construction work, grading, and clear-cutting related to or in preparation for Phase II before this second permit has been approved.

69. The Valara Data Center has been plagued with significant transparency failures from the start. The general public, including the impacted communities around the proposed Data

²³ Compare DES Statement of Basis, with 2020 National Emissions Inventory Data Retrieval Tool, EPA, <https://perma.cc/57XN-T97F> (select "Facility Data," then select "South Carolina" under "State," "SC-Spartanburg County" under "State-County," and "2851 Southport Road" under "Street Address").

²⁴ Spartanburg County, Citizen Self Service, Permit No.: DEVELOPPER-0426-1062.

²⁵ *Id.*

Center, were not timely informed about the proposal's true nature, scale, and impact, resulting in widespread public outrage when this information came to light. Impacted community members reasonably feel misled. Valara segmented the entire permitting process, including both air and land use permits, and thereby did not initially disclose to the public the true size of its proposal. For both permits, Valara first applied for smaller impacts and scale, and shortly after applied for a significant increase in the scope of development.

B. The Valara Data Center is a Major Land Development.

70. The ULMO provides that a Major Land Development is one similar to specified land uses, including industrial parks and other large-scale, high-impact, and potentially controversial developments. Ex. 1 at § 1.02. A Minor Land Development includes development that is not classified as major, including signs, single family homes, and temporary uses. *Id.* § 1.02; Ex. (A).

71. The ULMO thus requires the County to engage in a common-sense, comparative analysis. In other words, to determine whether a proposed land use is a major or minor development, the County must determine whether it is more similar to the major uses (e.g., industrial parks, office parks, subdivisions) listed in the ordinance or the minor uses (e.g., signs, single-family homes).

72. This Data Center development is, upon information and belief, the most expensive single development in Spartanburg County history. It will cost almost \$3 billion.²⁶ The Data Center includes, among other things, a power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.

²⁶ White, *supra* note 1.

73. In addition, the Data Center includes 450 MW of onsite power generation—a capacity comparable to that of other utility-run power plants in South Carolina. This level of industrial infrastructure is wholly inconsistent with the types of projects classified as minor under the ULMO.

74. The projected emissions from the onsite power plant would make the facility the largest industrial emitter of multiple pollutants in Spartanburg County and a large industrial emitter of particulate matter in South Carolina. A development with such significant environmental impacts cannot reasonably be considered “minor.”

75. The Data Center itself will include buildings totaling approximately 500,000 square feet—exponentially larger than any of the types of project types identified as “minor” in the ULMO.

76. Drone videos and images from the Site show clearing and grading occurring, which will significantly expand the footprint of the Data Center as compared to the former Kohler facility on the property. *Infra* ¶ 3.

77. Not only is Valara exceeding the footprint of the former Kohler facility—it has dramatically exceeded the scope of the “Phase I” permitted boundary, which is the only area of land development authorized by the First Minor Land Development Permit. As the satellite images below show, Valara is effectively ignoring the development limits in its Development Permit, and proceeding as if it already has the Second Proposed Minor Land Development Permit in hand for Phase II. It does not, as that second Permit remains under review by the County.

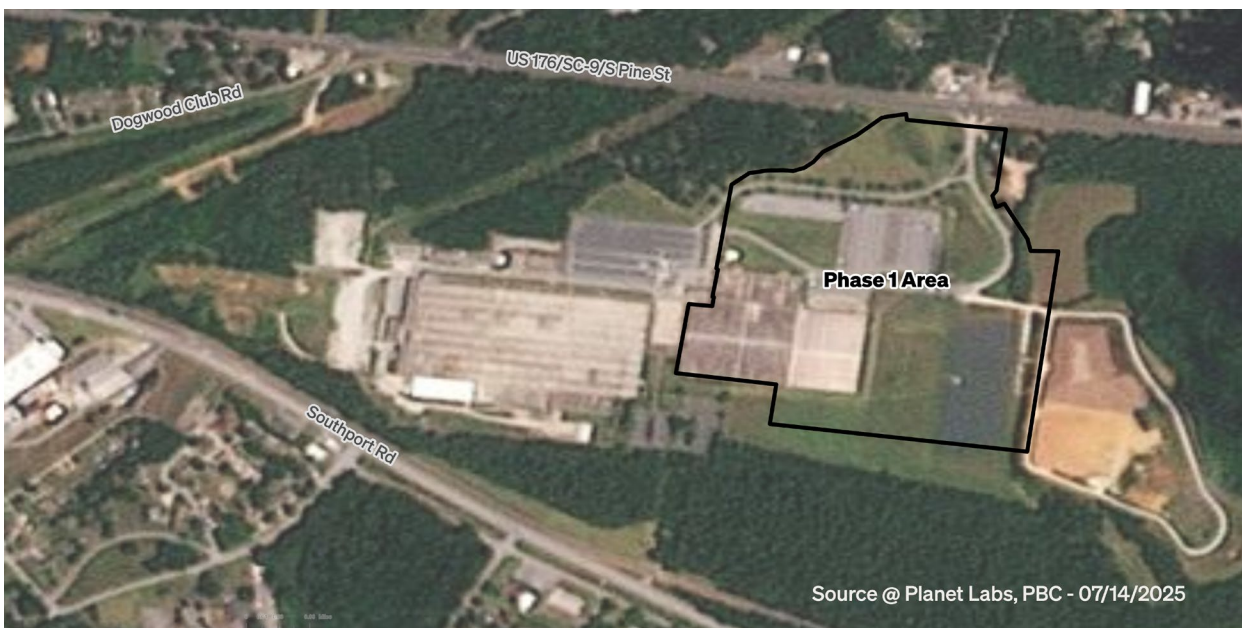


Figure 1 overlays the permitted development boundary onto satellite imagery from the site from July 2025, before issuance of the First Minor Land Development Permit.



Figure 2 depicts the same boundary on a satellite image from July 2026, which shows large-scale development, tree-cutting, grading, and excavating well outside the Phase I boundary.

78. These activities are outside of the scope of Valara's First Minor Land Development Permit. For example, Valara recently modified one of its land disturbance permits,

again without any public notice or comment, to “increase the limits of disturbance by 67.7 acres for Phase 3 tree cutting activities and proposed improvements including mass grading and the construction of aggregate pads on the west side of the site. These areas are considered impervious to allow for further development in future phases of the project. A new drainage system, which includes both ditches and a storm sewer system, is also provided as part of this phase.” This land disturbance permit is necessary, but not sufficient, to perform these activities—a Land Development Permit is needed as well. Yet Valara’s First Minor Land Development Permit does not authorize these activities beyond the defined permitted boundary, which Valara is effectively disregarding.

79. Upon information and belief, the light and noise pollution from the Data Center and its servers, generators, and turbines running 24/7 will significantly impact the surrounding neighborhoods—disrupting residents’ quality of life.

80. In contrast to the Data Center proposal, the types of projects identified as “Minor” in the ULMO are clearly much smaller in scale, less controversial, and have nothing like the environmental and land use impact of the Data Center. There is no reasonable argument that a massive, destructive, and controversial, almost \$3 billion²⁷ data center—with utility-scale onsite power generation—is more similar to a sign or single-family home than to an industrial park.

81. In every sense of the word, the proposed Valara Data Center is a “major” development.

82. Indeed, the Valara Data Center is far from a “typical” project. It is a highly controversial project and the County failed to adequately inform citizens about its full scale and impacts until after it issued initial approvals and massive tax breaks. This is exactly the type of

²⁷ White, *supra* note 1.

development that requires more stringent review at the Planning Commission.

83. Despite significant public concern and explanations to the County demonstrating that the proposed Valara Data Center qualifies as a Major Land Development, the County has not corrected course and continues to treat the project as minor. This action is in direct violation of the ULMO that the County is tasked with administering.

CLAIM FOR RELIEF

COUNT I: Declaratory Judgment Act – The Data Center is a Major Land Development being Reviewed, Approved, and Constructed as a Minor Land Development, in violation of the ULMO

84. Plaintiff incorporates by reference all preceding paragraphs.

85. Spartanburg County's ULMO classifies any application for land development as either major or minor.

86. Valara has unlawfully segmented its massive Data Center project into two phases. Valara applied for a First Minor Land Development Permit in July of 2025, and the County approved that permit on August 27, 2025.

87. Valara has now applied for a Second Proposed Minor Land Development permit for Phase II of constructing its massive Data Center, and the County is again processing the application as one for a Minor Land Development.

88. The Data Center is without doubt a Major Land Development under the ULMO, which encompasses industrial parks, office parks, manufacturing facilities, and other large-scale development.

89. Valara has violated the ULMO twice by submitting two permit applications for a Minor Land Development. The County has violated the ULMO and South Carolina law by approving the Valara Data Center's first application as a Minor Land Development. The County is

also violating the ULMO by currently processing the Valara Data Center’s second application as another Minor Land Development.

90. Given these violations, the Court should declare that the Valara Data Center cannot be impermissibly segmented into two projects; is one “Major Land Development”; and that any processing, approval, or permitting of the project as a “Minor Land Development” violates the ULMO.

91. The Court should further issue an injunction against any future processing or approval of this project as a “Minor Land Development” and should halt all erection, construction, reconstruction, alteration, conversion, grading, clearing, excavating, and related development and use activities at the site until the proper Major Development Permit is issued.

COUNT II: Planning Enabling Act – The Data Center is a Major Land Development being Reviewed, Approved, and Constructed as a Minor Land Development, in violation of the ULMO

92. Plaintiff incorporates by reference all preceding paragraphs.

93. The County and Valara’s violations of the ULMO are also subject to suit under the Planning Enabling Act, S.C. Code Ann. § 6-29-950(A).

94. First, Spartanburg County’s Unified Land Management Ordinance was adopted pursuant to the Planning Enabling Act. *See* S.C. Code Ann. § 6-29-950(A); Ex. 1, Preamble.

95. Second, as explained above, the First and Proposed Second Minor Land Development Permits do not comply with the ULMO because the Data Center and power plant authorized by these permits are major—not minor—land development.

96. Third, Valara is using, and is proposing to further use, the buildings, structures, and land of the site to construct this major land development in violation of the ULMO—i.e., without a Major Land Development permit.

97. Last, Plaintiff's members are neighboring property owners who would be, and already have been, specially damaged by this unlawful development, including serious harms to their use and enjoyment of their properties and the neighborhood.

98. Accordingly, the Court should declare that the County and Valara are violating the ULMO, and enjoin all erection, construction, reconstruction, alteration, conversion, and use of all activities at the site until the proper Major Development Permit is issued.

COUNT III: Declaratory Judgment Act & Planning Enabling Act – Valara is Substantially Exceeding the Scope of its First Minor Land Development Permit, Conducting Development Activities without a Land Development Permit in violation of the ULMO

99. Valara is currently “adding to and structurally alter[ing]” existing buildings and structures, as well as conducting grading, clearing, and excavating activities, without a Development Permit for the entire site and project. Ex. 1 § 1.07.

100. The ULMO provides that “[n]o building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until *all* applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.” *Id.*

101. This includes the requirement to obtain a Development Permit before construction may commence. The ULMO clarifies that an overall Development Permit is required before any “building, other structure or land shall be used” or before any “building, structure or land be converted, wholly or in part, to any other use...” *Id.* § 1.13.

102. The ULMO further provides that “[n]o building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.” *See* Ex. 1 § 1.07.

103. Valara is currently converting the existing Kohler industrial facility to another use

without all applicable and appropriate licenses, certificates and permits. While Valara obtained its First Minor Land Development Permit, this permit only covered “redevelopment” and “repurposing” of the existing Kohler facility along with minor exterior work.

104. Valara has not yet obtained the Second Proposed Minor Land Development Permit for the second phase of development at the site. This permit is still “in review” by Spartanburg County.

105. Yet, upon information and belief, Valara is currently conducting land disturbance and grading activities in preparation for Phase II and even an unspecified “phase III” of the project,²⁸ without approval of its second Minor Land Development permit as of the date of this Complaint. This activity violates the plain requirements of the ULMO.

106. Plaintiff’s members are neighboring property owners who would be, and already have been, specially damaged by this unlawful development, including serious harms to their use and enjoyment of their properties and the neighborhood.

107. The Court should thus issue a declaratory judgment finding Valara to be in violation of the ULMO by proceeding with construction activities before all necessary permits have been obtained, and should issue a permanent injunction halting these activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the declaratory relief requested and grant such other, further, or different relief as may be deemed just and proper.

Plaintiff respectfully requests that the Court:

1. Declare that the Valara Data Center is a Major Land Development under Spartanburg County’s ULMO;

²⁸ Spartanburg County, Citizen Self Service, Permit No.: LANDISTPER-0226-0900, <https://perma.cc/7S4R-M72P>.

2. Declare that the County improperly and unlawfully issued Valara's First Minor Land Development Permit because the project is actually a Major Land Development requiring full review and public process;
3. Declare that the County must immediately cease processing Valara's Second Proposed Minor Land Development Permit;
4. Permanently enjoin Spartanburg County from processing any Minor Land Development permit application submitted for this facility;
5. Declare that the County and Valara have violated the ULMO by processing the First Minor Land Development Permit and the Second Proposed Minor Land Development Permit as minor land development permits;
6. Declare that the County and Valara are violating the ULMO by allowing construction, redevelopment, and grading activities to commence before *all* required development permits have been approved;
7. Enjoin the unlawful erection, construction, reconstruction, alteration, conversion, grading, clearing, and any other construction or development activities at the Valara site until all required permits are issued.

Respectfully submitted this 12th day of August 2026.

s/ Catherine Wannamaker
 Catherine Wannamaker (S.C. Bar No. 102895)
 Susie Carlson (S.C. Bar No. 106396)
 Carl Brzorad (S.C. Bar No. 105413)
 Frank S. Holleman III (S.C. Bar No. 2564)
 Southern Environmental Law Center
 525 East Bay Street, Suite 200
 Charleston, SC 29403
 (843) 720-5270
 cwannamaker@selc.org
 scarlson@selc.org
 cbrzorad@selc.org

holl2759@bellsouth.net

APPENDIX B

EXHIBIT 1

UNIFIED LAND MANAGEMENT ORDINANCE



SPARTANBURG COUNTY SOUTH CAROLINA

Ordinance No. O-99-015 adopted December 31, 1999

Amended:

05/15/2000	07/19/2004	08/28/2009	04/15/2013	09/16/2019
10/16/2000	05/15/2006	02/10/2011	09/16/2013	12/16/2019
12/18/2000	06/16/2007	12/13/2011	02/17/2014	06/28/2021
06/18/2001	05/21/2007	05/21/2012	06/16/2014	03/07/2022
10/21/2002	07/03/2008	03/18/2013	07/15/2019	

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SPARTANBURG COUNTY, SC

UNIFIED LAND MANAGEMENT ORDINANCE

AN ORDINANCE OF SPARTANBURG COUNTY, SOUTH CAROLINA REGULATING THE USE OF CERTAIN BUILDINGS, STRUCTURES AND LAND, THE HEIGHT OF BUILDINGS AND STRUCTURES, THE SIZE OF YARDS, THE DEVELOPMENT OF FLOOD PLAIN AREAS, MULTI-FAMILY DWELLINGS, MANUFACTURED HOMES, AIRPORT ENVIRONS, LAND DEVELOPMENTS, AND STORM WATER RUNOFF; DEFINING CERTAIN TERMS USED HEREIN; PROVIDING FOR THE METHOD OF ADMINISTRATION AND AMENDMENT; AND PROVIDING FOR THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF THE PROVISIONS OF THIS ORDINANCE.

PREAMBLE

In accordance with authority conferred by the general statutes of South Carolina, 1976 Code of Laws, Title 6, Chapter 29 of the Comprehensive Planning Enabling Act of 1994, as amended, and for the purpose of promoting public health, safety, morals, convenience, order, appearance, prosperity, and general welfare; securing safety from fire; providing adequate light, air, and open space; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the creation of a convenient, attractive, and ecologically sensitive areas; facilitating the provision of public services, affordable housing, and disaster evacuation, in harmony with the adopted Comprehensive Plan for Spartanburg County, South Carolina, the Spartanburg County Council hereby ordains and enacts into law the following articles and sections, which shall comprise and be known as the Unified Land Management Ordinance of Spartanburg County, South Carolina, and shall be applicable throughout the designated portions of the unincorporated area of the County.

ARTICLE 1 – APPLICATIONS AND REQUIRED PERMITS

Section 1.01 Responsibility

All requests for permits and licenses required by this Ordinance, and legislative change or relief from the terms of this Ordinance shall be in the form of an application. The provisions of this Article shall govern the basic requirements for processing different types of applications from initiation to final action and issuance of a permit.

It shall be the responsibility of the Spartanburg County Administrator or his designee to administer the requirements for processing applications and issuing permits in accord with the provisions of this Ordinance.

It shall be the responsibility of an applicant to provide the required information to process a permit application, secure or renew a license, and present facts about circumstances which would justify a proposed change or modification to the terms and/or application of this Ordinance.

Section 1.02 Types of Applications

Types of applications for processing matters subject to the requirements of this Ordinance include:

1. Applications to Develop or Alter the Use of Land

This includes all land use and development activity covered by this Ordinance. Applications to develop or alter the use of land are classified for administrative purposes into two (2) categories.

Minor Land Development – is any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development.

Major Land Development – includes but is not limited to commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.

2. Applications for Change or Relief

This includes applications for changes to and/or relief from any part or provision of this Ordinance, of which there are three types of applications:

Amendment – is a change to the text of the Ordinance.

Variance – is an adjustment or modification of any regulation alleged to impose an unnecessary hardship on the use or development of land.

Appeal – is a petition by an applicant to reverse or modify a decision of an administrative officer, board, commission or council.

Section 1.03 Eligible Applicants

Parties and individuals required and/or eligible to initiate an application to alter, develop, subdivide or utilize land for purposes and activities regulated by this Ordinance, or to seek relief from or change requirements of this Ordinance are identified on Table 1.

Parties not listed may petition the Planning Commission and/or Council to initiate a change, but the petitioned party is not bound to act on behalf of the petitioner.

Table 1 Applicant Requirements/Eligibility				
Eligible Applicants	Applicants to Develop or Alter Use of Land	Applicants for Change and/or Relief from Ordinance Requirements		
		Amendment	Variance	Appeal
Property Owners	YES	NO	YES	YES
Agent of Property Owner*	YES	NO	YES	YES
Option Holder	YES	NO	YES*	YES*
Aggrieved Person or Party	NO	NO	NO	YES
Officials Administering this Ordinance (Staff)	NO	YES	NO	YES
Planning Commission	NO	YES	YES**	NO
Governing Council	YES	YES	NO	NO

* Must have written authorization

** Major Land Developments only

Section 1.04 Application Procedures

The procedure for processing applications is outlined by the following Application Procedural Chart (APC).

The process is initiated by filing a complete application including all information and fees required by Section 1.06 and assignment of the application to the proper staff member, agency, board or commission for review and processing outlined in Section 1.05.

Public notice where required by the APC chart shall be announced in a newspaper of general circulation in Spartanburg County at least 15 days but not more than 30 days prior to the time the application is scheduled for a public hearing. The notice shall state the nature of the application and the time, date and place of the hearing.

In addition to public notice in a newspaper, notice of an application for a variance shall be posted by Spartanburg County Planning Department staff on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. Notification shall be made by Staff via Certified Mail to contiguous land owners, which shall include those separated by a paved road.

If public hearing is delayed; party responsible for delay is to pay for re-advertising, re-notification, additional fees, etc.

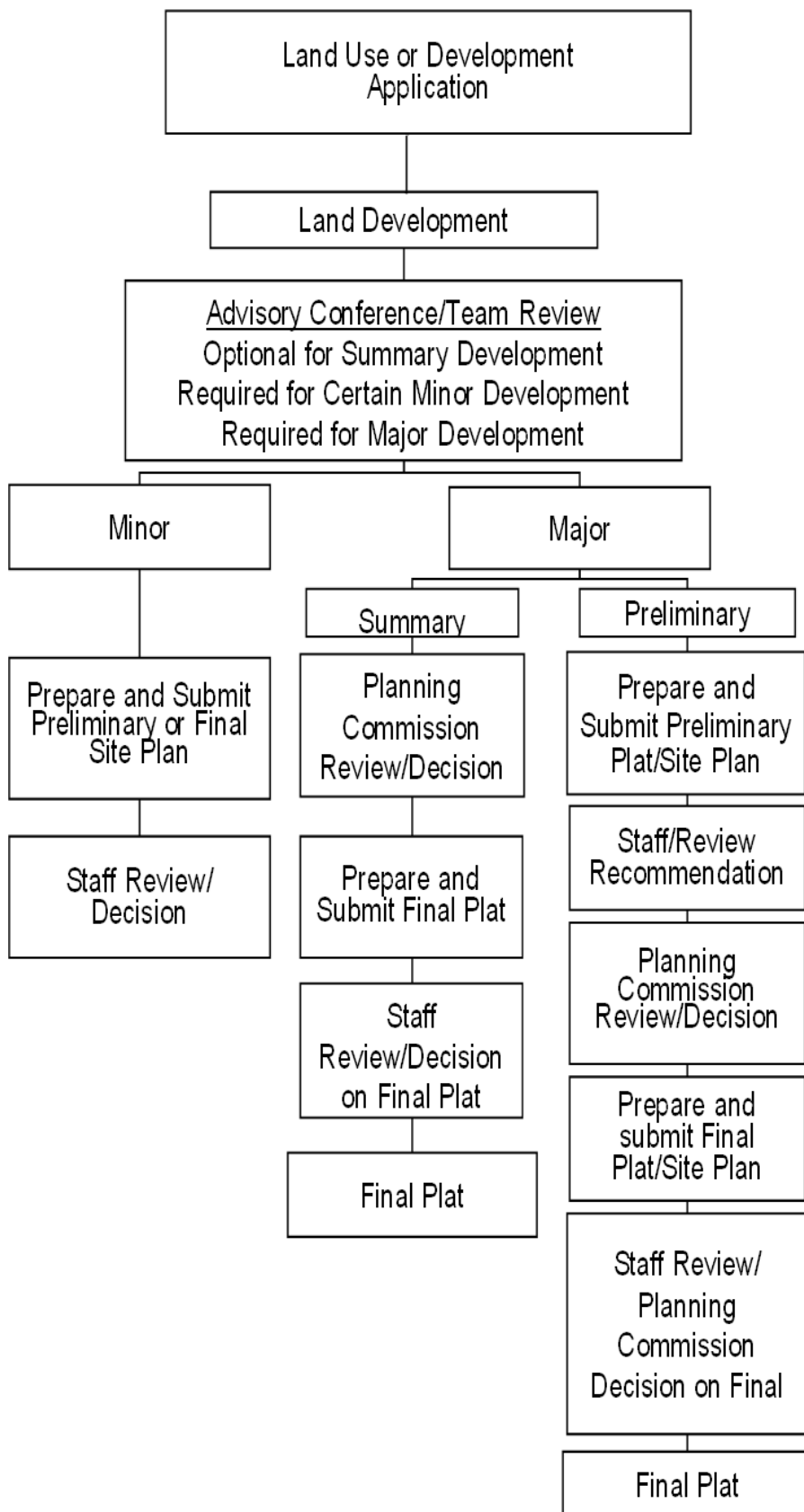
Appeals shall be taken within 10 days of the date of the action filing notice of appeal with the County.

A permit for an application subject to appeal to the Planning Commission or to the Board of Zoning Appeals may not be issued until the appeal period has expired.

Section 1.05 Assignment of Application for Review, Approval, Variances, and/or Appeals

Final authority on any land development application or application seeking relief from or change of any provision or regulation contained herein shall reside with the following County divisions, unless appealed, as provided for below. (See page 1-7)

Application Procedural Chart 1



Application Procedural Chart 2

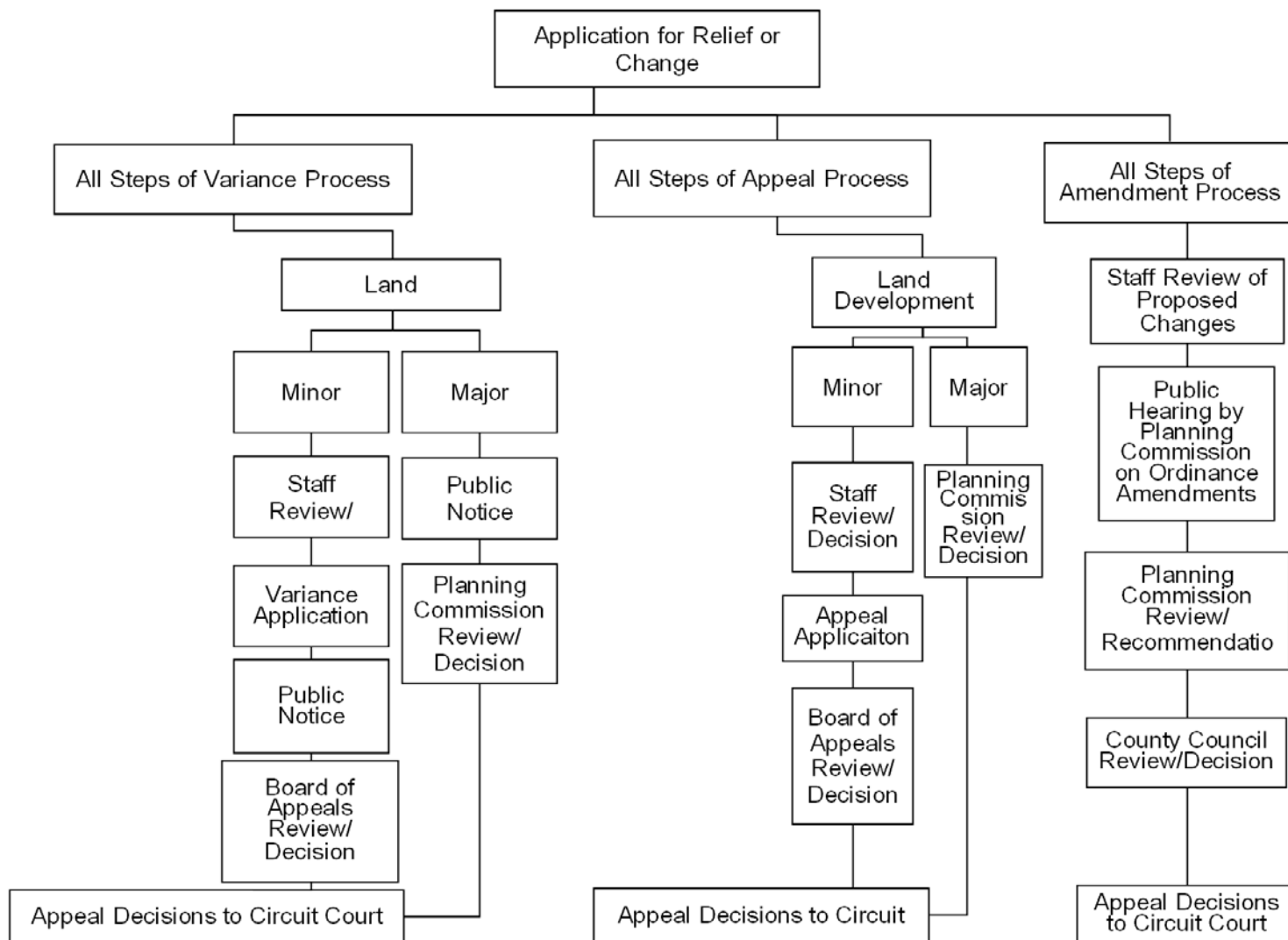


EXHIBIT A

EXHIBIT A	Review and Approval Authority			Variances		Appeals		Circuit Court Appeal
	Administrative		Board	Board		Administrative		
Land Developments	Building Department	Planning Department	Planning Commission	Board of Appeals	Planning Commission	Board of Appeals	Planning Commission	Circuit Court
Minor, to include								
Single-family dwelling	YES			YES		YES		YES
Manufactured home	YES			YES		YES		YES
Mining Operation		YES		YES		YES		YES
Outdoor Gun Range		YES		YES		YES		YES
Sexually Oriented Business		YES		YES		YES		YES
Open Storage		YES		YES		YES		YES
Communication Tower		YES		YES		YES		YES
Junk or Salvage Yard		YES		YES		YES		YES
Tattoo Parlors		YES		YES		YES		YES
Signs		YES		YES		YES		YES
Temporary Uses		YES		YES		YES		YES
All other Uses Not Classified as Major		YES		YES		YES		YES
Major, to include								
Attached Multi-Plex Dwelling Projects:								
(Apartment, Condominium & Townhouse)			YES		YES		YES	YES
Manufactured Home Park			YES		YES		YES	YES
Industrial Park & Commercial Subdivision			YES		YES		YES	YES
Shopping Center, Big-Box Retail			YES		YES		YES	YES
Office Park			YES		YES		YES	YES
Camps and RV Parks			YES		YES		YES	YES
Multiple Occupancy Building Project			YES		YES		YES	YES
Motor Speedway or Testing Track			YES		YES		YES	YES
Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals			YES		YES		YES	YES
Waste Management Facility			YES		YES		YES	YES
Asphalt Batch Plant			YES		YES		YES	YES
Scrap Metal Processor			YES		YES		YES	YES
Certain Public Uses			YES		YES		YES	YES
Mixed-Use Project/Mixed-Use Project-Residential Only			YES		YES		YES	YES

Section 1.06 Requirements and Fees

Table 2
Information Required to Support Application

All applications shall be filed on forms provided by the County and contain or be accompanied by the information required by Table 2, and any applicable ULMO section, with the required fee to help cover the cost of processing. Major Land Development Projects shall be submitted not less than 10 working days prior to the Planning Commission meeting and shall show the date of submittal.

Type of Application:	Information Required (Requirements are Cumulative, except # 13):
LAND DEVELOPMENT	
Minor (Final Plat or Site Plan Approval)	1. Location of all proposed structures, including free standing signs, 2. Required building setback lines, 3. Required landscaping and bufferyards, 4. Required off-street parking, 5. All information specified by Article 3 for conditional uses, as applicable.
Major (Preliminary Plat or Site Plan Approval)	
Major (Final Plat or Site Plan Approval) (Letter of Credit Plat)	
REVISIONS	1. Plat revisions by Developer/Owner/Surveyor, or by County on third submittal.
AMENDMENT	1. Draft of new text to be added and existing text to be deleted, 2. State reasons for change.
VARIANCE	1. State nature of variance, 2. Provide evidence of unnecessary hardship, 3. State necessity of variance.
APPEAL	1. State reasons for appeal, with specific reference to action being appealed.
Land Use Compliance Letter	

(Please obtain a checklist for projects from the Planning Department.)

Fees: Set per Fee Schedule adopted by Resolution of County Council

Section 1.07 Required Permits/Certificates

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.

No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

No permits inconsistent with the provisions of this Ordinance shall be issued unless accompanied by an approved variance.

Unless elsewhere regulated, the provisions of this Section shall not apply to the necessary construction, replacement or maintenance by a public utility of its outside plant facilities, including such items as poles, cross arms, guys, wire, cable and drops.

Section 1.08 Types of Required Permits/Certificates

One or more of the following permits/certificates together with the fees set per the Fee Schedule adopted by Resolution of County Council, which fees are non-refundable, shall be required by this Ordinance.

Permits (See Fee Schedule)
Building Permit
Repair Permit
Grading Permit
Right-of-Way Encroachment Permit
Development Permit
Certificate of Occupancy (use)
Stormwater Permit

Section 1.09 Building Permit

A building permit shall be required of all proposed building and/or development activity unless expressly exempted by the County Building Code.

Section 1.10 Repair Permit

When a permit is requested to make repairs only, the County may waive the requirements of a plat or plan.

Section 1.11 Grading (Land Disturbing) Permit

A grading permit approved by the Spartanburg County Public Works Department, Engineering Division shall be required prior to ANY land disturbing activity covered by the Spartanburg County Stormwater Management and Sediment Reduction Regulations (County Ordinance #497). [This ordinance has been replaced by the Storm Water Management Ordinance of Spartanburg County (No. O-09-02). (See also County Code Chapter 30, Article IV.)] This requirement applies to all land disturbing activities covered by this Unified Land Management Ordinance. No grading permit shall be issued in the absence of an approved Storm Water Management Plan.

Section 1.12 Right-of-Way Encroachment Permit

A Right-of-Way encroachment permit approved by the County Roads and Bridges Department shall be required prior to any improvements in Spartanburg County Road Rights-of-Way. No encroachment will be allowed in the absence of an approved Encroachment Permit. Reference to Section 2.02-8.

Section 1.13 Development Permit

No building, other structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance has been issued by the Planning Department staff, other than for such uses specifically exempted by this Ordinance or meet the following conditions: Continued identical use(s) of any building or land in existence and occupied on the effective date of this ordinance.

Section 1.14 Certificate of Occupancy

It shall be unlawful to use or occupy or permit the use of occupancy of any building or premises, or both, or parts thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use of structure until a Certificate of Occupancy has been issued by the County stating that the proposed use of the building or land conforms to the requirements of this Ordinance. A Certificate of Occupancy shall not be issued unless and until all required improvements have been met and approved by the County, a Letter-of-Credit notwithstanding.

Section 1.15 Inspections for Compliance

The County enforcement officer may make or require inspections of any land disturbing activity, construction or maintenance requirement to ascertain compliance with the provisions of this Ordinance and to ascertain compliance with approved permit applications, plats, plans, and/or certificates.

Section 1.16 Expiration of Permit

If the work described by any permit has not begun within six months from the date of issuance thereof, said permit shall expire, unless extended by the County upon application by the owner/developer.

Section 1.17 Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, the appropriate County agent or enforcement officer shall record and investigate such complaint, and take such action as provided by this Ordinance. Complaints may be filed in writing or verbally, stating fully the cause and basis thereof.

Section 1.18 Penalties for Violations

Any person violating any provision of this Ordinance shall upon conviction be guilty of a misdemeanor and shall be fined as determined by the court for each offense.

Where any building, structure, use or sign is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure, sign, or land is or is proposed to be used in violation of this Ordinance or in violation of an approved plan or plat granted by the County or Planning Commission, the enforcement officer may, in accord with the provisions of Section 56-7-80 of the South Carolina Code of Laws 1976, as amended, issue an ordinance summons, or institute injunction, mandamus, issue stop work order, withhold permits or Certificates of Occupancy, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use; to correct or abate the violation or to prevent the occupancy of the building, structure, or land. Each day such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues shall be deemed a separate offense.

ARTICLE 2 – DESIGN AND DEVELOPMENT STANDARDS

Section 2.01 Types of Land Development

For purposes of this Article, land development activity is divided into five categories:

1. Land Development, Generally
2. Land Development in Flood Hazard Areas
3. Land Development in the Vicinity of Spartanburg Downtown Memorial Airport

Design and development standards for each type of development follow.

Section 2.02 Land Development, Generally

The following requirements apply to all development in Spartanburg County, where applicable.

Section 2.02-1 Dimensional Standards

1. Purpose

The purpose of this Section is to establish order to the development process and reduce, if not eliminate, potential off-site conflicts regarding the development of a lot or parcel.

2. Lot Dimensions, Building Setbacks, and Height Requirements

Minimum lot areas, lot width, building setbacks and maximum height requirements are established on Table 3.

EXHIBIT A Table 3a – Residential Setbacks and Other Requirements

In any case where this table does not match the text in the chapters, use the requirements in the text.

Uses	Section Reference	Minimum Lot (Project Area - square feet)	Minimum Lot Frontage (feet)	Minimum Setback (feet from)									Maximum Height (feet)	
				Front Lot Line See Footnote (Z):			Rear Lot Line	Side Lot Line	Residential Units					
				Arterial Street	Collector Street	Minor Street			One	25 or More (I)	Other Uses (A)	Spacing Between Buildings on Same Lot		
RESIDENTIAL														
Single-Family With or Without Community Sewer	NONE	(J)(Q)	50(K)(S)(U)(EE)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)	
Duplex	NONE	(J)(Q)	50(K)(U)(EE)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)	
Patio & Zero Lot Line Housing	3.01	4000 R	40/house (K)(S)(U)(FF)	50 (L)/83(M)	30(L)/55(M)	15(L)/40(M)	20(Z)	(H)(N)(Z)	NA	NA	NA	NA	(Y)	
CONDITIONAL														
Townhouses	3.02	See Sec. 3.02	18/house (K)(S)(FF)	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	20(Z)	(G)(N)(Z)	NA	NA	NA	NA	(Y)	
Attached Multi-Plex Dwelling Projects	3.02	See Sec. 3.02	50(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	10(N)(Z)	NA	NA	NA	20 + 5 per story over first (DD)	(Y)	
Manufactured Homes	3.03	(J)(Q)	50(K)(S)(U)(EE)	50(L)/83(M)	30(L) / 55(M)	20(L)/45(M)	20(Z)	7.5 or 10(N)(Z)	NA	NA	NA	Sec. 2.02-6	(Y)	
Manufactured Home Park	3.04	(87,120)	3-99 lots 60 ft. 100 lots or more 100 ft. (K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	7.5 or 10(N)(Z)	NA	NA	NA	20	(Y)	
Accessory Apartments	3.05	-	-	50(L)/83(M)	30(L)/55(M)	20(L) / 45(M)	20(Z)	5 or 10(N)(Z)	-	-	-	10(DD)	(Y)	
Accessory Use		-	-	50(L)/83(M)	30(L)/55(M)	20(L)/45(M)	5(Z)	5 or 10(N)(Z)	NA	NA	NA	NONE	(Y)	
Home Occupations	3.06	See Sec. 3.06	-	-	-	-	-	-	-	-	-	-	Section 3.06	
Mixed-Use – Residential Only	3.29	See Sec. 3.29	See Sec. 3.29	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	20(Z)	NA	NA	NA	20 +5 per story over first (DD)	(Y)	

(A) Other uses include public parks, schools, religious institutions, hospitals, day care facilities, and nursing homes.
(G) No side yard required between townhouse units; 7.5 feet required between building and property line.
(H) If a zero lot line development, one side of lot shall provide a five-foot (5') side yard setback. If not a zero lot line development, each side shall have a three & ½ foot (3.5') side yard setback.
(I) 25 or more units in a platted subdivision.
(J) 8,000 sq. ft. with community sewer.
(K) Commercial/Industrial Developments must take access off a paved public or privately maintained road built to at least the County standards other than those for limited private residential developments. Other Uses require frontage on all weather or paved public or privately maintained road built to at least the County Standards.
(L) Setbacks shall be measured from the right-of-way line where dedicated. Setbacks may be modified by Section 2.02-2 Bufferyards.
(M) Where there is no right-of-way, measure from the centerline of the road.
(N) 10-ft side yard setback for corner lots within Residential Subdivisions on Minor and Major Residential Streets shall be measured from right-of-way.
(Q) Without Community Sewer, as determined by SC DHEC
(R) For Patio Homes designated deeded Common Areas may be substituted to fulfill the minimum requirements for setback, bufferyard and open space. A 10-ft. setback required between the unit and the Common Areas. In such cases, lot size may be reduced by up to 10%.
(S) 25 feet for approvable flag lots, see Section 2.05-4.
(U) Cul-de-sac lots must meet minimum frontage at the setback line.
(Y) Each additional foot above 35' add 1' to each side and rear yard setback.
(Z) All setbacks on roads are front setbacks as required by the road classification except as in footnote (N).
(DD) Spacing between residential buildings may be reduced if requirements of the International Residential Code are met.
(EE) Lot Frontage is controlled by the Subdivision Regulations. Use the larger of the two Frontage requirements.
(FF) Patio Homes and Townhouses must take their frontage on an internal road constructed as part of the development. Project frontage must meet the Subdivision Regulations.

EXHIBIT A Table 3b – Commercial & All Other Uses – Setbacks and Other Requirements

In any case where this table does not match the text in the chapters, use the requirements in the text.

Uses	Section Reference	Minimum Lot (Project area- square feet)	Minimum Lot Frontage (feet)	Minimum Setback (feet from)								Spacing between buildings on same lot	Maximum Height (feet)
				Front Lot Line See Footnote (Z)			Rear Lot Line Side Lot Line		Residential and Other Uses				
				Arterial Street	Collector Street	Minor Street			One Res.	25 or more Res. Units (I)	Other Uses (A)		
Auction House/Barn	3.07	(87,120)	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	500(W)	500(W)	NA	20(DD)	(Y)
Commercial Kennels and Certain Agricultural Uses	3.08	(20,000)	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	25(Z)	500(W)	1000 (W)	1000 (W)	20(DD)	(Y)
Mining Operations	3.09	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	25	25	(B) (W)	(B) (W)	NA	20(DD)	(Y)
Motor Speedways and Testing Tracks	3.10	NONE	60(K)(EE)	100(L)/133(M)	100(L)/125(M)	X	100(Z)	100(Z)	1000 (W)	2000 (W)	2000 (W)	20(DD)	(Y)
Outdoor Gun or Skeet Range	3.11	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	25(Z)	1000 (W)	1000 (W)	1000 (W)	20(DD)	(Y)
Sexually Oriented Businesses	3.12	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	200(W)	1000 (W)	(F) (W)	20(DD)	(Y)
Campgrounds and RV Parks	3.13	(217,800)	100(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	NA	NA	NA	10	(Y)
Fuel Products Bulk Storage and Distribution Facility	3.14	NONE	60(K)(EE)	Sec.3.14	Sec. 3.14)	X	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14	Sec. 3.14
Off-Site Hazardous Chemicals	3.15	(87,120)	60(K)(EE)	Sec. 3.15	Sec. 3.15	X	Sec. 3.15	Sec. 3.15	Sec. 3.15	Sec. 3.15	Sec. 3.15	20(DD)	(Y)
Coin-Operated Amusement, Cash Payouts	3.16	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	20(Z)	15(Z)	NA	500(W)	500(W)	20(DD)	(Y)
Waste Management Facilities	3.17	Sec. 3.17	60(K)(EE)	See Sec. 3.17	See Sec. 3.17)	X	Sec. 3.17	Sec. 3.17	Sec. 3.17	Sec. 3.17	Sec. 3.17	20(DD)	(Y)
Communication Towers	3.18	See Sec. 3.18	(V)	(D)(E)	(D)(E)	(D)(E)(V)	(D)(E)(Z)	(D)(E)(Z)	(D)	(E)	Sec. 3.18	20(DD)	Sec 3.18
Junk/Salvage Yards	3.19	(217,800)	100(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	Sec. 3.19	Sec. 3.19	Sec. 3.19	20(DD)	Sec. 3.19-4(3)
Accessory Buildings/Uses – Non-Residential	3.20	NA	NA	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	5(Z)	5(Z)	NA	NA	NA	NONE	(Y)
Temporary Uses	3.21	-	-	-	-	-	-	-	-	-	-	-	Sec 3.21
Nuclear and Hazardous Waste Disposal	3.22	NOT permitted	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX
Certain Public Service Uses	3.23	Sec. 3.23	-	-	-	-	-	-	-	-	-	-	Sec. 3.23
Tattoo Facility	3.25	Sec. 3.25	50(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	Sec 3.25	Sec 3.25	Sec 3.25	20(DD)	(Y)
Flea Markets, Swap Meets, etc.	3.26	2 acres	60(K)(EE)	50(L)/83(M)	50(L)/83(M)	X	30(Z)	30(Z)	200	200	NA	20(DD)	(Y)
Asphalt Plants	3.27	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	X	50(Z)	50(Z)	1000(W)	1000(W)	1000(W)	20(DD)	(Y)
Scrap Metal Processors	3.28	217,800	100(K)(EE)	Sec 3.28	Sec 3.28	X	Sec 3.28	Sec 3.28	Sec 3.28	Sec 3.28	Sec 3.28	20(DD)	Sec 3.28
All Other Commercial and Industrial Uses	3.24	NONE	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	NA	NA	NA	20(DD)	(Y)
Mixed-Use Project	3.29	Sec. 3.29	60(K)(EE)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	25(Z)	25(Z)	50(Z)	50(Z)	50(Z)	20(DD)	(Y)
ALL OTHER USES		NONE	60(K)	50(L)/83(M)	40(L)/65(M)	30(L)/55(M)	20(Z)	15(Z)	NA	NA	NA	20(DD)	(Y)

(A) Other Uses include public parks, schools, religious institutions, hospitals, day care facilities, nursing homes.
(B) 1,000 feet for mining involving explosives. 300 feet for mining not involving explosives.
(D) Height of tower minus 20 feet.
(E) Setbacks from platted subdivisions with 25 lots or more or at least 50 dwelling units within 1,000 feet of a proposed tower shall be 2 times the height of the tower (if the tower is less than 200 ft.) or 3 times the height of the tower if tower is 200 ft. or taller.
(F) 1,000 feet from another sexually oriented use and other uses listed in (A).
(I) 25 or more units in a platted subdivision.
(K) Nonresidential Developments must take access off a paved public or privately maintained road built to at least the County standards other than Section 2.05-3-Private Road Developments. Other Uses require frontage on all weather or paved public or privately maintained road built to at least the County Standards.
(L) Setbacks shall be measured from the right-of-way line where dedicated. Setbacks may be modified by Section 2.02-2, Bufferyards.
(M) Where there is no right-of-way, measure from the centerline of the road
(V) Minimum of a 25-foot recorded access easement to a publicly maintained road.
(W) Setbacks shall be measured from the proposed structure to the nearest property line.
(Y) Each additional foot above 35' add 1' to each side and rear yard setback.
X= Denied Access to Minor Street.
XX= Not Permitted.
(Z) All setbacks on roads are front setbacks as required by the road classification.
(DD) Spacing between non-residential buildings may be reduced if the requirements of the International Building Code are met. Twenty-foot spacing requirement does not apply to communication equipment buildings.
(EE) Lot Frontage is controlled by the Subdivision Regulations. Use the larger of the two Frontage requirements.

Section 2.02-2 Bufferyards

1. Purpose

The purpose of a buffer area is to minimize any potential adverse impact between adjacent land uses and minor streets; and promote land use compatibility.

2. Definition

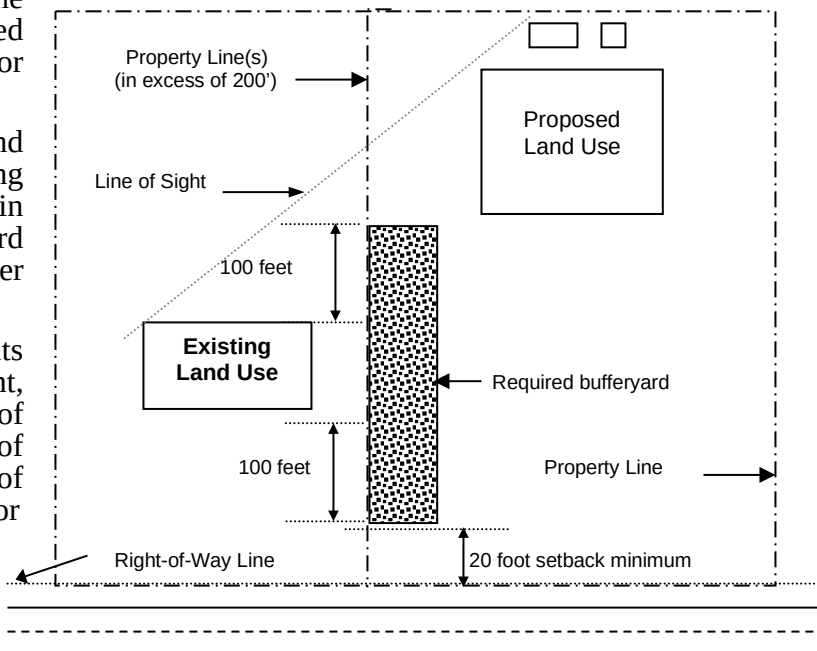
A bufferyard is a portion of a yard, which contains fences, walls, berms and plantings located along the perimeter of a parcel of land to lessen the impact of noise, land use intensity, and light on adjoining property. The area used in the bufferyard must be a portion of the property under development and may be a portion of the rear, side or front yard setback requirements of Section 2.02-1. Bufferyards are inclusive of required setbacks. The yard depths shown in the Bufferyard Illustrations are the minimum required.

3. Specifications and Options

To determine the required bufferyard for a given use, refer to Table 4, and match the abutting use with a proposed use or expansion of an existing use. Should a question arise as to the land use classification of a proposed or abutting use, Planning Department staff shall determine the classification. Next, refer to the Bufferyard Illustrations to determine the amount of bufferyard required. After review of the preliminary plan, the County staff shall determine the appropriate bufferyards. The requirements are given in 100-foot units as measured along the property line. Whenever a wall or fence and/or landscaping is required, the location of the structure shall be determined by Planning Department staff. After site review, fencing requirements may be changed by Planning Department staff. The required bufferyards must be installed before a Certificate of Occupancy or Certificate of Completion is given.

The length of a bufferyard shall extend the length of the property line separating two uses, except for property lines in excess of 200 feet, where the bufferyard need only extend 100 feet beyond either end of the existing use to be buffered.

However, if proposed use or its accessories are within the line of sight, the buffer may be extended. Line of sight shall be taken from corner of existing use structure to corner of adjacent proposed use structure and/or its accessory buildings, as shown. The above also applies to any second existing residential use structure on the same parcel.



4. Use of Existing Vegetation In Bufferyard Areas

Existing vegetation shall be retained to the degree practical and feasible with special attention given to existing trees 18 inches in diameter or larger at DBH. If the existing vegetation provides a screen equal to or greater than that which would be planted, no other plant material shall be required. In case of open woods, an additional planting of eye level shrubs such as hemlock or pines may be needed to improve screening.

Site plans submitted for approval shall show location and extent of existing vegetation within bufferyard areas. Approved site plans can only be altered or amended by the Planning Commission.

5. Materials

To achieve the desired results, only evergreen plants, suitable for local conditions, shall be used, to achieve an opaque screen as required. Deciduous trees may be planted along with the evergreens to

enhance the height of the screen. Lower story deciduous shrubs may be used in front of evergreen screens as part of the required number of plants. Refer to Table 5 for plant suggestions. When structures are used, the materials shall be durable and suitable for screening, as outlined in 2.02-2.9.

6. Plant Size and Caliper

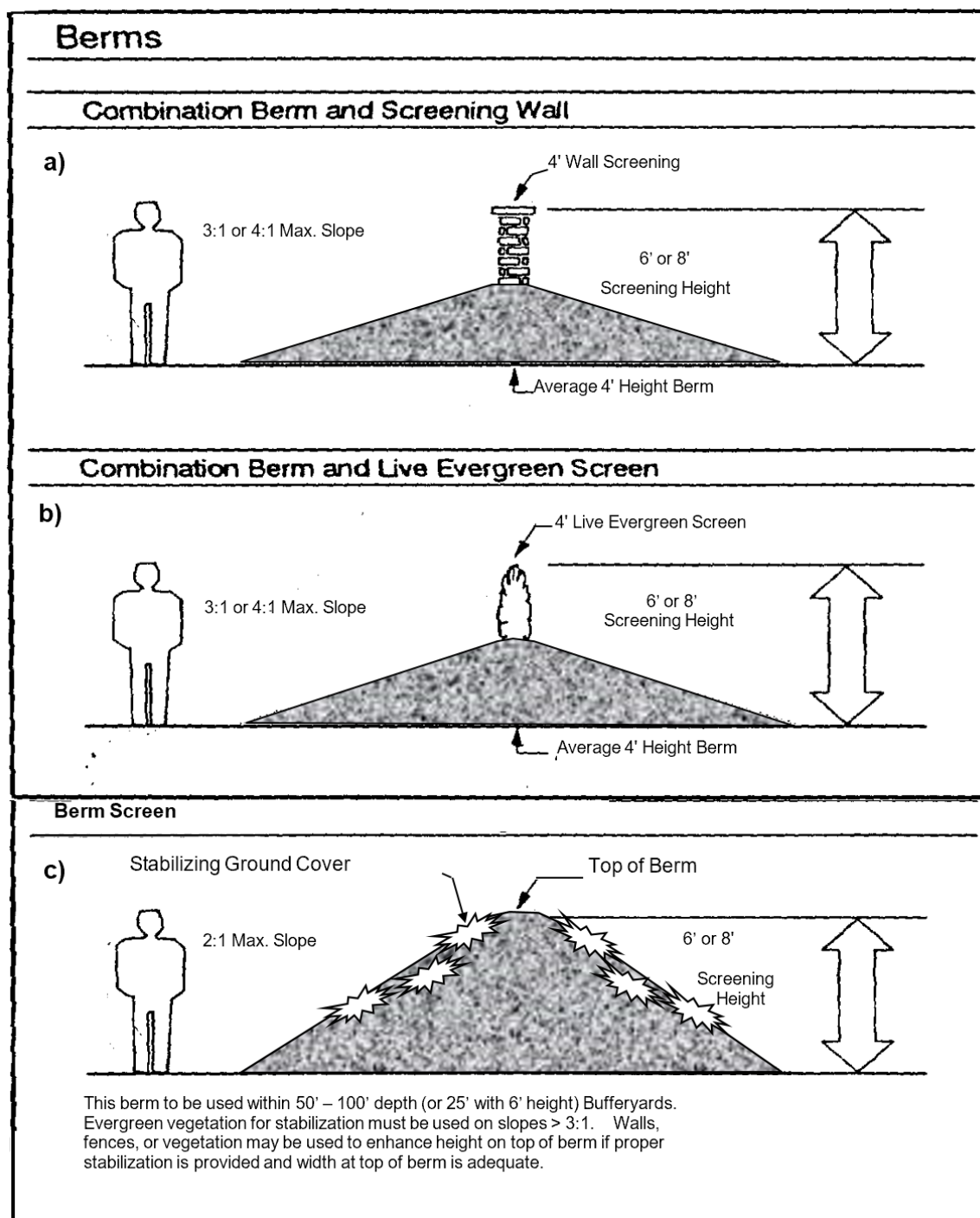
The minimum tree at planting shall be 6 to 7 feet in height and 2 or more inches in trunk diameter at a height of 18 inches above the ground. The minimum shrub shall be 2 to 3 feet in height but shall also be large enough to ensure an opaque screen within the specified time period of four (4) years, in accord with Bufferyard Illustration requirements. Both trees and shrubs shall be nursery stock with well-developed root systems unless comparable plants found in place can be used.

It is generally understood that the strict application of these provisions will apply. However, due to unique circumstances the Planning Department staff may approve an alternative method. When determined appropriate by staff one of the following alternatives may be used:

7. Berms

- a) Combination berms may be used to compensate for fences or walls. A six (6) or eight (8) foot high opaque structure can be a combination of berm and fence or wall to total six (6) or eight (8) feet.
- b) Combination berms may be used to compensate for live evergreen screens. A six (6) or eight (8) foot high opaque screen can be a combination of berm and evergreen plants to total six (6) or eight (8) feet.
- c) Stand-alone berms may be used to compensate for fences, walls or vegetative screens. A six (6) or eight (8) foot high opaque screen can be a berm planted with grass if the slope is 3:1 or less, or with evergreen vegetative ground cover to prevent erosion if the slope is greater than 3:1.

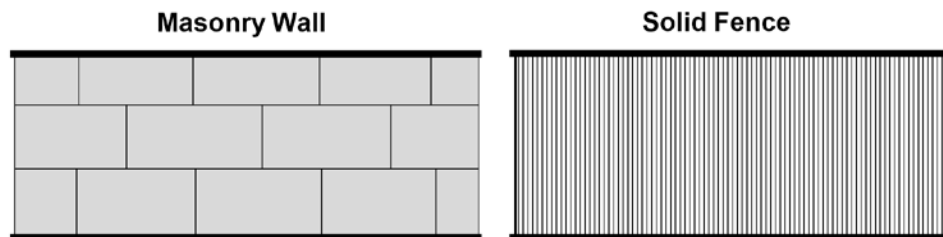
Bufferyard width and site conditions will determine the proper slope ratio to be used for berms. All berms are to have compacted and stabilized dirt material.



8. Fence and Wall Specifications

Walls must be made of masonry materials including poured concrete, concrete block covered with stucco, and brick. See Bufferyard Illustrations for placement options.

Chain link fences with evergreen hedge on the outbound side may be substituted for wooden fence of the same height, as approved by Planning Department staff. Refer to Table 5 for hedge plants which are among those acceptable. All plants must be sized and spaced to obscure the chain link fence within four (4) years of planting. Chain link fences with wood, plastic, or metal strips are expressly prohibited.



9. Front Yard Plant Strip Required

All commercial, industrial, office, and institutional developments must have at least a five (5) foot wide plant strip between the road right-of-way and any property development. The plant strip shall be grassed or mulched and may have plantings that do not interfere with sight distance for egress and ingress. On expansion projects, the requirement for a five (5) foot plant strip may be waived if it can be shown that existing or new dimensions of the lot or buildings make it impossible to comply.

10. Responsibility

It shall be the responsibility of the proposed new use to provide the bufferyard where required by this Ordinance, except that no new detached single-family dwelling or duplex shall be required to provide such bufferyard.

11. Required Maintenance

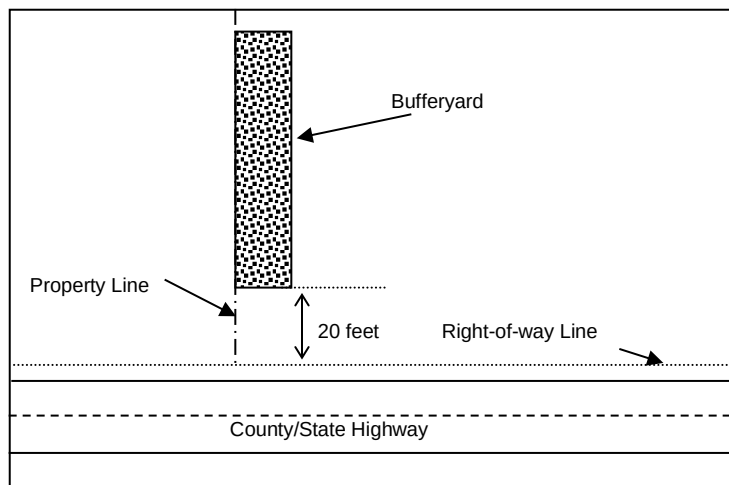
The maintenance of required bufferyards shall be the responsibility of the property owner. All such areas shall be properly maintained so as to ensure continued buffering. Dead trees shall be removed and promptly replaced with correct sized plants; debris and litter shall be cleaned; and berms, fences, and walls shall be maintained at all times. Failure to do so is a violation of this Ordinance, and may be remedied in the manner prescribed for other violations.

12. Use of Bufferyards

A bufferyard may be used for passive recreation and may be interrupted by access driveways not exceeding 16 feet in width (exceptions for uses requiring wide curb cuts may be approved by Planning Department staff). All other uses are prohibited, including off-street parking and accessory uses.

13. Sight Clearance

Bufferyards may not obscure a clear line of sight for vehicular traffic. Therefore, bufferyards should be placed no closer than 20 feet from street/road right-of-way lines.



14. Bufferyards for Industrial or Commercial Expansions

When an industrial or commercial land use expands in the direction of an existing adjacent land use, it is required to provide a bufferyard against that adjacent land use, as outlined in Table 4.

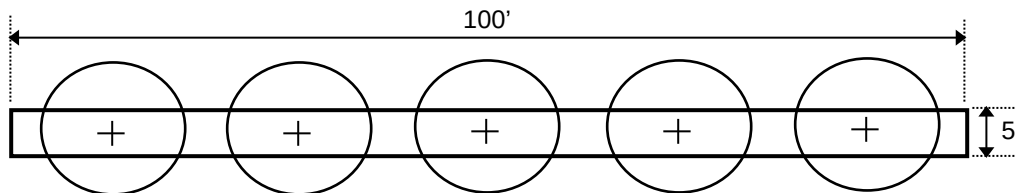
Table 4 Side and Rear Bufferyard Requirements (Note: Check Design Standards Section 2.08-9 for additional buffer yard requirements.)									
<i>Proposed Use (5)*</i>	<i>Existing Use (1)(2)</i>								
	Agricultural (with residence) (6)	Single-family Home (3)	All Other Residential (4)	Office/Institutional	Low Intensity Commercial	Medium Intensity Commercial	High Intensity Commercial	Light Industry	Heavy Industry
Office / Institutional	2	4	3	0	0	0	0	0	0
Manufactured Home Park	3	5	4	0	0	0	0	0	0
Multi-Family 1-3 units/acre	1	3	2	0	0	0	0	0	0
Multi-Family 4-8 units/acre	2	4	3	0	0	0	0	0	0
Multi-Family > 8 units/acre	3	5	4	0	0	0	0	0	0
Townhouses 1-3 units/acre	1	2	1	0	0	0	0	0	0
Townhouses 4-8 units/acre	2	3	2	0	0	0	0	0	0
Townhouses > 8 units/acre	3	4	3	0	0	0	0	0	0
Mixed-Use Projects	3	4	3	2	1	0	0	0	0
Mixed-Use Projects – Residential Only	2	3	2	0	0	0	0	0	0
Low Intensity Commercial	1	3	2	0	0	0	0	0	0
Medium Intensity Commercial	2	5	4	1	1	0	0	0	0
High Intensity Commercial	3	5	5	2	2	1	0	0	0
Light Industry	3	6A	5	2	2	1	1	0	0
Heavy Industry	4	6B	6	3	3	2	2	1	0
Footnotes apply only where indicated in the table. (1) Buffer along minor streets as if the property were an adjacent parcel. (2) In determining buffer yard classification, adjacent vacant parcel(s) that total less than 100 feet in width shall be disregarded, and the buffer applied shall be determined by the next adjacent property use. (3) Includes subdivision of 25 or more submitted for approval or recorded platted lots, or a single-family home or manufactured home on a minor street. (4) Requirements may be reduced by one side buffer yard class where existing residential use is located on an arterial street. (5) Planning Department Staff shall determine appropriate buffer yard within the classes listed above. (6) To be considered, existing residence must be within 100 feet of property line adjacent to new use. Accessory structures and uses are not to be considered. * If the proposed use is not stated on the site plan or plat, then the highest intensity buffer shall be required at perimeter of project boundary. If projects are phased, Buffer yard must be consistent with previous or other phases.									

Bufferyard Illustrations

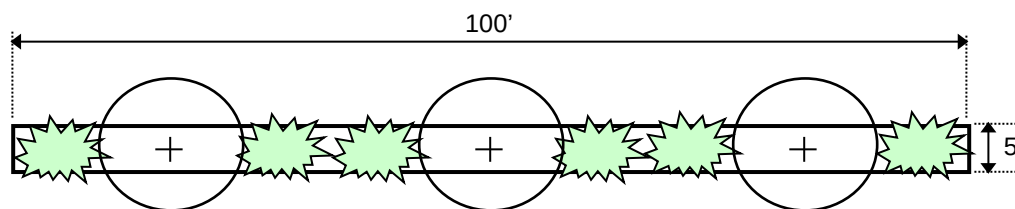
Following are examples of vegetation, fence, wall or berm layouts within each Bufferyard. "o.c." means 'on center', or from the center of one plant to the center of the next plant, indicating the possible spacing. The bottom border of each bufferyard represents the existing use side. The scale used in the illustrations is approximately 1"=20'-0". See Legend for symbol representations.

Bufferyard 1 Options

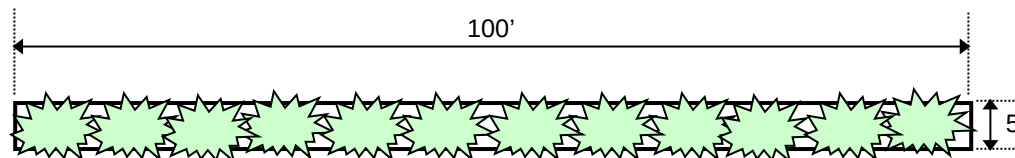
a) 5 trees (20' o.c.)



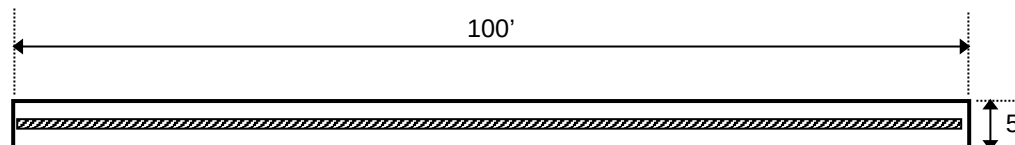
b) 3 trees (33' o.c.) & 6 shrubs



c) 12 shrubs (8' o.c.)

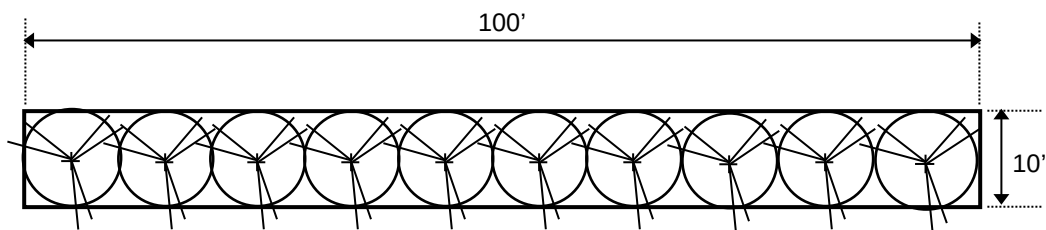


d) 6' fence

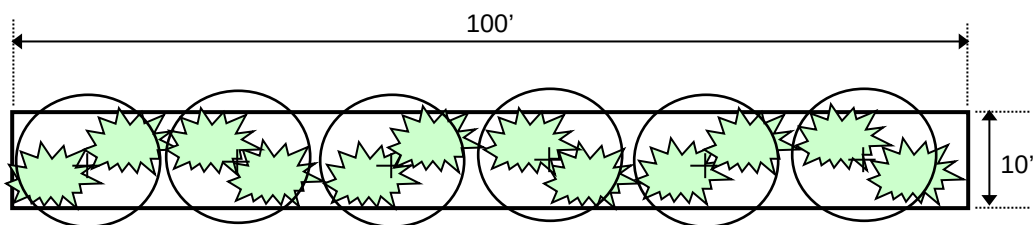


Bufferyard 2 Options

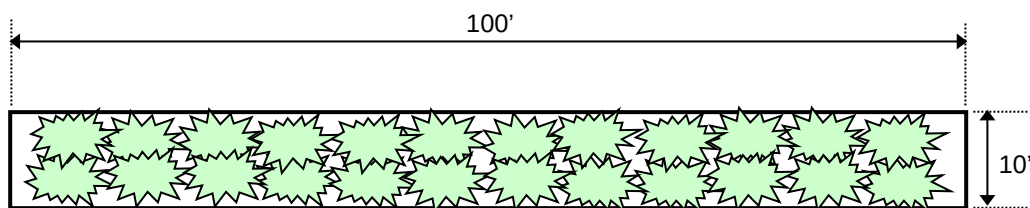
a) 10 trees (10' o.c. single row)



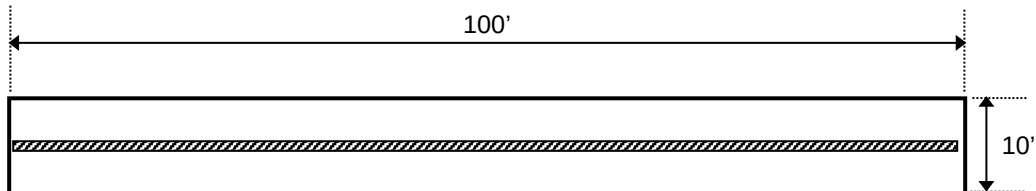
b) 6 trees (17' o.c. single row) & 12 shrubs (8' o.c. single row)



c) 24 shrubs (5'-8' o.c. two rows)

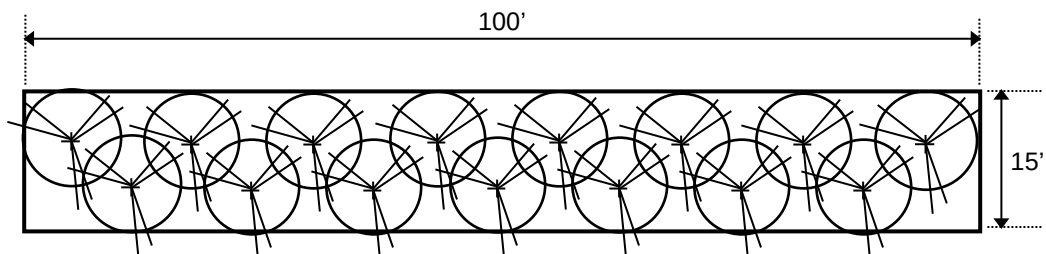


d) 6' fence

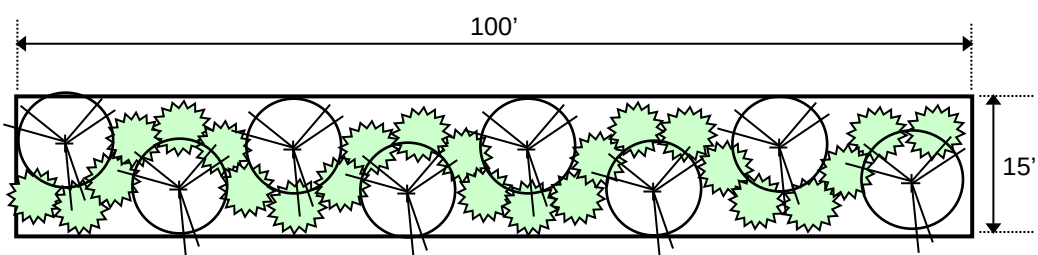


Bufferyard 3 Options

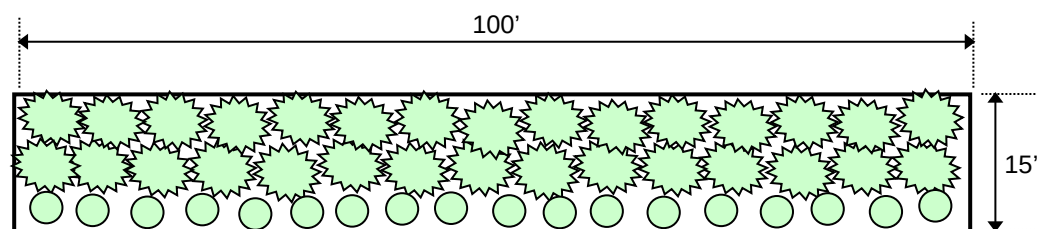
a) 15 trees (8' o.c. staggered rows)



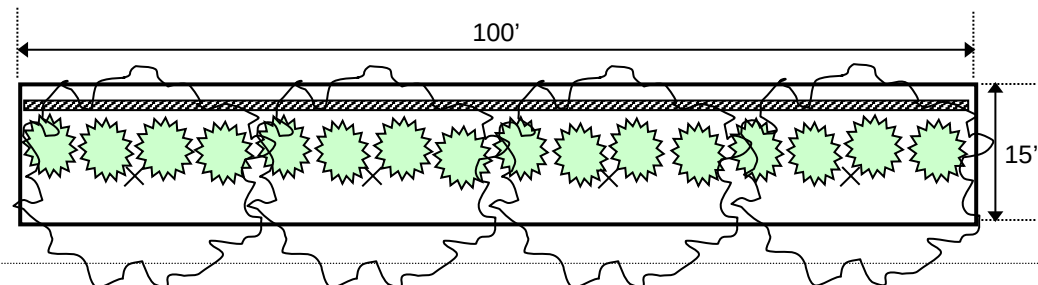
b) 8 trees (12' o.c.) & **24 shrubs** (4' o.c. single row; 8' o.c. two rows)



c) 48 shrubs (4' o.c. two rows; 6' o.c. three rows; or combine large and small)

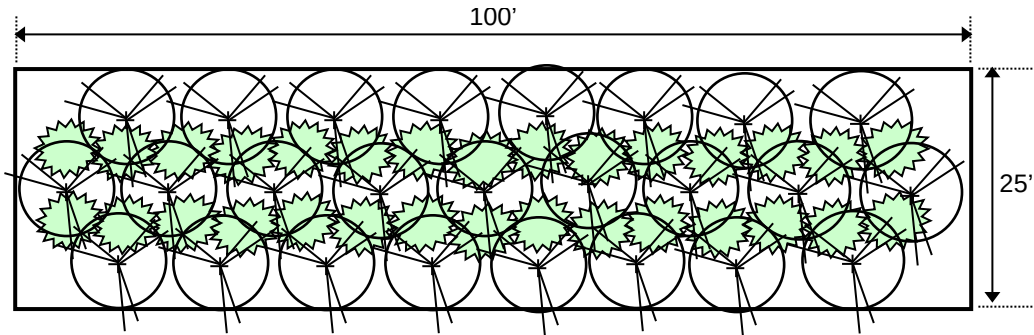


d) 6' fence & 20 shrubs or trees (5' o.c. single row; 8' o.c. single row, staggered; or a combination)

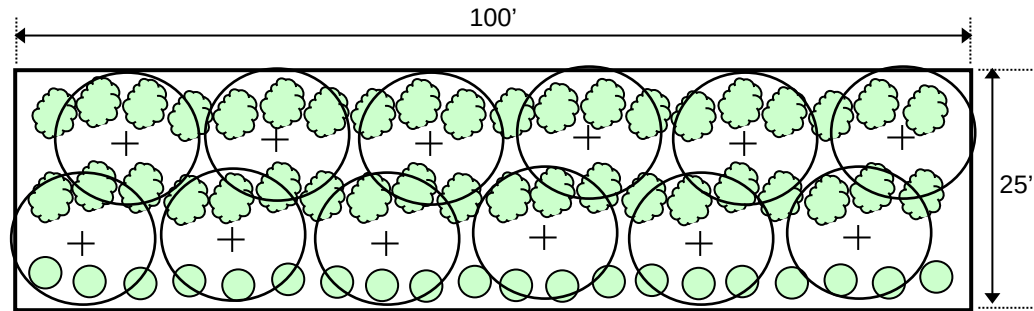


Bufferyard 4 Options (Opaque Screen)

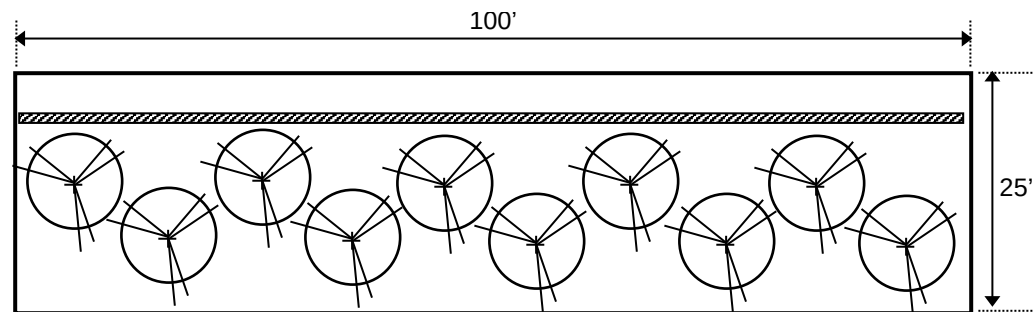
a) 25 trees (12' o.c. three rows) & **30 shrubs** (6' o.c. two rows)



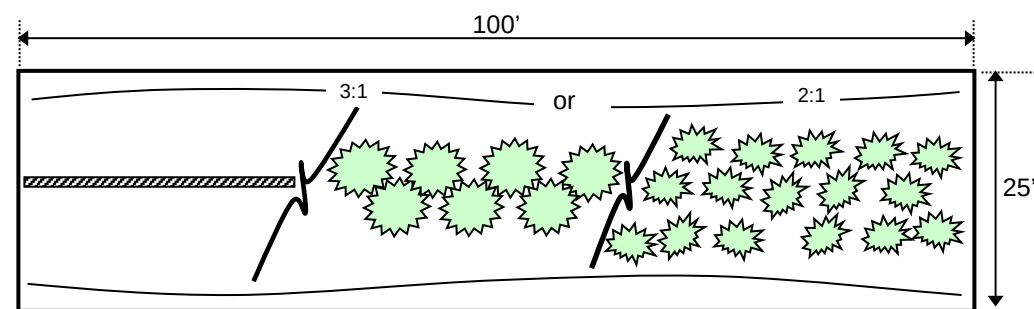
b) 12 trees (17' o.c. two rows) & **60 shrubs** (5' o.c. three rows)



c) 8' fence & 10 trees or shrubs (10' o.c. single row, staggered; 20' o.c. two rows)

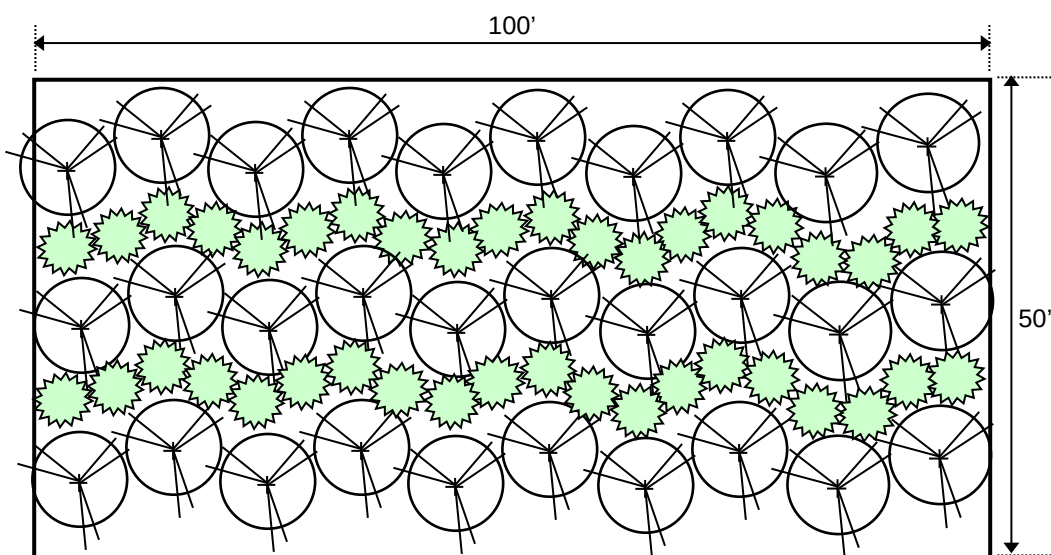


d) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)

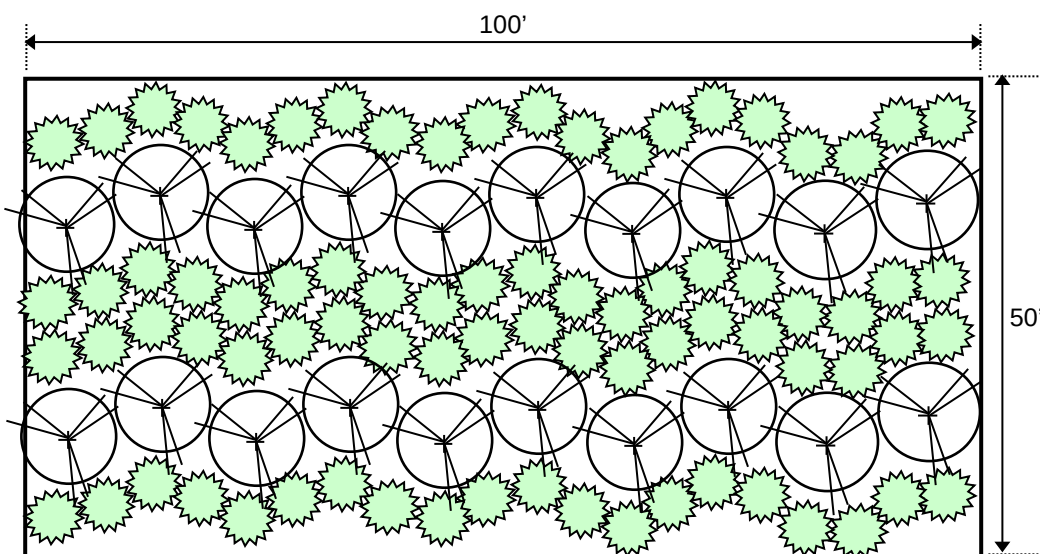


Bufferyard 5A Options
(Opaque Screen)

a) 30 trees (10' o.c. three rows) & **40 shrubs** (5' o.c. two rows)

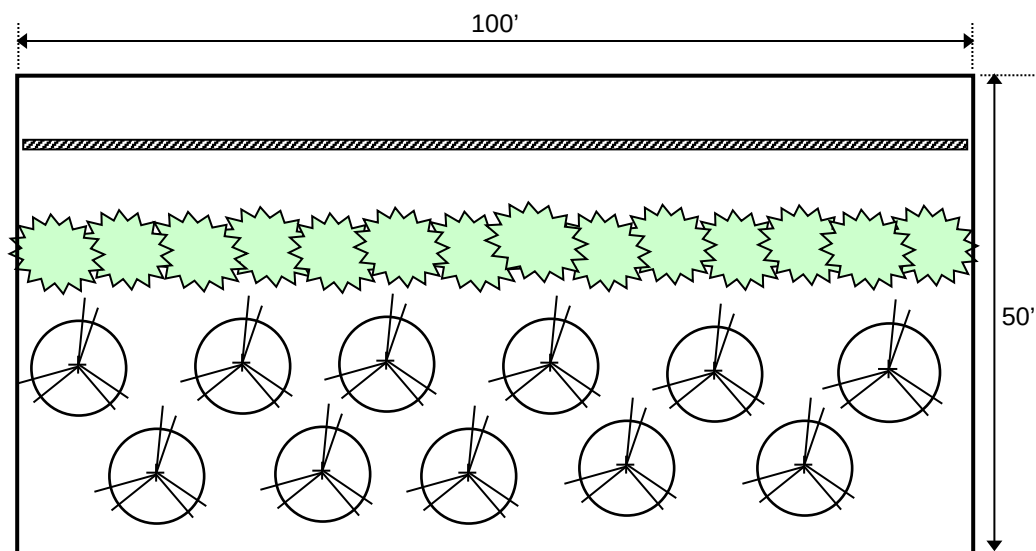


b) 20 trees (10' o.c. two rows) & **80 shrubs** (5' o.c. four rows)

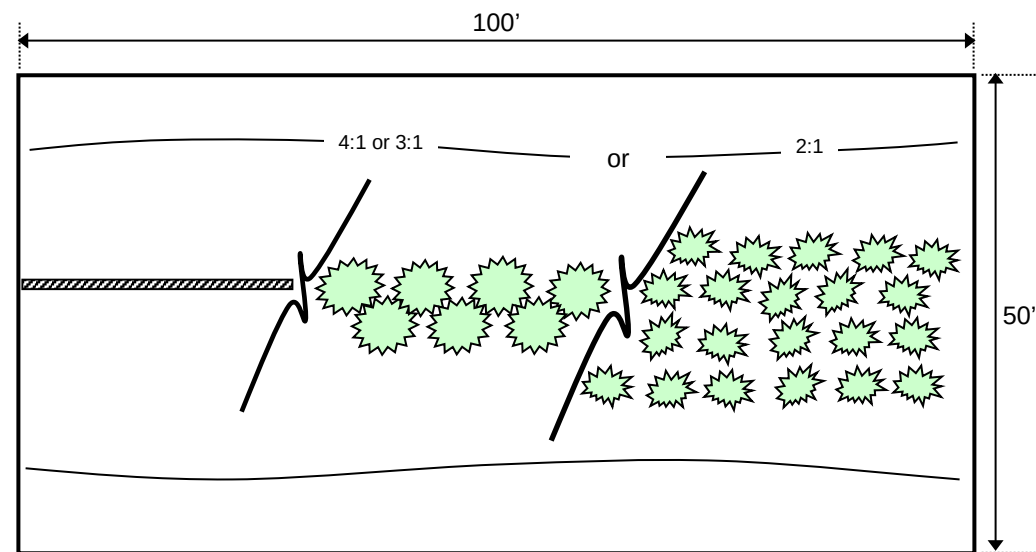


Bufferyard 5A Options (Opaque Screen)

c) 8' fence & 25 trees or shrubs (or a combination)

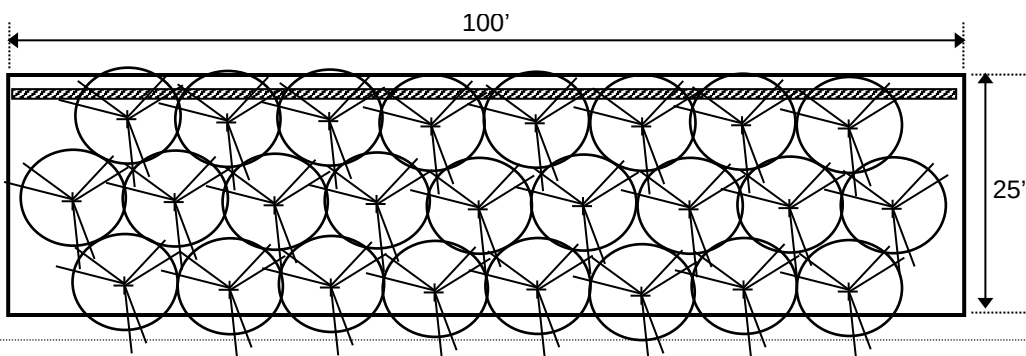


d) Any Berm option 4:1, 3:1, or 2:1 (With stabilization vegetation)

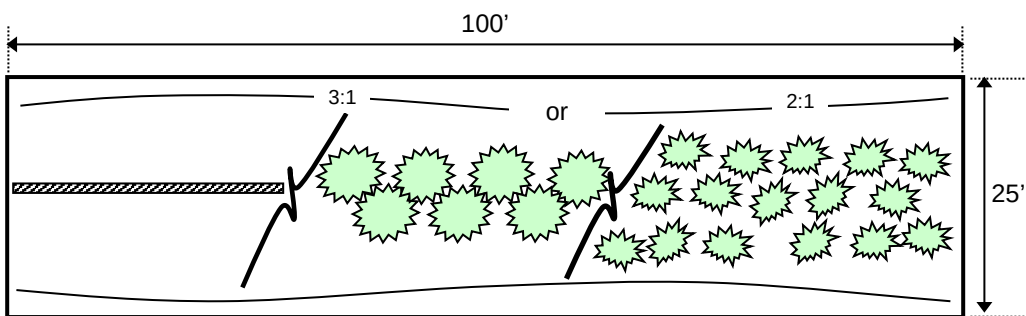


Bufferyard 5B Options (Opaque Screen)

a) 6' wall & 25 trees or shrubs (10' o.c. three rows, staggered)

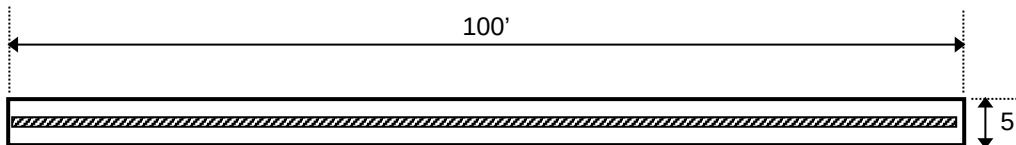


b) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)



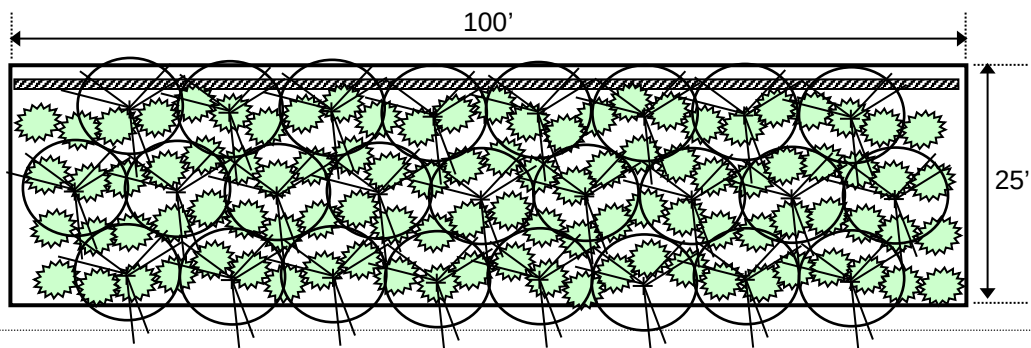
Bufferyard 5C Option (Opaque Screen)

a) 8' wall

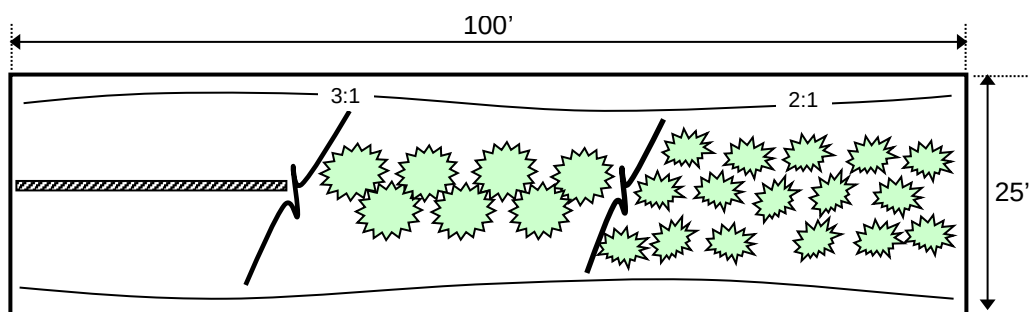


Bufferyard 6A Options (Opaque Screen)

a) 6' wall & 25 trees (10' o.c. three rows, staggered) **& 100 shrubs** (4' o.c. four rows)

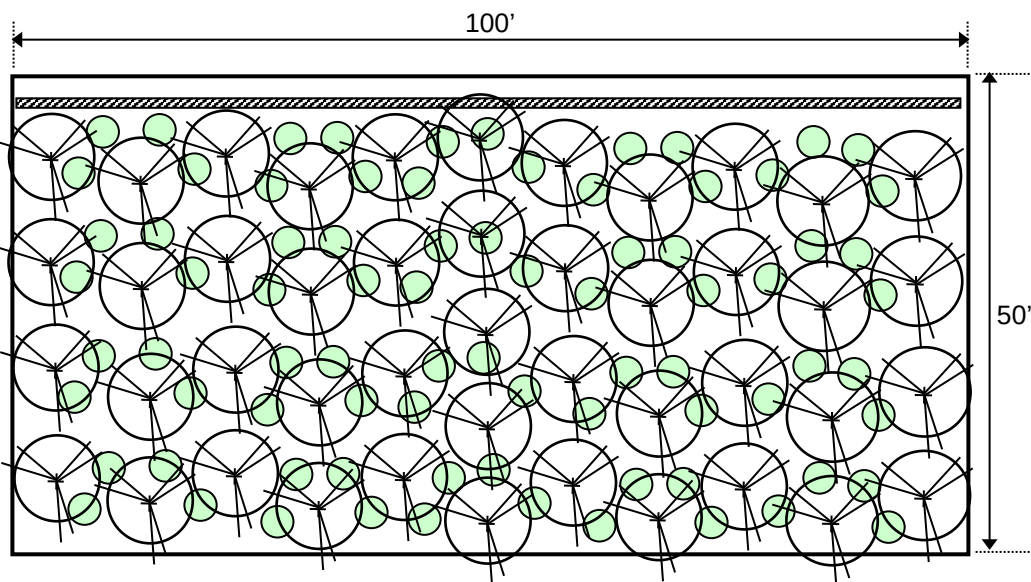


b) 3:1 Berm (4' Height) or 2:1 Berm (6' Height with stabilization vegetation)

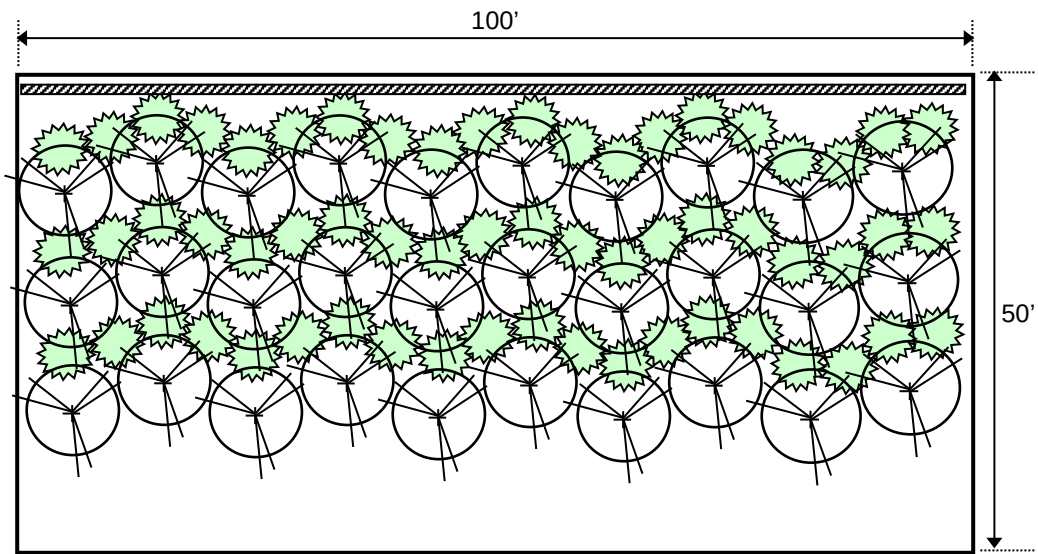


Bufferyard 6B Options (Opaque Screen)

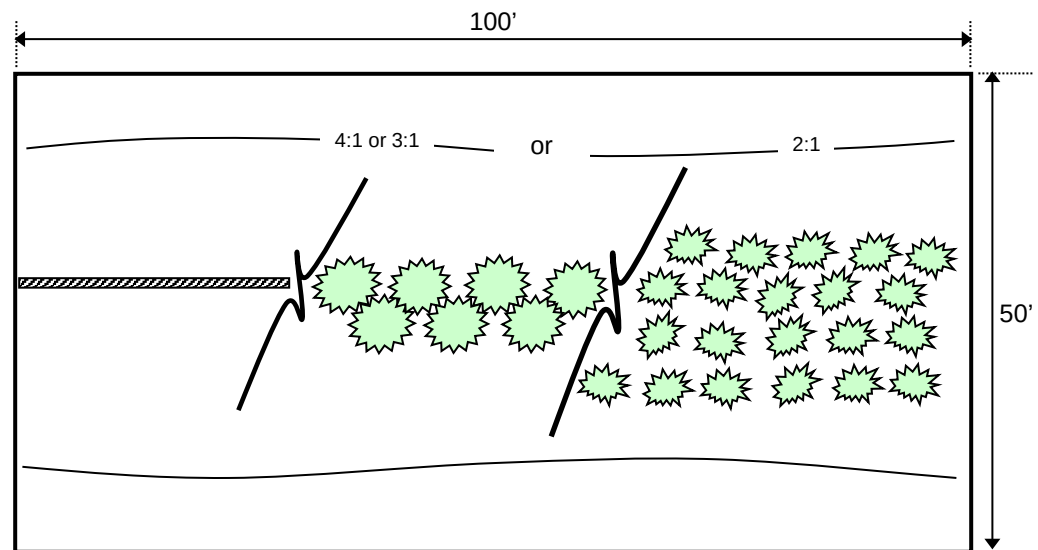
a) 8' fence & 45 trees (9' o.c. four rows) **& 80 shrubs** (5' o.c. four rows, staggered)

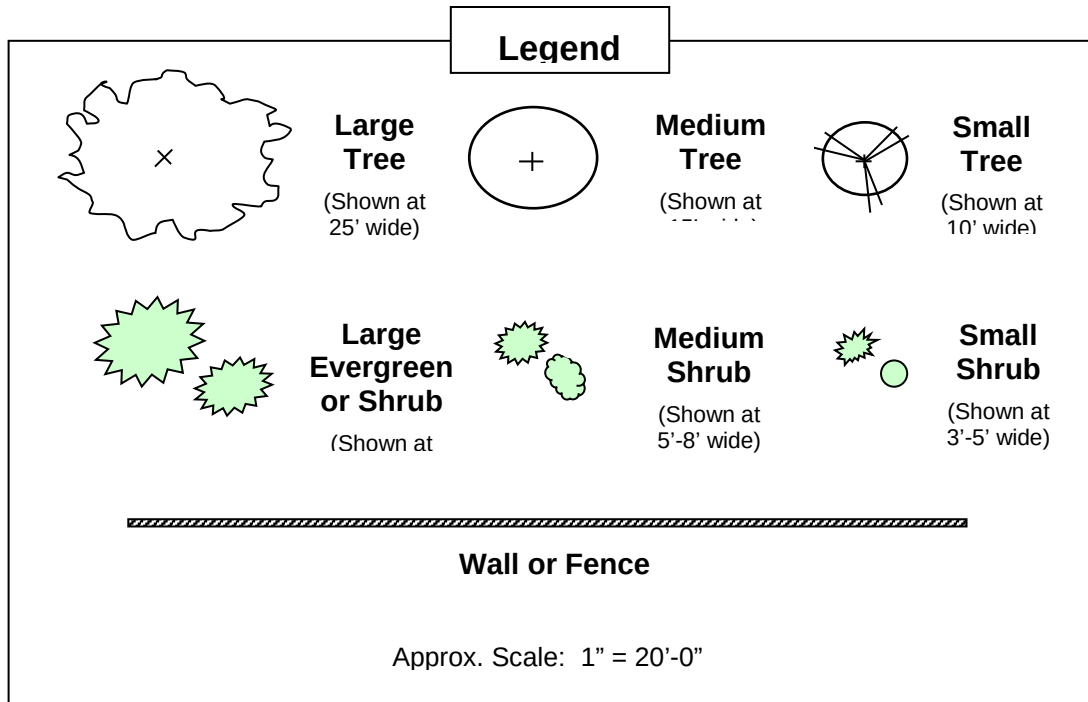


b) 30 trees (10' o.c. three rows) & **120 shrubs** (5' o.c. six rows)



c) Any Berm option 4:1, 3:1, or 2:1 (With stabilization vegetation)





See Table 5 for Suggested Landscape Plants.

Table 5 Suggested Landscape Plants						
Plant Name Or Variety Name	Approximate Mature Height	Width	Growth Rate	Screening Capacity	Maintenance Level	Evergreen or Deciduous
Large Trees or Evergreens						
Leyland Cypress	70'	12'	Fast	Good	Low	Evergreen
Loblolly Pine	70'	25'	Fast	Good	Low	Evergreen
Maple, Red	40'-60'	35'-40'	Med-Fast	Good	Low	Deciduous
Maple, Sugar	70'	45'	Med-Fast	Good	Low	Deciduous
Oak, Pin	70'	50'	Fast	Good	Low	Deciduous
Oak, Red	65'	65'	Fast	Good	Low	Deciduous
Oak, Sawtooth	40'	30'	Fast	Good	Low	Deciduous
Oak, Water	70'	45'	Med-Fast	Good	Low	Deciduous
Oak, Willow	50'	35'	Medium	Good	Low	Deciduous
Red Cedar	50'	20'	Medium	Excellent	Low	Deciduous
River Birch	70'	40'	Fast	Good	Low	Deciduous
Southern Magnolia	70'	40'	Slow-Med	Excellent	Low	Evergreen
White Pine	70'	40'	Fast	Good	Low	Evergreen
Medium Trees or Evergreens						
Cherry Laurel	25'	20'	Fast	Good	Low	Deciduous
Flowering Dogwood	30'	30'	Slow-Med	Good	Medium	Deciduous
Holly, Nellie Stevens	25'	15'	Fast	Excellent	Low	Evergreen
Japanese Cherry 'Kwanzan'	35'	35'	Med-Fast	Good	Low	Deciduous
Small Trees or Evergreens						
Anise	20'	15'	Medium	Excellent	Low	Evergreen
Crape Myrtle	20'	30'	Fast	Good	Low	Deciduous
Fortune's Tea Olive	20'	15'	Slow	Excellent	Low	Evergreen
Holly, Chinese 'Burford'	20'	15'	Fast	Excellent	Low	Evergreen
Holly, Emily Bruner	20'	15'	Fast	Excellent	Low	Evergreen
Ligustrum Japonica	10'	8'	Fast	Excellent	Low	Evergreen
Torulosa Juniper 'Hollywood'	15'	10'	Fast	Good	Low	Evergreen

Section 2.02-3 Landscaping

1. Purpose

The purpose of landscaping is to improve the appearance of vehicular use areas and development abutting public rights-of-way; to protect, preserve, and promote the aesthetic appeal, scenic beauty, character and value of land in the County; to promote public health and safety through the reduction of noise pollution, storm water runoff, air pollution, visual pollution, and artificial light glare.

2. Definition

Landscaping is a type of open space permanently devoted and maintained for the growing of shrubbery, grass, other plants and trees.

3. Where Required

No proposed commercial, institutional, industrial or other non-residential use shall hereafter be established and subsequently used unless landscaping is provided in accord with the provisions of this Section. Expansions shall meet the minimum requirements of the expansion area only. Landscaping is not required for existing uses.

4. Landscaping Plan

A landscaping plan is required and the developer is responsible for meeting the landscaping requirements of this Ordinance.

5. Landscaping Requirements

Required landscaping shall be provided as follows:

- (1) Along the outer perimeter of a lot or parcel, where required by the bufferyard provisions of this Article to buffer and separate incompatible land uses. The amount specified shall be as prescribed by Section 2.02-2.
- (2) There is no landscaping requirement for sites needing fewer than 20 parking spaces. Landscaped areas shall be provided for any open vehicular use area containing 20 or more parking spaces, or fraction thereof. Landscaped areas shall be located in such a manner as to divide and break up the expanse of paving and at strategic points, but shall contain not less than one canopy tree per 20 parking spaces, or fraction thereof. This will allow for clustering of trees. In no case shall a parking space be located more than 100 feet from the trunk of a canopy tree. Elsewhere, landscaped areas shall be designated to soften and compliment the building site.

6. Landscaped Areas

- (1) All landscaped areas in or adjacent to parking areas shall be protected from vehicular damage by a raised concrete curb or an equivalent barrier of six (6) inches in height. The barrier need not be continuous.
- (2) Interior landscaped areas containing canopy trees must have a minimum area of eight (8) feet by eight (8) feet in size.
- (3) Landscaped areas adjacent to parking spaces shall be landscaped so that no plant material greater than 12 inches in height is located within two feet of the curb or other protective barrier. (Plant material greater than 12 inches in height would be damaged by the automobile bumper overhang or by doors swinging open over the landscaped areas.)

7. Required Maintenance

The maintenance of required landscaped areas shall be the responsibility of the property owner. All such areas shall be properly maintained so as to assure their survival and aesthetic value.

Section 2.02-4 Common Open Space

1. Purpose

The purpose of this section is to ensure adequate open space for high density residential development; to integrate recreation, landscaping, greenery and/or natural areas into such projects;

to promote the health and safety of residents of such projects; and to compensate for the loss of open space inherent in single-family residential projects.

2. Definition

Common open space is land and/or water bodies used for recreation, amenity or buffer; it shall be freely accessible to all residents and property owners of a development, where required by this Ordinance. Open space shall not be occupied by buildings, structures, roads, or parking, other than those in conjunction with the use of the open space. Nor shall it include the yards or lots of residential dwelling units required to meet minimum lot area or parking area requirements.

3. Common Open Space Plan

Proposed uses/projects required by this Ordinance to have common open space shall be accompanied by an open space or landscaping plan as part of the application. The plan shall:

- (a) Show natural areas of undisturbed vegetation or areas replanted with vegetation construction. Woodlands and wetlands are specific types of natural areas.
- (b) Designate the type of open space, which will be provided.
- (c) Specify the manner in which common open space shall be perpetuated, maintained and administered.

4. Types of Common Open Space and Required Maintenance

The types of common open space which may be provided to satisfy the requirements of this Ordinance together with the maintenance required for each are as follows:

- (a) Maintenance is limited to removal of litter, dead trees, plant materials, and brush. Natural watercourses are to be maintained as free flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain levels.
- (b) Recreational areas are designed for specific active recreational uses such as tot lots, tennis courts, swimming pools, ballfields, and similar uses.
- (c) Greenways are linear green belts linking residential areas with other open space areas. These greenways may contain bicycle paths, footpaths, and bridle paths. Connecting greenways between residences and recreational areas are encouraged.
- (d) Landscaped areas, lawns and required buffer areas, including creative landscaped areas with gravel and tile, so long as the tile does not occupy more than two percent of the required open space. Lawns, with or without trees and shrubs, shall be watered regularly to ensure survival and mowed regularly to ensure neatness.

5. Preservation of Open Space

Land designated as open space may not be separately sold, subdivided or developed. Open space areas shall be maintained so that their use and enjoyment as open space are not diminished or destroyed. Open space areas may be owned, preserved and maintained as required by this section by any of the following mechanisms or combinations thereof:

- (a) Dedication and acceptance by the County.
- (b) Common ownership of the open space by a homeowner's association, which assumes full responsibility for its maintenance.
- (c) Deed-restricted, private ownership which shall prevent development and/or subsequent subdivision of the open space land and provide the maintenance.

In the event that any private owner of open space fails to maintain same, the County may in accordance with the Open Space Plan and following reasonable notice, demand that deficiency of maintenance be corrected, and enter the open space to maintain same. The cost of such maintenance shall be charged to those persons having the primary responsibility for maintenance of the open space.

Section 2.02-5 Off-Street Parking and Loading

1. Purpose

The purposes of this Section are to ensure adequate provision of on-site parking and loading space, to improve traffic circulation and minimize vehicular and pedestrian conflicts, to reduce the expense of paving, and to promote the aesthetic appeal of parking lots.

2. Land to Provide Parking

Required off-street parking must be provided on the same lot or parcel as the principal use for which it is required; however, street separation is permissible.

3. Numerical Requirements, Off-Street Parking

When any new development is commenced or when any existing development is enlarged by 10% or more, or the use changed, provision shall be made for off-street vehicular parking facilities on the same lot in accordance with the standards of this Section.

Off-street parking provided to comply with the provisions of this Section shall not be reduced below the requirements herein.

Table 6 Off-Street Parking Requirements	
Use	Required Off-Street Parking Spaces
Amusement-Coin Operated, Video Arcades, etc.	6.0 per 1,000 sq. ft. of GFA
Animal Shelter & Pounds	1.0 per 1,000 sq. ft. of GFA
Antique Store	1.0 per 350 sq. ft. of GFA
Apartment Development	1.5 per dwelling unit <u>plus</u> 1.0 per every 5 units for visitor parking
Apparel & Accessory Stores	1.0 per 350 sq. ft. of GFA
Aquarium	2.0 per 1,000 sq. ft. of GFA
Attached Multi-Plex Dwelling Projects	See Apartment Development, Condominium Development, or Townhouse Development
Automotive, Repair & Services	1.0 per 300 sq. ft. of GFA <u>plus</u> 1.0 per 5,000 sq. ft. of gross land area
Automotive/Recreational Vehicle/Boat Dealers	2.0 per 1,000 sq. ft. of GFA <u>plus</u> 1.0 per every 20 vehicle display spaces
Barber/Beauty Shops/Tattoo Facilities	1.0 per each employee <u>plus</u> 2.0 per chair
Bed & Breakfast Inns	1.0 per guestroom <u>plus</u> 1.0 per each employee
Billard/Pool Halls	1.0 per 200 sq. ft. of GFA
Book Stores	1.0 per 350 sq. ft. of GFA
Bowling Centers	5.0 per lane
Broadcasting & Telecommunications	1.0 per 500 sq. ft. of GFA
Business Services	1.0 per 350 sq. ft. of GFA
Camera & Photography Supply	1.0 per 350 sq. ft. of GFA
Campgrounds, RV Parks	1.5 per RV / campsite or dwelling unit <u>plus</u> 1.0 per employee
Car Washes	Mechanical: 1.0 per every 2 employees <u>plus</u> 1.0 per manager / owner <u>plus</u> stacking spaces equal to 5 times the maximum capacity of auto washing unit. Self-Service: Stacking spaces equal to 5 times the maximum capacity.
Cemeteries	None
Churches	1.0 per every 4 seats in the main assembly room
Clubhouses – Development Specific	1.0 per 350 sq. ft. of GFA
Communication Tower Antenna	None
Condominium Development	2.0 per dwelling unit
Correctional Institution	1.0 per each employee on largest shift <u>plus</u> 1.0 per 25 inmates
Crematories	1.0 per 500 sq. ft. of GFA
Day Care Services (Nursery School)	1.0 per 300 sq. ft. of GFA with designated drop-off & stacking.
Depository Institutions, Banks	5 stacking spaces per drive-in window <u>plus</u> 1.0 per each employee on largest shift <u>plus</u> 1.0 per 300 sq. ft. of GFA
Drug Stores	1.0 per 350 sq. ft. of GFA

Dwelling, Single-Family & Duplex, Two-Family	2.0 per dwelling unit
Fairs, Carnivals	By individual review
Fire Departments, EMS	4.0 per bay
Fireworks	1.0 per 350 sq. ft. of GFA
Flea Markets	1.5 per stall
Florists	1.0 per 350 sq. ft. of GFA
Fuel Dealers	1.0 per 500 sq. ft. of GFA
Funeral Chapels (except crematories)	5 spaces <u>plus</u> 1.0 per every 2 seats in the main assembly room
Furniture, Home Furnishings	1.0 per 350 sq. ft. of GFA
Gasoline Service Stations-Full Service	1.0 per each employee on largest shift <u>plus</u> 3 for each service rack or car wash
Gasoline Service Stations-Self Service	1.0 per 600 sq. ft. of GFA
Gift, Novelty & Souvenir Shops	1.0 per 350 sq. ft. of GFA
Golf, Driving Range-only	1.0 per tee <u>plus</u> 1.0 per each employee on largest shift
Golf, Miniature, Putt-Putt	1.0 per hole <u>plus</u> 1.0 per each employee on largest shift
Golf, Par 3-only	2.0 per hole <u>plus</u> 1.0 per each employee on largest shift
Government, Executive, Legislative, General	1.0 per 350 sq. ft. of GFA
Gravestones, Monuments	1.0 per each employee
Grocery Store-Convenience, (i.e.7-11)	1.0 per 100 sq. ft. of GFA
Grocery Store-Supermarket	1.0 per 350 sq. ft. of GFA
Hardware Stores	1.0 per 350 sq. ft. of GFA
Health Services-Urgent Care (No beds)	1.0 per 150 sq. ft. of GFA
Health, Home Care Services	1.0 per 500 sq. ft. of GFA
Hobby, Toy & Game Shops	1.0 per 350 sq. ft. of GFA
Holdings, Investment Companies	1.0 per 350 sq. ft. of GFA
Hospitals, Institutions-Medical (Beds)	1.0 per each bed <u>plus</u> 6.0 per 1000 s.f. of office & administrative area
Hotels, Rooming Houses, Lodging, Motels	1.1 per room or suite <u>plus</u> 1.0 per every 3 patrons of maximum capacity of each meeting/banquet room <u>plus</u> 50% of spaces otherwise required for accessory uses (i.e. restaurants, lounges, etc.)
Industry-Heavy, Publishing, Manufacturing, Distributing	1.0 per company vehicle left on premises <u>plus</u> 1.0 per each employee on largest shift
Industry-Light	2.0 per every 3 employees
Jewelry Shops	1.0 per 350 sq. ft. of GFA
Junk Yards, Salvage Yards	1.0 per each employee PLUS 1.0 per business vehicle <u>plus</u> 1.0 per 350 sq. ft. GFA
Laundries/Dry-cleaning-Coin Operated	1.0 per 150 sq. ft. of GFA
Laundry, Cleaning & Garment Services	1.0 per 500 sq. ft. of GFA
Lawn & Garden Equipment & Supply Stores	1.0 per 350 sq. ft. of GFA
Libraries	1.0 per 350 sq. ft. of GFA <u>plus</u> 1.0 per each employee on largest shift
Liquor Stores	1.0 per 350 sq. ft. of GFA
Manufactured Home Parks	2.0 per dwelling unit
Marina/Marina with Landing	3.0 per every 4 slips <u>plus</u> 10% of spaces large enough for cars with boat trailers
Medical & Dental Laboratories	1.0 per 500 sq. ft. of GFA
Merchandise Stores (General)	1.0 per 350 sq. ft. of GFA
Mining	2.0 per every 3 employees
Mixed-Use Projects/Mixed Use Projects – Residential Only	Calculate by breaking down uses per this Table
Mobile Home Dealers	1.0 per every 10 mobile homes on display <u>plus</u> 1.0 per 300 sq. ft. of office space with a minimum of 5 spaces
Monasteries, Convents	1.0 per every 6 residents <u>plus</u> 1.0 per each employee <u>plus</u> 1.0 per every 5 chapel seats (if possible)
Motor Freight Transport	1.0 per each employee on largest shift <u>plus</u> 1.0 per truck parked on site
Motorcycle Dealers	1.0 per 600 sq. ft. of GFA
Multi-Family	See Attached Multi-Plex Dwelling Projects

Museums, Art Galleries	1.0 per 350 sq. ft. of GFA
Night-Club, Cocktail Lounge, Tavern, Disco, Bar	1.0 per every 3 seating accommodations <u>plus</u> 1.0 per every 2 employees on largest shift or 1.0 per 100 sq. ft. of GFA, whichever requires the greatest number of spaces
Nursing & Personal Care Facilities	1.0 per every 5 patient beds <u>plus</u> 1.0 per each employee on largest shift
Office Administrative/Professional Services	1.0 per 350 sq. ft. of GFA
Offices & Clinics of Physicians	1.0 per 150 sq. ft. of GFA
Paint, Glass & Wallpaper	1.0 per 350 sq. ft. of GFA
Parcel Delivery Services	1.0 per 250 sq. ft. of GFA
Parks & Playgrounds, Public/Non-Athletic	1% of land area
Patio Homes	2.0 per dwelling unit
Pawn Shops	1.0 per 350 sq. ft. of GFA
Photographic Studios, Portraits	1.0 per 350 sq. ft. of GFA
Physical Fitness Facilities	1.0 per 300 sq. ft. of GFA
Produce Stand	1.0 per 350 sq. ft. of GFA
Racetracks	1.0 per every 4 seats provided
Racquetball/Handball	1.0 per 200 sq. ft. of GFA
Refuse Systems, Sanitary Landfills, Dumps	See Waste Management Facilities(Section 3.17)
Rehabilitation, Vocational Services	1.0 per 350 sq. ft. of GFA
Residential Care, Congregate Care, Assisted Living	1.0 per 500 sq. ft. of GFA
Restaurant/Food Service-with inside or outside seating	1.0 per every 3 seats-including dining & drinking areas <u>plus</u> 2.0 for every 3 employees on largest shift
Restaurant/Food Service- Drive-through only	1.0 per 150 sq. ft. of GFA <u>plus</u> area for 8 stacking spaces for the first drive-in window & 6 stacking spaces for the additional drive-in window
Rifle/Shooting Range-Outdoor	1.0 per target area <u>plus</u> 1.0 per each employee
Scrap Metal Processor	1 per 40,000 square feet of gross land area (inside screened area) not to exceed 12 spaces + 1 per employee + 1 per company vehicle.
School, College, University	5.0 per classroom <u>plus</u> 10 administrative spaces
Schools, Elementary, Secondary	2.0 per classroom <u>plus</u> 5 administrative spaces
Schools, Fine Art, Music, Dance, Vocal	1.0 per 200 sq. ft. of GFA
Schools, High Schools	5.0 per classroom <u>plus</u> 10 administrative spaces
Schools, Vocational, Commercial, Trade	5.0 per classroom <u>plus</u> 10 administrative spaces
Shopping Centers	1.0 per 250 sq. ft. of GFA
Skating/Ice Rink	1.0 per 200 sq. ft. of GFA or individual review
Sporting Goods & Bicycle Shops	1.0 per 350 sq. ft. of GFA
Stables, Horseback Riding, Boarding, etc.	1.0 per 200 sq. ft. of GFA or individual review
Stadium, Arena, Athletic Field	By individual review
Swimming Pool – Public	2.0 per 100 sq. ft. of water surface area
Swimming Pool – Development Specific	1.0 per 100 sq. ft. of water surface area
Tax Return Preparation Services	1.0 per 350 sq. ft. of GFA
Taxation, Finance, Monetary-Public	1.0 per 350 sq. ft. of GFA
Tennis Club	2.0 per court <u>plus</u> 1.0 per 200 sq. ft. of clubhouse floor area in excess of 1,000 sq. ft.
Tennis Courts	2.0 per court
Terminal, Truck	1.0 per 250 sq. ft. of floor area devoted to office space <u>plus</u> 2.0 per company vehicle operated from premises
Theaters-Indoor	1.0 per every 4 seats provided
Theaters-Outdoor	1.0 per every 5 patrons at maximum capacity, or per individual review
Townhouse Development	2.0 per each unit
Transportation Services	1.0 per 500 sq. ft. of GFA
Transportation, Air	1.0 per 250 sq. ft. of GFA
Transportation, Bus	1.0 per 250 sq. ft. of GFA
Travel Agency	1.0 per 350 sq. ft. of GFA
Truck Stops	1.0 per 600 sq. ft. of GFA

Veterinary Services	1.0 per 250 sq. ft. of GFA
Video Tape Rental	1.0 per 250 sq. ft. of GFA
Warehousing	1.0 per 10,000 sq. ft. or minimum of 5 spaces
Warehouses-Mini	1.0 per on-site employee with a minimum of 3 spaces
Waste Management Facility(Section 3.17)	1.0 per each employee <u>plus</u> 1.0 per business vehicle <u>plus</u> 1.0 per 350 sq. ft. of office space
SPECIAL LAND USES (unique land uses)	The minimum number of parking spaces required for a use not specifically mentioned in this section shall be determined by Planning Department staff.

3. Numerical Requirements, Off-Street Loading

All uses shall provide off-street loading space sufficient for their requirements. Such space shall be arranged so that no vehicle being loaded or unloaded in connection with normal operations shall stand in or project into a public street, walk or alley.

4. Design Standards

Required off-street parking shall be designed so that all movement onto a public street shall be in a forward motion, and meet the following standards:

(a) Parking Dimensions

Parking stalls shall be not less than nine (9) feet by 18 feet, except that a maximum of 30 percent of the total number of stalls may be 8.5 feet by 18 feet. However, the dimensions of all parallel parking stalls shall be not less than eight (8) feet by 22 feet. Minimum isle width shall be as follows:

90 degree parking	24 feet
60 degree parking	18 feet
45 degree parking	13 feet
30 degree parking	11 feet

(b) Parking Construction

- (1) Parking lots with 20 or more spaces shall be surfaced with asphalt, concrete, porous asphalt, porous concrete, or brick pavers. However, expansive impervious surface parking lots shall be avoided. In their design, parking lots shall be broken down into sections as appropriate for the type and size of development, and shall be separated by landscaped dividing strips, berms and similar devices.
- (2) Parking lots intended to provide for off-street parking shall be improved with a minimum 6-inch stabilized aggregate base course and a minimum 1½-inch asphalt or concrete surface course or equivalent. A Professional Engineer may design, and submit for approval, an alternate paving design of at least equivalent durability. However, the surface course must be of the materials found in (1).
- (3) For parking provided in excess of the spaces required by Table 6, porous brick pavers or cellular confinement systems that use grassing should be used.
- (4) Parking areas for Rural Event Venues, including rural wedding venues, agritourism facilities and natural/passive park facilities, regardless of the number of spaces required, may be surfaced with grass or gravel, in lieu of the surfaces listed above.

(c) Drainage

Parking lots shall be designed so as not to drain into or across public sidewalks or on adjacent property, except into a natural watercourse or a drainage easement. In developed areas where this condition may be impossible to meet, the County may exempt the developer from this requirement, provided that adequate provision is made for drainage.

(d) Separation from Walkways and Streets

Off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys, and required yards and buffer areas by a wall, fence, curbing, or other protective device approved by the Planning Department staff.

(e) Entrances and Exits

Landscaping, curbing or other approved barriers shall be provided along boundaries to control entrance and exit of vehicles or pedestrians. All off-street parking areas shall be designed so that all movement onto a public street is in a forward motion. Entrance and exit driveways to public streets and alleys in the vicinity of street intersections must be located at least forty (40) feet, measured along the curb line, from the intersection of the nearest curb line.

(f) Marking

Parking lots with 20 or more spaces shall be marked by painted lines, curbs or other means to indicate individual spaces. Signs or markers, as approved, shall be used as necessary to ensure efficient traffic operation of the lot.

(g) Lighting

Adequate lighting shall be provided if off-street parking spaces are to be used at night. Equipment for lighting parking facilities shall be arranged so that light does not interfere with traffic or adjoining residential areas.

5. Maintenance

All off-street parking areas shall be maintained in a clean, orderly, dust-free, and weed-free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles or equipment, except for service and auto repair stations.

6. Parking Space for the Physically Handicapped

When off-street parking is required for any building or use, except for residential dwellings with fewer than 20 units, parking for the handicapped shall be included when calculating the overall parking requirements for such building or use, based on the following formula:

<u>Number of Required Spaces</u>	<u>Number of Spaces Reserved for Handicapped Persons</u>
Up to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
Over 500	2% of total required

Parking spaces for the physically handicapped shall measure 12 feet by 18 feet or 8 feet in width, with an adjacent access isle 8 feet in width, and shall be located as close as possible to ramps, walkways, and entrances. Parking spaces should be located so that physically handicapped persons are not compelled to wheel or walk behind parked cars to reach entrances, ramps and walkways. (Refer to Appendix E-1)

7. Stacking Lanes for Drive Through Facilities

Each drive through facility shall provide stacking lanes long enough to accommodate drive through traffic and ensure that on-site circulation will not interfere with traffic movement on adjacent streets.

8. Joint Use of Off-Street Parking Lots

Up to 50 percent of the parking spaces required for (1) theaters, public auditoriums, bowling alleys, dance halls, clubs, churches and religious institutions may be provided and used jointly by (2) financial institutions, offices, retail stores, repair shops, service establishments, and similar uses not normally open, used, or operated during the same hours as those listed in (1); provided however, that written agreement assuring their retention for such purposes shall be properly drawn and

executed by the parties concerned, approved as to form and content by the County Attorney, and shall be filed with the application for a building permit.

9. Approval of Parking and Off-Street Loading Plans and Layouts

Designs and plans for areas to be used for off-street parking and off-street loading shall be subject to approval by the Planning Department staff, who may withhold a permit or take other action if the layout of either would create avoidable safety or traffic congestion problems, pending acceptable modification of the layout, or appeal to the Board of Zoning Appeals.

Section 2.02-6 Multiple Buildings on a Lot

Except for single-family, detached residential dwellings, including manufactured/mobile homes (as defined in Section 3.03-1), there is no limit on the number of principal buildings or structures which may be built or located on a lot or parcel; provided all applicable requirements of this Ordinance shall be met.

Two single-family, detached residential dwellings, including manufactured/mobile homes (as defined in Section 3.03-1), or any combination of two such dwellings may be established on a single lot or parcel; provided the dimensional requirements on Table 3 shall be met for both dwellings as if they were established on separate lots, and so arranged to ensure public street access, building setback and lot conformance with Section 2.05-4 in the event the property upon which the dwellings are located is subsequently subdivided for sale or transfer. For the purposes of this section, 25-foot flag lots shall not be allowed. The minimum public street frontage required for each dwelling is fifty (50) feet.

Multiple dwelling units are prohibited on lots located on roads built in accordance with the Private Street Design Section 2.05-3 or lots located on a Road of any lesser standard.

Single family dwellings may be located on non-residential parcels provided all applicable requirements of this ordinance are met.

Section 2.02-7 Access to Property/Curb Cuts for Non-Residential Uses

All Commercial/Industrial developments must take access from a paved State, County or Municipally maintained road.

Section 2.03 Land Development in Flood Hazard Areas

All development must conform to the Spartanburg County Flood Damage Prevention Ordinance, Ordinance # 0-04-01, adopted January 12, 2004.

Section 2.04 Land Development in the Vicinity of the Spartanburg Downtown Memorial Airport

Section 2.04-1 Purpose

The purpose of this Section is to protect the dual interests of the airport and neighboring land uses, and to:

- (1) Protect and promote the general health, safety, economy, and welfare of the airport environs;
- (2) Prevent the impairment and promote the utility and safety of the airport;
- (3) Promote land use compatibility between the airport and surrounding development;
- (4) Protect the character and stability of existing land uses in the vicinity of the airport; and
- (5) Enhance environmental conditions in the areas affected by airport operations.

Section 2.04-2 Applicability

This Section shall apply to all areas, referred to as zones, within an established Airport Environ District shown on the Airport District Map for the Spartanburg Downtown Memorial Airport, which map is

hereby adopted and declared to be a part of this Ordinance and is on file in the County Planning Department.

Section 2.04-3 Airport Zones Defined

There are hereby created four Airport Environ Zones, defined as follows:

Zone 1

Zone 1 is defined by those areas exposed to an annual average noise level between 60 and 65 decibels as measured utilizing A-weighted day-night sound levels (Ldn) methodology.

Zones 2 and 3

Zones 2 and 3 are defined as being exposed to an annual average noise level in excess of 65, but not more than 75 decibels as measured utilizing A-weighted day-night sound level (Ldn) methodology.

Zone 4

Zone 4 is defined as being exposed to an annual average noise level in excess of 75 decibels as measured utilizing A-weighted day-night sound level (Ldn) methodology.

Section 2.04-4 Prohibited Uses

Prohibited uses within any of the four zones include any use which would:

- (1) Create electrical interference with navigational signals or radio communication between the airport and aircraft;
- (2) Diminish the ability of pilots to distinguish between airport lights and other lights;
- (3) Result in glare in the eyes of pilots using the airport;
- (4) Impair visibility in the vicinity of the airport; and create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft using the airport.

Section 2.04-5 Use Restrictions

Table 8 establishes the types of land uses which are compatible within and which may be permitted in each zone, based upon its respective tolerance for noise.

Future development within each zone shall be governed by Table 8, which assigns use compatibility by zone, based on the following:

- (1) No New Development: A clear incompatibility exists between future development and unavoidable aircraft noise.
- (2) Noise Restrictions Applicable: Potential incompatibility exists due to noise exposure from proximity to a runway which can be avoided if certain noise attenuation restrictions are met, as required by this section.
 - a. To ensure compatibility with adjacent land uses, Manufactured Home Parks will be allowed where the Park is over 45 acres and contiguous to a municipality.
- (3) No Use Restrictions: A clear compatibility exists between the proposed land use and airport.

Section 2.04-6 Noise Restrictions

Noise restrictions shall apply within the zones identified by Table 8.

Where permitted within such zones, residential dwellings and portions of buildings where the public will be received, shall be structurally designed and constructed to achieve an outdoor to indoor Peak Noise Level Reduction (NLR) of at least 30 Db (decibels). All other permitted uses and structures shall be exempt from this Section.

Normal construction can be expected to provide an NLR of 20 Db, thus the actual required reduction is only 10 Db. Lowering the NLR shall be achieved through incorporation into the design and

construction of all proposed uses, sound insulation materials and methods for improving acoustic insulation performance.

A description of such methods and materials shall accompany all building applications for uses affected by this Section and shall be subject to approval by the County prior to the issuance of a building permit.

Table 8				
Land Use Compatibility Performance Standards				
Land Uses	Compatible Land Use Zones			
	Zone 4 Ldn>75	Zone 3 Ldn 70-75	Zone 2 Ldn 65-70	Zone 1 Ldn <65
RESIDENTIAL Low density (less than 1 DUA)*				
RESIDENTIAL Medium density (1-4 DUA)				
RESIDENTIAL High density (5 or more DUA)				
MANUFACTURED HOMES Single lots or parks #				
COMMERCIAL General retail				
COMMERCIAL Airport related				
COMMERCIAL Highway related				
SERVICES Professional and personal				
RECREATIONAL Indoor and cultural activities				
INSTITUTIONAL Schools, churches, hospitals, nursing home				
INSTITUTIONAL Governmental				
RECREATIONAL (<2 acres) Playgrounds, neighborhood parks				
RECREATIONAL (>2 acres) Community and regional parks				
RECREATIONAL Golf courses, riding stables, water recreation				
RECREATIONAL Spectator sports, outdoor assembly				
WHOLESALE Warehouses, transportation, freight				
INDUSTRIAL Light and heavy				
AGRICULTURAL (except livestock) Crops, forestry				
OPEN SPACE USES Utilities, quarries, cemeteries, vacant land				
*DUA = dwelling units per acre; # Allowed in limited circumstances (see Sec. 2.04-5(2)(a))				

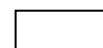
No New Development



Noise Restrictions Applicable



No Restrictions



Section 2.04-7 Lighting Regulations

No use, subdivision, or project in the Airport District shall have outdoor lighting or illumination arranged and/or operated in such a manner as to be misleading or pose a danger to aircraft operations.

Section 2.04-8 Regulations Applicable to Existing Structures

The owner of any existing structure or vegetation that is currently penetrating any airport zone surface shall permit the installation, operation, and maintenance thereon of whatever markers and lights deemed necessary by the Federal Aviation Administration, or the South Carolina Aeronautics Commission to indicate to the operators of aircraft in the vicinity of an airport the presence of an airport obstruction. These markers and lights shall be installed, operated, and maintained at the expense of the Airport Operator.

However, the regulations prescribed in this Section shall not be construed to require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of an existing use. Nothing contained herein shall require any change in the construction, alternation, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.

Section 2.04-9 Variances

Any person desiring to erect or increase the height or size of any structure not in accordance with the regulations prescribed in this Section may apply for a variance from such regulations to the Board of Zoning Appeals (the Board), in accord with the provisions of Article 1. The Application for a variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace.

Additionally, no application for a variance to the requirements of this Ordinance may be considered by the Board unless a copy of the application has been furnished to the Airport Operator for advice as to the aeronautical effects of the variance. If the Airport Operator does not respond to the application within 15 days after receipt, the Board may act on its own to grant or deny the application for a variance.

Any permit or variance granted, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, may be so conditioned as to require the owner of the structure in question to install, operate, and maintain at the owner's expense, such markings and lights as may be deemed necessary by the Federal Aviation Administration, the South Carolina Aeronautics Commission, and the Airport Operator.

ARTICLE 3 CONDITIONAL USE REGULATIONS

The regulations contained in this Article are intended to better the impact and improve the siting of certain uses, buildings, and projects whose characteristics could adversely affect surrounding property and environmental conditions. For purposes of this Ordinance, these uses are classified as Conditional Uses. Standards and criteria over and above those set forth elsewhere in this Ordinance are imposed herein on all such conditional uses, listed below, to enhance land use compatibility.

Reference	Section
Patio and Zero Lot Line Housing Projects	3.01
Attached Multi-Plex Dwelling Projects	3.02
Manufactured Homes	3.03
Manufactured Home Parks	3.04
Accessory Apartments	3.05
Home Occupations	3.06
Auction Barns and Auction Houses.....	3.07
Commercial Kennels, and Certain Agricultural Uses	3.08
Mining Operations	3.09
Motor Speedway or Testing Tracks	3.10
Outdoor Gun or Skeet Range	3.11
Sexually Oriented Businesses	3.12
Camps & Recreational Vehicle Parks	3.13
Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals.....	3.14
Off-Site Hazardous Chemical Storage	3.15
Coin Operated Amusements, Cash Payouts	3.16
Waste Management Facilities	3.17
Communication Towers & Antennas	3.18
Junk and Salvage Yards	3.19
Accessory Buildings and Uses	3.20
Temporary Uses	3.21
Nuclear and Hazardous Waste Disposal	3.22
Certain Public Service Uses	3.23
All Other Commercial and Industrial Uses	3.24
Tattoo Facilities.....	3.25
Flea Markets, Swap Meets, and Open-Air Markets.....	3.26
Asphalt Batch Plants	3.27
Scrap Metal Processor	3.28
Mixed-Use Projects/Mixed-Use Projects–Residential Only	3.29

Section 3.01 Patio and Zero Lot Line Housing

Due to the unique design features of patio and zero lot line housing, the following design requirements shall supplement other applicable requirements of this Ordinance and govern the development of such uses.

1. Minimum lot area shall be 4,000 square feet per unit.
2. Where a unit is to be constructed at or on the property line, a five-foot private maintenance easement shall be provided on the adjoining lot.
3. Front yard setbacks shall be as prescribed by Table 3.
4. Direct access of a patio house shall be limited to minor streets. Where a patio home complex fronts on a collector or major street, no more than two access points shall be allowed. No direct access for individual houses shall be permitted on collector or major streets.
5. Projects shall be served by public water and sewer facilities.
6. Projects consisting of twenty-five (25) or more units shall include at least 10 percent of the project site in common open space, in accord with the requirements of Section 2.02-4.

Section 3.02 Attached Multi-Plex Dwelling Projects

The following design requirements shall supplement other applicable requirements of this Ordinance and govern the development of Attached Multi-Plex Dwelling Projects. An Attached Multi-Plex Dwelling Project shall consist of at least one building with three (3) or more attached units on a single parcel of land or two (2) or more buildings each with two (2) attached units on a single parcel of land. Any such development shall be categorized as an apartment development, condominium development, or townhouse development, depending upon ownership arrangements and Building Code requirements.

Below are the requirements that Attached Multi-Plex Dwelling Projects have in common. Specific requirements for each type of Attached Multi-Plex Dwelling Projects type shall be found in separate sections immediately following this section.

1. Density shall not exceed:
 - Eight (8) units per acre on minor streets, minor residential streets, and major residential streets
 - Twelve (12) units per acre on collector streets
 - No maximum on arterial streets
2. Bufferyards shall be as required by Section 2.02-2 for the specific type of project.
3. All telephone and electric service utilities shall be underground in all Attached Multi-Plex Developments where feasible.
4. Setbacks and frontage requirements shall be governed by Table 3 Setbacks and Other Requirements.
5. The current International Building Code requirements shall be adhered to, paying particular attention to the firewall requirements.
6. Due to the differing design and ownership features associated with apartment developments, condominium developments, and townhouse developments the following requirements shall supplement the above requirements:

a. Townhouse Developments

1. Not more than eight (8) townhouse units may be joined together.
2. Projects consisting of twenty-five (25) or more units shall include at least 10 percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.

3. Direct vehicular access of a townhouse shall be limited to minor streets. Where the project fronts a collector or major street, no more than two access points shall be allowed. No direct access for individual units shall be permitted on collector or major streets.

b. Condominium Developments

1. Projects consisting of twenty-five (25) or more units shall include at least 15 percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.
2. The site for a condominium project must be at least one acre in size.
3. Any centralized garbage and refuse pickup and other utility areas shall be enclosed and screened from view by fencing, walls or shrubbery.
4. Direct vehicular access of a condominium shall be limited to minor streets. Where the project fronts a collector or major street, no more than two (2) access points shall be allowed. No direct access for individual units shall be permitted on collector or major streets.

c. Apartment Developments

1. Projects consisting of twenty-five (25) or more units shall include at least fifteen (15) percent of the project site in Common Open Space, in accordance with the requirements of Section 2.02-4 Common Open Space.
2. The site for an apartment project must be at least two (2) acres in size.
3. Garbage and refuse pickup and other multi-family utility areas shall be provided, enclosed and screened from view by fencing, walls or shrubbery.
4. Interior development streets, parking areas, dwelling entranceways and pedestrian walks shall be provided with sufficient illumination to minimize hazards to pedestrians and vehicles utilizing the same. Lighting shall be so arranged as to reflect away from adjoining properties.
5. Off-street parking areas shall not open directly onto a public street, but shall be provided with access drives or other controlled access. Access drives shall not serve as part of a specified parking area and shall be kept clear of parked vehicles. On-street bay parking shall not be permitted on public rights-of-way. For specific parking space requirements see Table 6 - Off-Street Parking Requirements.

Section 3.03 Manufactured Homes

Section 3.03-1 Definitions

For purposes of this Ordinance there are the following types of manufactured homes: Residential Designed Manufactured Homes, Standard Designed Manufactured Homes, and Mobile Homes, the definitions of which are found in Article 6.

Section 3.03-2 Use of Mobile Homes, Manufactured Homes, Travel Trailers, and RVs

No mobile home or manufactured home shall be used for any purpose other than that for which it was designed.

Further, no recreational vehicle or travel trailer shall be used or permitted for permanent residential use. These vehicles are not built in compliance with the HUD Standards or the International Residential Code and, as such, shall not be allowed for permanent residential use.

A recreational vehicle may be set up for a period of up to 90 days within a twelve-month period for the purposes of living on site while building a residence.

Section 3.03-3 Location

Manufactured Homes, Residential Designed, when meeting the requirements of this section and other applicable requirements of this Ordinance shall be permitted anywhere in the unincorporated areas of

Spartanburg County, unless specifically prohibited by deed restrictions, prohibitions contained elsewhere in this Ordinance, or other applicable regulations.

Manufactured Homes, Standard Designed, when meeting the requirements of this section and other applicable requirements of this Ordinance shall be permitted; (1) on existing lots of record as of May 21, 2012; (2) as a second residence on a lot of record with a single-family detached dwelling, in accordance with Section 2.02-6; (3) in a Manufactured Home Park, in accordance with Section 3.04; and (4) in an approved subdivision, accessible by and fronting on a minor public street. While direct access to and frontage on minor, collector or major streets is allowed, in those cases where a corner lot is created (through the planning/construction of a new street), the manufactured or mobile home will front and take access on the internal street.

Mobile Homes, as defined by this Ordinance, shall not be permitted or established within the jurisdiction of this Ordinance. Where in existence at the time of adoption of this Ordinance, such uses may be continued in accordance with the provisions of Section 4.06, Nonconformities, provided such uses are maintained in habitable condition as defined by and subject to the conditions of Section 3.03(5) and 3.03(6). Furthermore, it shall be unlawful for any person, firm, or legal entity to bring into Spartanburg County any manufactured housing or mobile home constructed prior to 1976, unless the manufactured unit can be certified to meet June 1976 HUD Standards for Construction.

Section 3.03-4 Exception

Manufactured Housing structures and mobile homes currently on the tax rolls of Spartanburg County built prior to 1976 may be relocated within Spartanburg County provided they are first inspected by the Building Codes Department and meet this Ordinance's Habitability requirements prior to electrical service being released.

Section 3.03-5 Setup

All manufactured housing shall:

- a. Be installed in accordance with the Manufacturer's Installation Manual. In the absence of such a Manual, the home must be installed in accordance with the requirements of Section 19-425-42 of the South Carolina Manufactured Housing Board Regulations.
- b. Be under-skirted around the entire home with brick, masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation and be tied down per the South Carolina Manufactured Housing Board Regulations.
- c. Have constructed at all egress doors steps and landings conforming to the latest adopted edition of the International Residential Code. These steps and landings must be anchored securely into the ground.
- d. The owner of a mobile home who obtains a replacement mobile home has 30 days from the date of electrical power transfer or 90 days from the issue date of a moving permit, whichever is less, to remove the original mobile home from the property or meet the requirements contained in Table 3 of this Ordinance.
- e. Be provided with a sanitary sewer system approved by DHEC. Evidence of such approval shall accompany each and every permit request to install a manufactured home.
- f. Be served by a separate electric meter. It shall be unlawful for any such home to receive electricity except by use of this separate meter. Any existing home not in compliance with this Section upon the effective date of this Ordinance shall be served by a separate meter within one hundred eighty (180) days of the effective date, or be declared by a code enforcement officer to be in violation of this Ordinance, and processed accordingly as provided for in Section 1.20 Penalties for Violations. It shall be unlawful for any public utility or electrical supplier to connect power to any manufactured home in the absence of an approved permit issued by the appropriate County Official to establish said home.
- g. No Manufactured Home shall have the electrical service installed until porches, steps, tie downs and skirting requirements have been met.
- h. Permit Required for Individual Mobile Homes and Manufactured Homes

No mobile home or manufactured home shall be parked, located or permanently placed on an individual lot, parcel or Manufactured Home Park Space without a manufactured/mobile home

permit being issued by the County's permitting authority in accordance with S.C. Code 1976, § 31-17-320. A permit is also required when ownership is transferred regardless of whether the mobile/manufactured home is relocated. No permit shall be issued except in conformity with the provisions of this Section.

- i. A current Spartanburg County decal shall be displayed on the mobile/manufactured home so as to be clearly visible on the main door or from the street.
- j. The proper address shall be posted on the home so that it is visible from the street as required by the Spartanburg County Road Naming and Property Numbering Ordinance (No. 599) (See County Code, Chapter 62, Article 3.

Section 3.03-6 Habitability

No manufactured home or mobile home built prior to June 15, 1976 shall be permitted, used or occupied nor shall public utilities be extended to or activated in any such home unless and until the home has been inspected and found to be habitable by the Building Official or his designee.

The term "habitable" as used herein means that there is no defect, damage, or deterioration to the home which creates a dangerous or unsafe situation or condition; that the plumbing, heating, and electrical systems are in safe working order; that the walls, floor, and roof are free from any holes, breaks, loose or rotting boards and are structurally sound; and that all exterior doors and windows are in place. Further, the term habitable shall include the provision of the following facilities.

- a. **Sanitary Facilities** – Every manufactured and mobile home shall contain not less than a kitchen sink, lavatory, tub or shower, and a water closet all in good working condition and properly connected to an approved water and sewer system. Every plumbing fixture and water and waste pipe shall be properly installed and free from defects, leaks, and obstructions.
- b. **Hot and Cold Water Supply** – Every manufactured and mobile home shall have connected to the kitchen sink, lavatory, and tub or shower cold and hot running water. All water shall be supplied through an approved distribution system connected to a potable water supply.
- c. **Heating Facilities** – Every manufactured and mobile home shall have heating facilities which are properly installed and maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms and bathrooms. Where a central heating system is not provided, each mobile or manufactured home shall be provided with an alternative system, approved by the Building Official.
- d. **Cooking and Heating Equipment** – All cooking and heating equipment and facilities shall be installed in accordance with Federal Manufactured Home Construction and Safety Standards.
- e. **Smoke Detector** – Every mobile and manufactured home shall be provided with an approved listed smoke detector, installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm.

Section 3.04 Manufactured Home Parks

Section 3.04-1 Purpose

The purpose of this section is to address the unique needs of Manufactured Home Parks, in order that they may be considered a safe and healthy residential option to the residents of Spartanburg County. The County has an interest in maintaining and improving the supply of affordable housing for its citizens.

Section 3.04-2 Compliance with the Definition of a Manufactured Home Park

The following shall be used in determining compliance with the definition of a Manufactured Home Park found in Article 6:

- a. Any manufactured or mobile home on a parcel(s) shall be counted toward the total number of Manufactured Home Park Spaces even if the home is unoccupied, used for storage, or not currently connected to electricity. This count also includes a manufactured/mobile home occupied by the property owner as a legal residence.

- b. Separating the ownership of manufactured/mobile homes or Manufactured Home Park Spaces into two or more legal entities for the purpose of avoiding being defined as a Mobile Home Park is not allowed unless the requirements for a subdivision and the dimensional requirements of Table 3 can be met. If the manufactured/mobile homes or Manufactured Home Park Spaces are adjacent or across the street from each other and their management is not clearly handled as separate entities, then they shall be considered part of a single Manufactured Home Park.
- c. All such “parks” in Spartanburg County, new or pre-existing this ordinance, will be subject to requirements for licensing and inspection found in Section 3.04-5 and shall register with Spartanburg County within one year of May 21, 2012.

Section 3.04-3 Site Plan for New or Expanding Manufactured Home Parks

The establishment or expansion, and operation of a Manufactured Home Park shall be shown on a site plan professionally-drawn by an engineer or surveyor, shall comply with the design and development standards contained in this ordinance, and shall include the following information:

1. General: A required development plat or park plan at a scale of not less than 1"=20 feet or not more than 1"=100 feet shall contain the following information:
 - Proposed name of Manufactured Home Park;
 - North arrow, graphic scale, and written scale;
 - Name of record owner(s), developer(s), and surveyor(s) or engineer;
 - A vicinity map, for the purpose of locating the proposed park; and
 - Correct Assessor's Office Parcel Identification Number(s).
2. Existing Site Data
 - a. Total tract boundaries of the park, and a statement of total acreage of the property;
 - b. All existing rights-of-way, easements, sewer lines, fire hydrants, utility transmission lines, storm drainage ditches, water courses, buildings, and all other significant man-made or natural features within the proposed park;
 - c. All existing streets on or abutting the park, including names, right-of-way widths, pavement widths and approximate grades; and
 - d. The 100-Year Flood Boundary from the most current Spartanburg County FEMA Flood Insurance Rate Maps (FIRM).
3. Proposed Site Data
 - Street rights-of-way, pavement widths, grades, and street names;
 - Preliminary plans for sanitary sewerage disposal systems, storm sewers, water, electricity and gas lines, showing connections to existing systems or proposals for developing new systems, storm sewer profiles, cross-sections and sizes;
 - Other easements and rights-of-way, including location, dimensions, and purposes;
 - Topographic maps with a contour interval of 5 feet;
 - Contour changes to be made by grading, if any;
 - Location, size, and number of proposed and existing Manufactured Home Park Space and all existing and proposed automobile parking spaces for each unit in accordance with Section 3.04 (12), as well as any planned common parking areas;
 - Location, width, and plantings of bufferyard areas;
 - Centerline profile for any newly constructed interior streets;
 - Location of common open space, if required by Section 3.04-5 (14);
 - Location of all solid waste containers and screening of containers, as required by Section 3.04-4 (15); and
 - E-911 addresses as required by Ordinance No. 599. (See also County Code Chapter 62, Article 3.) and as approved by the County E911/Addressing staff.

Section 3.04-4 Requirements for the Establishment or Expansion and Operation of Manufactured Home Parks

All required site improvements shall be installed prior to placement of units in the park. The establishment or expansion, and operation of a Manufactured Home Park shall comply with the following design and development standards:

1. Adherence to Existing Regulations and Guidelines

All Manufactured Home Parks must adhere to any applicable Federal, State, or County regulations or guidelines, including but not limited to DHEC Regulations, the Property Addressing and Road Naming Ordinance (See Code Chapter 62, Article 3.), and the Assessor's Mobile Home Registration process.

2. Water and Sewer

All proposed Manufactured Home Parks shall be served by public water and sewer systems or other community systems, plans of which shall be approved by DHEC.

3. Lighting

A Manufactured Home Park containing five (5) or more homes must be lighted at night with electric overhead vapor lamps no more than four hundred (400) feet apart along interior streets and within amenity and common areas. Lighting shall be arranged so as to reflect away from adjoining properties, unless such light direction is dictated by safety concerns. Lighting shall use full cut off fixtures which give the property owner maximum directional control of site lighting.

4. Signage, Names

All Manufactured Home Parks containing five (5) or more units must provide a sign of at least six (6) square feet indicating the name of the park.

Park names shall not be the same as or phonetically similar to other park or subdivision names.

5. Streets-Interior

(a) All interior streets shall have a minimum fifty (50) foot right-of-way and be constructed on a prepared soil base that has had all tree stumps and other vegetation removed to a depth of two (2) feet below sub-grade and properly compacted. No permanent parking or structures shall be permitted in the right-of-way.

(b) The paved portion of the street shall be at least 16 feet wide for a park with fewer than 50 homes and 20 feet wide for a park with more than 50 homes. The street must consist of at least 1.5 inches of compacted tar and gravel on a 4-inch compacted stone base or at least 1.5 inches of compacted asphalt surface on 2 inches of compacted asphalt base.

(c) Entrances must either be aligned with opposing exterior streets or there shall be at least 125 feet between the entrance and the existing street measured centerline to centerline.

(d) Projects in excess of one hundred (100) units shall have a second twelve (12) foot exit lane and an entrance lane of sixteen (16) feet. Transition from the entrance/exit lanes to the internal street system shall begin not less than sixty (60) feet from the street right-of-way line at the entrance.

(e) A paved or piped ditch is required along any section of roadway that is in excess of a 5% grade.

(f) All dead-end roadways shall terminate in a "cul-de-sac" with a minimum turning radius of thirty-five (35) feet, exclusive of parking. In lieu of a "cul-de-sac," other methods to achieve vehicular turnaround as set forth in Section 2.05-2 must be provided.

(g) All road names are subject to approval by the Planning and Development Department in accordance with Spartanburg County Ordinance No. 599 - Road Naming and Property Numbering. (See County Code Chapter 62, Article 3.)

(h) To the extent not in conflict with subsection (b) above, construction of all streets shall be in compliance with Spartanburg County Standard Specifications for Construction of Roads. The Spartanburg County Public Works Department, Engineering Division, shall review and approve all street plans.

- (i) A "Letter of Compliance", issued by a registered/licensed engineer, must be submitted, assuring that the construction of the roads and drainage system conforms to this Section.
- (j) In order to expand a Manufactured Home Park by more than 10 Manufactured Home Park Spaces, the main roadway inside the park (leading to the expanded Manufactured Home Park Spaces) must be paved to at least the width of the current driving surface or a minimum of 16 feet, whichever is greater, and a depth of 1½ inches. The number of new Manufactured Home Park Spaces added after July 19, 2004, shall be cumulative.

6. Drainage

The land shall be so graded, paved areas so pitched and storm drains and catch basins so located and sized as to provide rapid run-off of storm waters and avoid undue accumulations of water under the normal range of weather conditions. Drainage and sedimentation plans shall be required in accordance with the Storm Water Management Ordinance of Spartanburg County (No. 09-02). (See County Code Chapter 30, Article IV.)

7. Installation

All proposed homes, including replacements, shall be installed in accordance with the installation requirements of Section 19-425.42 of the South Carolina Manufactured Housing Board Regulations.

8. Numbering

Permanent numbers shall be placed on each mobile or manufactured home and shall be located in accordance with the requirements of the Road Naming and Property Numbering Ordinance No. 599. (See County Code Chapter 62, Article 3).

9. Access

No Manufactured Home Park Space shall have direct access to a public street, but shall instead access an internal driveway system.

10. Density

The maximum density shall not exceed eight (8) manufactured homes or mobile homes per acre with public water and public sewer or as approved by DHEC.

11. Setbacks and Spacing

- a. Spacing between manufactured homes, common buildings (laundry, etc), and accessory buildings shall meet the requirements of Table 3.
- b. The setbacks from exterior streets shall meet the requirements of Table 3.
- c. The setbacks of manufactured homes from interior streets shall be 25 feet from the street centerline.
- d. All building structures and mobile homes shall be setback from the park perimeter as found in Table 3. The requirements of this section may be superseded by the bufferyard requirements since the bufferyard may be wider than the side or rear setback.

12. Parking

Two off-roadway parking spaces shall be provided for each designated Manufactured Home Park Space in accordance with Table 6. Each parking space shall be 9 feet wide and 18 feet long and shall be paved.

Parking on roadways in the Manufactured Home Park is not permitted. Signs shall be posted at sufficient intervals stating such.

13. Bufferyards

Bufferyards shall be provided on the perimeter of the park or court in accordance with the requirements of Section 2.02-2.

14. Common Open Space

Projects consisting of twenty-five (25) or more units, whether a new park or an expansion of an existing park to a total of 25 units or more, shall include at least 15 percent of the total project site

in designated common open space, in accordance with the requirements of Section 2.02-4-Common Open Space. The area shall be suitable for active recreation.

15. Household Waste Removal

In Manufactured Home Parks containing five (5) or more homes, dumpsters shall be easily accessible to the residents for the collection and disposal of refuse. Bulk waste containers shall be provided at an average of at least 1.5 cubic yards for every three (3) manufactured homes. Dumpster sites shall be screened from public rights-of-way. Collection shall be on a weekly basis to ensure that containers do not overflow.

A garbage pickup service may be substituted, but such service must be continuously maintained with at least weekly pick up to ensure that containers do not overflow.

16. No recreational vehicle or travel trailer shall be used or permitted. These vehicles are not built in compliance with the HUD Standards or the International Residential Code and, as such, shall not be allowed.

17. Operational Requirements

All grounds and common buildings located within Manufactured Home Parks are expected to be maintained in a clean, sanitary and safe manner, the Manufactured Home Park Spaces kept clear of refuse, debris and unnecessary clutter, and all refuse shall be stored, collected and disposed of in such a manner as not to create a nuisance, vector attractant, breeding or harborage problem, in accordance with Spartanburg County's Property Maintenance Ordinance and South Carolina DHEC Regulation 61.40.

Section 3.04-5 Licensing, Inspection, and Annual Fees for Manufactured Home Parks

1. Licensing and Fees

- a. A license shall be required to open and/or operate a Manufactured Home Park and shall be subject to annual renewal due June 15th. The license fee shall be set per the Fee Schedule adopted by Resolution of County Council.
- b. or an owner who fails to renew the annual license by the deadline, there shall be a monthly late fee equal to half of the above base rate.
- c. n owner may not renew a license if his/her park is not in compliance with this ordinance. Late fees will continue to accrue for those parks that are found to be non-compliant.
- d. Late fees will continue to accrue for an owner who is in compliance and does not pay the annual license fee.
- e. In either case (c. or d.), failure to comply with the requirements of this ordinance may result in the revocation of license to operate a park. After the annual fee is 60 days delinquent, the owner shall be considered in violation of this ordinance for the lapsed license.
- f. A Manufactured Home Park license is not transferrable.
- g. Successors or assigns of a Manufactured Home Park may be responsible for payment of any delinquent or due fees, penalties or fines.

2. Annual Inspection; Violation

- a. All Manufactured Home Parks registered in Spartanburg County shall undergo an annual inspection to ensure compliance with this Ordinance.
- b. When a violation is determined, notice shall be given in writing by the code enforcement officer, together with an established time period within which the violation must be corrected.
- c. A park owner whose park, upon annual inspection, has been found to be in violation shall not be allowed to renew the license, and no mobile/manufactured home moving permits will be issued for said park until violations are resolved.
- d. A Manufactured Home Park license may be revoked by the Spartanburg County Environmental Enforcement Department Director for a violation of this Ordinance or other applicable regulations governing the operation of such uses based on inspection of the premises.

3. Suspension of License

- a. Failure to correct the violation(s) within the established time period will result in license suspension. When a license is suspended, all occupants of the park shall be notified of the suspension and be given notice to vacate the park within ninety (90) days.
- b. Any person who has received notice that his license will be suspended unless certain conditions or practices at the Manufactured Home Park are corrected, may request and shall be granted a hearing on the matter before County Council by filing a petition with the Planning and Development Department. The petition for such hearing must be filed within 10 calendar days following the day on which delivery of the notice of license suspension was delivered to such person. If no petition is filed within 10 calendar days following the delivery of the notice of license suspension, the license shall be deemed to have been automatically revoked.
- c. A Manufactured Home Park, upon the owner's loss of license, based on violations of this Ordinance shall meet all Unified Land Management Ordinance requirements in order to reopen. Otherwise, the park must be closed and all manufactured/mobile homes disposed of by the park owner.
- d. The provisions of this section can be enforced through appropriate court or legal action.

Section 3.05 Accessory Apartments

A single detached accessory dwelling unit no greater than 1/3 the floor area of the principal dwelling may be permitted, provided all applicable requirements of Table 3 are met and other public agencies have been satisfied.

Section 3.06 Home Occupation

A home occupation, as defined by this Ordinance, shall meet the following requirements.

1. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 50 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
2. The home occupation shall be conducted entirely within the residence, except where the residence is located on two or more acres, in which case, part or all of the occupation may be conducted in an accessory building, provided that a total of no more than 50 percent of the floor area of the residence be used in the conduct of the home and meet all setback requirements of Table 3 for Accessory Uses.
3. No exterior indication of the use shall be evident other than a sign of two (2) square feet or less in size.
4. No more than one (1) person not residing in the residence shall be employed.
5. No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.
6. There is no alteration of the residential character of the building and/or premises.

Section 3.07 Auction Barns and Auction Houses

Auctions Barns and Auction Houses shall be considered land uses incompatible with residential neighborhoods due to the impacts of noise, traffic, and operating hours." As a result, any such use proposed for Spartanburg County shall comply with the following standards:

1. Proposed structures shall take access only on collector and arterial streets. Parking will be required to meet the same requirements as required for places of public assembly, which is one space for each four places of public assembly seats based on maximum capacity.
2. No such use may be located within 500 feet of an individual residential structure or within 500 feet of a platted subdivision of 25 or greater lots.

3. No outside speakers or audible auction activities shall be allowed for any such use.
4. Proposed structures must be fully enclosed and all sales and items displayed for sale must be contained within enclosed buildings.
5. The minimum lot size for any such use shall be Two Acres.
6. Proposed structures shall be located 60 feet from the front Right-of-Way line at which street access is located, 20 feet from the rear property line and 15 feet from the side property lines.
7. Front setback on an arterial street for any such use shall be 50 feet and the front setback on a collector street shall be 40 feet.
8. There shall be a minimum distance of 20 feet between any and all proposed structures.
9. The maximum height of any proposed structures shall be 35 feet plus 1 per 1 additional side and rear yard setback.
10. Any such use is classified as High Intensity Commercial for establishment of required buffer yards.

Section 3.08 Commercial Kennels, Veterinary Services, and Certain Agricultural Uses and Crematories

The above referenced uses shall be located no closer than 1,000 feet from any residential subdivision, multi-family development, or mobile home park of 25 units or more and 500 feet to any adjacent residence other than the principal residence. In addition to the distance separation, a Class 3 bufferyard shall be required for referenced uses requiring the 1,000 feet of separation and a Class 4 bufferyard for referenced uses requiring the 500 feet of separation. Incineration of animals or animal refuse shall be permitted under the above conditions. Veterinary clinics that have no outdoor pens or incineration are exempt from this regulation. Commercial kennels and certain agricultural uses, including stockyards, livestock auction houses, livestock feed lots, poultry houses, pig parlors, dairy barns, packing houses, farm processing operations (e.g., cider mills, dairies, poultry, or meat processing) with six (6) or more employees, and other agricultural support uses that create sustained noise and odor problems, shall be located and operated in accord with DHEC regulations.

Section 3.09 Mining Operations

A. Mining

Due to the land disturbing nature of these operations, the potential of air and water pollution, and noise and vibration from explosives, mining operations shall be subject to the following conditions:

1. A mining permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The mining permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Mining Operations shall not be located on Minor Streets
3. Any and all applicable requirements specified by Table 3b shall be met.

B. Sand Dredging

Sand Dredging Operations with less than 5 acres of Disturbed Mining Area shall be allowed on Minor Streets under the following conditions. Sand Dredging Operations with 5 or more acres of disturbance shall follow the Mining provisions in Section 3.09(A). Disturbed Mining Area shall be defined as the area of land or water from which sand has been removed, or upon which sand has been deposited, including the location of on-site processing, stockpiles, settling ponds, and mining vehicle operation.

1. A mining permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The mining permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Any and all applicable requirements specified by Table 3b must be met.
3. Any Sand Dredging Operations, or expansion of an existing operation creating a new access, shall submit a proposed Access Plan and must receive approval of the plan. This Plan shall show the anticipated routing of all truck traffic to the nearest Collector Street.
 - a. Sand Dredging Operations are only allowed access by roads that are paved.
 - b. Any roads or bridges to be utilized must be capable of handling the additional traffic and weight loads of the mining activity. If they are not, they must be improved as needed to handle that traffic and weight. However, the County nor State are required to make and/or fund the improvements. The entity responsible for the maintenance of such facilities will be asked to review the condition of any roads and bridges contained in the Access Plan and report that information along with required improvements to the Planning and Development Department. This entity may be the South Carolina Department of Transportation, the Spartanburg County Department of Public Works, or a municipality.

Section 3.10 Motor Speedways or Testing Tracks

Land uses of this Section are declared to be incompatible with residential development, and many nonresidential uses. To enhance compatibility, the following development standards shall apply:

Dirt tracks shall not be permitted.

Bufferyards specified for heavy industrial uses shall be required around all sides of the facility.

A Storm Water Management and Sediment Reduction Plan, as defined in the County's Storm Water Ordinance # 497 [This ordinance has been replaced by the Storm Water Management Ordinance of Spartanburg County (No. O-09-02). (See also County Code Chapter 30, Article IV.)]

Section 3.11 Outdoor Gun or Skeet Range

Due to potential danger and noise generated by these uses, the following criteria shall govern their location in Spartanburg County.

The use shall be oriented away from inhabited areas.

The site upon which the use is proposed shall be suitable in size and topography to insure the safety of surrounding residents as determined by the Spartanburg County Planning Department Staff. (Refer to Table 3.)

Section 3.12 Sexually Oriented Businesses

Owing to the potentially deleterious effects as a result of the location or concentration of sexually oriented businesses within the County, such uses in addition to meeting the requirements of Table 3 shall be permitted, operated and regulated in accord with the requirements of Ordinance No. 670, as amended; said Ordinance herein adopted and incorporated in its entirety by reference.

Section 3.13 Camps and Recreational Vehicle Parks (SIC 703)

Camps and recreational vehicles (RV) parks shall comply with the following site and design standards.

1. Exposed surfaces shall be covered or protected with vegetative growth capable of preventing soil erosion.
2. The site shall be developed in a manner that preserves natural features and landscape.
3. The following dimensional requirements shall serve as parameters beyond which development shall not exceed.
4. No site shall be located less than 150 feet from drinking water supply or 300 feet from a comfort station.
5. Maximum density shall not exceed 15 vehicles per acre, with minimum 10-foot separation.
6. Bufferyards shall be as specified by Section 2.02-2.
7. Areas designated for parking and loading or for circulation shall be physically separated from public streets. All one-way drives shall be 12' wide, and two-way drives shall be 20' wide, and shall be located at least 150 feet from any street intersection. All interior streets shall be private and not public, and shall be constructed with a 4" compacted stone travel-way approved by the County Engineer. Street grades shall not exceed 12 percent.
8. Each park site shall be serviced by public water and sewer or other systems approved by DHEC.
9. Durable, watertight, refuse containers, with fly-tight covers sufficient to contain all refuse, shall be provided at each service building and sanitary waste station, or at a central storage area readily accessible and located not more than 300 feet from any camp or picnic site unless provided at the campsite. Refuse containers shall be provided at the rate of eight cubic feet (60 gallons) for each five campsites or the equivalent thereof if containers are provided at individual sites.
10. The site, if located on a corner lot, may access a minor road, when both roads are maintained by the South Carolina Department of Transportation, notwithstanding the limitation in Table 3b that prevents a site from accessing a minor road.

Section 3.14 Bulk Storage and Distribution Facility for Fuel Products and Liquid Asphalt Distribution Terminals

The intent of this section is to manage and regulate the bulk storage, blending, transfer, and distribution of Fuel Products and Liquid asphalt Distribution Terminals. It is not intended to include retail gasoline stations, convenience stores selling gasoline, retail sales of Fuel Products, or businesses who, due to operational requirements, Fuel Products for internal use. Due to considerations for the public health and safety and potential pollution to the environment, such uses being built or expanded shall be permitted in Spartanburg County only under the following conditions. An expansion of a facility includes expansion of tank capacity, new tanks or structures, or adding to the acreage of a site.

1. A site plan shall be prepared by an individual licensed to practice engineering and/or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), right-of-ways and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, tanks, dikes, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, existing water wells, and surface water bodies. The plan shall show all buildings, to include all dwellings, and places of Extensive Group Assembly on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Entrance/exists shall provide a minimum 50-foot turning radius.
4. A storm water runoff and sedimentation plan as defined by the County's Storm Water Ordinance No. O-09-02, as amended, shall be required showing all on-site and off-site drainage. (See also County Code Chapter 30, Article IV.)]
5. Access to any Bulk Storage and distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminal shall be controlled through the use of an 8-foot chain link fences topped with barbed wired that encloses the entire premises in order to prevent unauthorized access.
6. All structures and appurtenances shall be located and constructed to provide adequate safeguards and not constitute a hazard to adjoining and nearby uses and the general public.
7. Fuel Products shall be stored in accordance with the following storage capacity and height limits. However, the spacing and setback requirements in #8 of this Section must also be met.

Tank Type	Maximum Allowed Capacity (In or Adjacent to Heavy Industrial Areas)	Maximum Allowed Capacity (Adjacent to All Other Uses)	Height Limit
Under-ground (UST)	Unlimited	150,000 gallons/acre	Not Applicable
Above Ground (AST)	150,000 gallons/acre	100,000 gallons/acre	35 feet
AST or UST Within 1000 feet of a Fuel Product Pipeline* or within an Existing Bulk Storage and Distribution Facility	Unlimited	Unlimited	65 feet
* Fuel Product Pipeline in existence as of September 16, 2013			

Liquid Asphalt shall be stored in accordance with the following storage capacity and height limits. However, the spacing and setback requirements in #8 of this Section must also be met.

Tank Type	Maximum Allowed Capacity (In or Adjacent to Heavy Industrial Areas)	Maximum Allowed Capacity (Adjacent to All Other Uses)	Height Limit
Under-ground (UST)	Unlimited	150,000 gallons/acre	Not Applicable
Above Ground (AST)	150,000 gallons/acre	100,000 gallons/acre	35 feet

8. Spacing and Setbacks

a. New Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminal.

Tanks or other storage vessels and dikes within a proposed Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Facility shall meet the setbacks and spacing requirements in the following table. The same setbacks that apply to industrial uses shall be used for other buildings and structures on the site. Table 3b requirements also apply.

Bulk Storage and Distribution of Fuel Products or Liquid Asphalt Distribution Terminal Spacing/Setback Requirements	
Property line	200 Feet; 50 Feet if adjacent to another Bulk Storage and Distribution Facility for Fuel Products
All Dwellings and Places of Extensive Group Assembly	1000 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement
These Spacing/Setback Requirements apply to tank cars and tank vehicles, as well as stationary tanks. Please see definition of Bulk Storage and Distribution. Measurements shall be taken from the nearest storage tank, dike, or fuel transfer area to the residential or other listed structure.	

b. Expansion of Existing bulk Storage and Distribution Facility for Fuel Products or liquid Asphalt Distribution Terminal

The expansion or addition of tanks or other storage vessels and dikes within an Existing Bulk Storage and Distribution Facility for Fuel Products or an existing Liquid Asphalt Distribution Terminal shall meet the setbacks and spacing requirements in the following table. The same setbacks that apply to industrial uses shall be used for other buildings and structures on the site. Table 3b requirements also apply.

Bulk Storage and Distribution of Fuel Products Spacing/Setback Requirements for Expansion of Existing Facilities	
Property line	200 Feet; 50 Feet if adjacent to another Bulk Storage and Distribution Facility for Fuel Products
All Dwellings and Places of Extensive Group Assembly	500 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement
These Spacing/Setback Requirements apply to tank cars and tank vehicles, as well as stationary tanks. Please see definition of Bulk Storage and Distribution. Measurements shall be taken from the nearest storage tank, dike, or fuel transfer area to the residential or other listed structure.	

9. The following fire and safety requirements shall be reviewed and approved by the Spartanburg County Fire Marshal's Office prior to the issuance of a Development Permit.
 - a. All storage facilities shall comply with the latest edition of the "Flammable and Combustible Liquids Code, NFPA 30" of the National Fire Protection Association.
 - b. Storage tanks must be protected by either an attached extinguishing system approved by the Fire Marshal or an American Petroleum Institute-approved floating roof.
 - c. Dikes
 - 1) Tanks or groups of tanks shall be diked to prevent the spread of liquid onto other properties, waterways, or drainageways. The volumetric capacity of the diked area shall not be less than 110 percent of the capacity of the largest tank within the diked area.
 - 2) Dikes or retaining walls shall be of earth, steel, concrete or solid masonry designed and constructed to be liquid tight and to withstand a full hydraulic head. Earthen dikes three (3) feet or more in height shall have a flat section at the top not less than two (2) feet in width. The slope shall be consistent with the angle of repose of the material of which the dikes are constructed. Dikes shall be restricted to an average height of not more than six (6) feet above the exterior grade unless means are available for extinguishing a fire in any tank. Dikes enclosing such tanks shall be provided at the top with a flareback section designed to turn back a boil-over wave. A flareback section shall not be required for dikes and walls enclosing approved floating roof tanks.
 - 3) Where provision is made for draining rainwater from diked areas, such drains shall normally be kept closed and shall be so designed that when in use they will not permit flammable liquids to enter natural watercourses, public sewers, or public drains. Where pumps control drainage from the diked area, they shall not be self-starting.
 - d. Onsite access to all storage tanks shall be provided by means of gravel or paved roadways.
 - e. A fire hydrant with sustained water flow rate of at least 1500 gallons per minute must be available on the site and hydrant(s) situated in an area of low risk in case of a fire emergency.
 - f. All Bulk Storage and Distribution Facilities for Fuel Products and Liquid Asphalt Distribution Terminals shall provide to the County in digital format upon obtaining all approvals and prior to the issuance of the County permit: (a) a spill plan; (b) contingency plans for moving product in leaking or damaged tanks to backup tanks, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management. Any revisions shall also be filed with the aforementioned offices.
10. Approvals from Other Agencies
 - a. Any Bulk Storage and Distribution Facility for Fuel Products or Liquid Asphalt Distribution Terminals proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the State Fire Marshal's Office and/or the Compliance and Enforcement Division of the NPDES Permits Administration of DHEC, as applicable, and other state, federal or outside agency that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
 - b. When a land development application from a Bulk Storage and Distribution Facility for Fuel Products or a Liquid Asphalt Distribution Terminal requires a permit or approval from an outside agency and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this Ordinance after obtaining their approval.
 - c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
 - d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.

11. Maintenance

- a. No loose combustible material, empty or full drums or barrels, shall be permitted within the diked area.
 - b. All storage tanks shall be maintained in a leak-proof condition with an adequately painted, rust free exterior surface.
12. Nothing contained herein shall be intended to preempt or abrogate the requirements for a Bulk Storage and Distribution Facility for Fuel Products or a Liquid Asphalt Distribution Terminal to adhere to the requirements of state or federal agencies.

Section 3.15 Off-Site Hazardous Chemical Storage

The purpose of this section is to manage the off-site storage of Hazardous Chemicals. Due to considerations for the public health and safety and potential pollution to the environment, such uses being built or expanded shall be permitted in Spartanburg County only under the following conditions. An expansion of a facility includes expansion of storage capacity, new construction, or adding to the acreage of the site. This Section is not intended to allow for permanent or long-term storage of hazardous chemicals or hazardous chemical waste.

1. A site plan shall be prepared by an individual licensed to practice engineering or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of waste handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, existing water wells, and surface water bodies. The plan shall show all buildings, to include all dwellings and places of Extensive Group Assembly on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Chemicals shall be stored on impermeable flooring so that soils and ground water sources will not be contaminated and the storage shall meet all applicable State and Federal regulations.
4. A Storm Water Management and Sediment Plan, regardless of size, shall be developed as defined in County Ordinance No. O-09-02, as amended, showing all on-site and off-site drainage. (See also County Code, Chapter 30, Article IV.)
5. Access to any Off-Site Hazardous Chemical Storage facility shall be controlled through the use of an 8-foot chain link fence topped with barbed wire that encloses the entire premises in order to prevent unauthorized access.
6. Off-Site Hazardous Chemical Storage Facilities shall meet the following setbacks and spacing requirements, along with applicable requirements found in Table 3b.

Off-Site Hazardous Chemical Storage Spacing/Setback Requirements	
Property line	500 Feet
All Dwellings and Places of Extensive Group Assembly	1000 Feet
Drinking water well in current use	500 Feet
Surface water bodies	100 Feet
Rights-of-way/Easements	Outside ROW/Easement

7. In addition to determining whether the stored chemical(s) trigger the requirements of this Section, the Spartanburg County Fire Marshal's Office shall review and approve the following fire and safety requirements prior to the issuance of a Development Permit.
 - a. A fire hydrant with sustained water flow rate of at least 1500 gallons per minute must be available on the site and hydrant(s) situated in an area of low risk in case of a fire emergency.
 - b. The site shall include an on-site containment area for the Hazardous Chemical so that a leak or spill is contained entirely on the facility's property and thus prevented from entering the surface or subsurface drainage system, man-made or natural, within the County.
 - c. All facilities storing Hazardous Chemicals off-site shall provide to the County in digital format upon obtaining all approvals and prior to the issuance of the County permit: (a) a spill plan; (b) contingency plans for moving product in leaking or damaged tanks or containers to backup vessels, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management. Any revisions shall also be filed with the aforementioned offices.
8. Approvals from Other Agencies
 - a. Any Off-Site Hazardous Chemical Storage Facility proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the State Fire Marshal's Office, the Department of Health and Environmental Control, or other outside agency (Environmental Protection Agency (EPA) and others) that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
 - b. When a land development application from an Off-Site Hazardous Chemical Storage Facility requires state government, federal government or other outside agencies' permit or approval and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this ordinance after obtaining their approval.
 - c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
 - d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.
9. Nothing contained herein shall be intended to preempt or abrogate the requirements for an Off-Site Hazardous Chemical Storage Facility to adhere to the regulations of state or federal agencies.

Section 3.16 Coin Operated Amusement Devices, Cash Payouts

No coin operated amusement device which provides payouts authorized by Section 17-19-60 of the South Carolina Code of Laws shall be operated in a non-permanent structure such as a tent, mobile home, trailer or temporary structure. The provisions of this section shall not apply to any location with machines:

1. licensed before May 30, 1993; or
2. not involving payouts authorized by Section 17-19-60 of the Code of Laws of South Carolina.

Section 3.17 Waste Management Facilities

Legislative Findings of Fact and Policy Intent: All of the provisions and procedures set forth in this ordinance are derived from and based upon County Council's findings of fact in reference to the unique and peculiar attributes of Spartanburg County including its population projections, density and distribution, its highways and feeder roads, terrain, soil, industrial and commercial propensities, water resources, climate and seasonal effects, present and future environmental projections, law enforcement capabilities, property values, public facilities, residential uses, parks and recreational facilities,

churches and commercial uses, affects upon tax revenues, quality of life, and adverse secondary effects. Based upon all those findings, County Council has concluded as a matter of fact that the provisions are necessary and required to avoid or retard the deterioration of quality of life in Spartanburg County and the deterioration of commercial, business and industrial viability in Spartanburg County. All of those findings are the basis for the requirements and governing provisions of this ordinance which is also enacted pursuant to 4-9-25 of the Home Rule Act as necessary for the preservation of health, order and good government in Spartanburg County.

The requirements of this section shall apply to all new waste management facilities and to expansions of all existing waste management facilities as defined herein.

The facilities covered under this section include, but are not limited to, the following:

Solid Waste Landfills (SC Code of Regulations 61-107.19)

<u>New DHEC Classifications</u>	<u>Old Classifications</u>
Class One Landfill	Land Clearing Debris Landfills
Class Two Landfill	Construction and Debris Landfills and Industrial Solid Waste Class I Landfills
Class Three Landfill	Municipal Solid Waste Landfills, Industrial Solid Waste Class II Landfills, and Industrial Solid Waste Class III Landfills

Other Waste Management Facilities covered by this Section:

Composting and Wood Chipping/Shredding Facilities (SC Code R.61- 107.4)
 Infectious Waste Management Facilities (SC Code R.61-105)
 Recovered Materials Processing Facilities
 Recycling Facilities
 Short Term Structural Fills (SC Code R.61-107.19)
 Waste Incinerators
 Waste Processing Facilities
 Waste Transfer Stations

3-17.1 Definitions

For purposes of Section 3.17 the following definitions shall apply:

“Composting and Wood Chipping/Shredding Facility” means a facility that receives yard trash and land-clearing debris and prepares it to be used as mulch, etc. These facilities do not bury waste. DHEC registers these facilities, but does not issue a permit.

“Disposal” means the discharge, deposition, injection, dumping, spilling or placing of any waste into or on any land or water, so that the substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater. Incineration of waste shall be considered a form of disposal for purposes of this Section.

“Facility” means all contiguous land, structures, other appurtenances and improvements on the land used for managing waste. A facility may consist of several management units. Junk and salvage yards shall not be included in this definition.

“Incineration” means the use of controlled flame combustion or other techniques to thermally break down solid, liquid, or gaseous combustible wastes, producing residue that contains little or no combustible materials. For purposes of this ordinance, waste-to-energy facilities, pyrolysis facilities and any form of high temperature-high energy waste management facilities shall be classified as incineration facilities.

“Incinerator” means a facility or device engaged in or used for incineration as defined herein.

“Infectious waste” means any used material which is: generated in the health care community in the diagnosis, treatment, immunization, or care of human beings; generated in embalming, autopsy, or necropsy; generated in research pertaining to the production of biologicals which have been

exposed to human pathogens; and generated in research using human pathogens. This includes discarded articles that may cause puncture or cuts, such as needles, syringes, lancets, or scalpel blades; microbiologicals, such as specimens, cultures, human pathogenic agents, culture dishes, etc.; blood and blood products; pathological waste, including human tissues and bodily fluids; contaminated animal waste; isolation waste; and other waste as set forth in SC Code R.61-105. Infectious Waste does not include those wastes defined by SC DHEC as hazardous waste; radioactive and nuclear wastes; infectious waste generated by a private household; and other such exemption as defined by SC DHEC regulations.

“Infectious Waste Management Facility” means a facility engaged in waste management where the waste is infectious waste. Hospitals, nursing and personal care facilities, dentist offices, medical offices, laboratories, clinics, and medical treatment centers, and other similar patient care facilities are exempt from this definition if the waste generated is collected on a schedule or treated on site whereby the storage does not constitute a nuisance or risk to human health. Mortuaries and tattoo and body piercing facilities shall be similarly exempted.

“Landfill” means an engineered land burial facility for the disposal of waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment.

“Person” means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity

“Processing” means to reduce or alter the volume, biological, chemical, and/or physical characteristics of waste through processes prior to delivery of such waste to a recycling, resource recovery facility or to any waste management facility.

“Processing facility” is any combination of structures, machinery, or devices utilized to reduce or alter the volume, biological, chemical, or physical characteristics of waste through processes (such as baling or shredding) prior to delivery of such waste to a recycling or resource recovery facility or to a waste treatment, storage, or disposal facility, and excludes collection vehicles.

“Recovered material” means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

“Recovered Materials Processing Facility” means a facility engaged in the recycling, storage, processing, resale and/or reuse of recovered materials.

“Recyclable material” means those materials which are capable of being recycled and which would otherwise be processed or disposed of as waste.

“Recycling” means any process by which materials that would otherwise become waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

“Recycling Facility” means any facility engaged in the recycling of recyclable materials.

“Residence” means a structure or part of a structure that has been used as a residence or for which a permit has been issued by the County containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses, apartments, manufactured home parks, dormitories, or fraternity or sorority houses. Residences, for the purpose of this section, shall also include commercial, overnight-stay services such as hotels, motels, or tourist cabins.

“Separation” means the sorting of waste into its various components prior to recycling or disposal.

“Short term structural fill” is restricted temporary land-filling for future beneficial use where hardened concrete, hardened asphaltic concrete, bricks, masonry blocks and land-clearing debris may (under a DHEC permit-by-rule) be disposed of in a area of one (1) acre or less for a period not to exceed twelve (12) months. Such sites must be registered and approved by SCDHEC, but do not require consistency with the Spartanburg County Solid Waste Plan.

“Solid waste” means any garbage, refuse, or sludge from a waste treatment facility, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agriculture

operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

“Storage” means the containment of waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such solid waste; provided, however, that storage in containers by persons of waste resulting from their own activities on their property, leased or rented property, if the waste in such containers is collected on a schedule whereby the storage does not constitute a nuisance or risk to human health, shall not constitute storage. The term does not apply to containers provided by or under the authority of the County for the collection and temporary storage of residentially generated wastes prior to disposal.

“Subdivision, Residential” means an application for a subdivision or a subdivision approved by the County as defined in Article 6 of this Ordinance.

“Transfer station” means a combination of structures, machinery, or devices at a place or facility where waste is taken from collection vehicles and placed in other transportation units, with or without reduction of volume, for movement to another waste management facility.

“Treatment” means any technique designed to change the physical, chemical, and/or biological characteristics or composition of any waste so as to render it safe for transport, amenable to storage, recovery, or recycling, safe for disposal, or reduced in volume or concentration.

“Waste” means any substance or material whether it is in solid, liquid, semi-solid, or contained gaseous form that is defined as a waste by South Carolina Department of Health and Environmental Control regulations or any U.S. EPA regulation. This definition includes, but is not limited to, solid waste and infectious waste. Any recyclable material or recovered material shall be considered a waste until such time as the recyclable material or recovered material has been converted to a product with a viable market. Speculation that a market exists does not constitute viable.

“Waste management” means the systematic control, by any technique, of the storage, treatment, processing, incineration, transfer, recycling, recovery, separation, and/or disposal of waste.

“Waste management facility” means a “facility” engaged in “waste management”. A junk or salvage yard shall not be included in this definition. Convenience centers and drop-off centers are exempt from this definition.

“Waste-to-Energy” means the incineration process whereby waste is converted into thermal energy to generate steam that drives turbines for electricity generation.

To the extent that a term is not defined in the Unified Land Management Ordinance and is defined in the South Carolina Code of Laws or Regulations that definition shall apply. Other terms shall carry their customary and ordinary meaning.

3.17-2 Waste Management Facility Standards

3.17-2.1 General Requirements

All Waste Management Facilities and Sites shall be subject to the following:

1. The Planning and Development Department shall not begin the review of an application for a permit until the applicant has submitted a complete application to the Planning and Development Department, as determined by staff. If staff determines the application to be incomplete, the applicant will be notified in writing of the deficiencies within fourteen calendar days of receipt of the application.
2. All applicants must submit four (4) hard copy sets and one (1) PDF set of the following plans for the specific type of facility being proposed.

- a. Vicinity plan that shows the area within one-half mile of the property boundaries of the facility in terms of: the existing and proposed land uses within that area at the time of permit application; and, residences, public and private water supply wells, known aquifers (Class Two and Class Three Landfills only), surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility. The plan shall be on a scale of not greater than 500 feet per inch unless otherwise approved by the Planning and Development Department.
 - b. Site plan that shows the facility's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of waste handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show property lines, existing wells, and surface water bodies. The plan shall show all buildings, to include residences and schools, on adjacent properties. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
 - c. A full set of storm water plans shall be submitted to the Engineering Division of the Public Works Department.
 - d. If the owner of the site on which the waste management facility is to be placed is not the project applicant, written permission must be obtained from the owner to apply for the project's approval.
3. If a waste management facility land development application requires South Carolina Department of Health and Environmental Control (DHEC) permitting and is "approvable" under this ordinance, the Planning and Development Department will issue a letter to DHEC stating that a land development permit will be issued upon receipt of the DHEC permit so long as the proposed waste management facility still meets the requirements of this ordinance after obtaining approval from DHEC.
 4. All required permits and approvals must be obtained from the DHEC, as applicable, prior to the County issuing a land development permit.
 5. Waste management facility operators shall provide an estimate of daily, weekly, and monthly truck trips broken out by the size, type, and load capacities of vehicles. County staff will examine public road access to the site and make a determination based on the above data and the construction of the road, regardless of functional road classification, regarding the adequacy and safe use of the public road to support projected truck traffic resulting from projects on county roads. If the capacity of the road is found to be inadequate, the project will not be approved. Waste management facilities will not be allowed on minor streets in any case, except for structural fill projects of less than one acre where it is determined that the road is capable of handling anticipated loads.
 6. No Waste Management Facility shall be established within 1000 feet of the following Scenic Corridors: SC Highway 11 (Cherokee Foothills Scenic Highway), SC Highway 9, SC Highway 56, SC Highway 110 (Battleground Road), SC Highway 30 (J Verne Smith Parkway), Interstate 85 and Interstate 26. Waste Management Facilities with outdoor processes or storage shall be prohibited on any Federal Aid Primary Highway unless screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the highway. (SC Code of Laws, Title 57, Chapter 27 Junkyard Control, as amended)
 7. The provisions of Article 2 for Heavy Industrial Uses shall apply to all Waste Management Facilities unless the requirements for certain types of Waste Management Facilities are specified otherwise herein. Table 6 specifies off-street parking for Waste Management Facilities.
 8. Access to any Waste Management Facility shall be controlled through the use of fences, gates, berms, natural barriers, or other means to prevent illegal dumping and unauthorized access as demonstrated by the applicant with the concurrence of staff.

9. Dust, odors, fire hazards, litter and vectors shall be effectively controlled at all waste management facilities so they do not constitute nuisances or hazards.
10. Open burning at any waste management facility shall be prohibited.
11. Setback measurements shall be made from the nearest point of improvement (including any structure, parking, landfill footprint, etc.) on the subject property to the property line of the neighboring use (residence, residential subdivision, school, daycare, church, hospital, public park or airport). Setbacks from drinking water wells, surface water bodies, easements, right of ways, and wetlands shall be measured from the nearest point of improvement on the subject property to the feature itself.

3.17-2.2 Solid Waste Landfills

Landfills shall be subject to the General Requirements for all Waste Management Facilities in addition to the following:

A. Class One Landfills

1. A Class One Landfill shall accept only trees, stumps and wood chips which have not come into contact with petroleum products or hazardous contaminants.
2. The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed the highest adjoining natural grade.
3. All materials and activities shall be screened in such a fashion as not to be visible from off-site.
4. A Class One landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS ONE LANDFILLS Spacing/Setback Requirements	
Property line	50 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	200 feet
Drinking water well	100 feet
Surface water bodies	100 feet
Utilities	50 feet
Rights-of-way	50 feet
Wetlands	Compliance with USACE

5. Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class One Landfill.

B. Class Two Landfills

1. The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed a height of 100 feet from the highest adjoining natural grade.
2. A Class Two Landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS TWO LANDFILLS Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	1000 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	50 feet
Airport *	10,000 (Turbojet) 5,000 (Turboprop)
Wetlands	Compliance with USACE
* Requires landfill owner with a landfill within these distances to demonstrate that the landfill does not pose a bird hazard.	

3. Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class Two Landfill.

C. Class Three Landfills

1. The facility shall be enclosed by an eight-foot chain link fence with evergreen screen with a minimum height not less than eight feet at maturity or a wall structure as illustrated by Section 2.02-2, on all sides visible from streets.
2. The height/gradient of fill materials shall not exceed a 3 to 1 side slope ratio and shall not exceed a height of 100 feet from the highest adjoining natural grade.
3. A Class Three Landfill shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

CLASS THREE LANDFILLS Spacing/Setback Requirements	
Property line	200 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	1000 feet
Drinking water well	500 feet—up gradient 750 feet—side gradient 1000 feet—down gradient
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	50 feet
Airport	10,000 feet (Turbojet) 5,000 feet (Turboprop) 6 miles (New Landfill)
Wetlands	Compliance with USACE

4. Upon DHEC certification of proper closure, a plat showing the boundaries of the disposal area of the closed disposal facility with the type and location of the solid wastes disposed of at the facility shall be submitted to the Spartanburg County Planning Department and recorded in the Spartanburg County Register of Deeds Office. The recorded plat shall state that the land contained herein has been used for a Class Three Landfill.

D. Short-Term Structural Fill

A Short-term Structural Fill is exempt from the vicinity plan and site plan requirements. Instead a plat delineating the fill area, surrounding land uses, wells, water bodies, and easements shall be submitted to the Planning Department.

A notice, along with the above-mentioned plat, shall be recorded in the Register of Deeds Office to put future purchasers on notice that short term structural fill was placed on the site. The notice shall include a list of the specific materials used as fill.

SCDOT right-of-way Structural Fill sites that are directly related to road construction are exempt from these requirements if the fill is within the road right of way.

Structural Fills shall meet the General Requirements for Waste Management Facilities and the following requirements:

- a. The materials utilized for fill must not have been contaminated by hazardous contaminants, petroleum products, or painted with lead-based paint. Structural fill may not provide a sound structural base for building purposes.
- b. A Structural Fill shall meet the following setbacks and spacing requirements.

STRUCTURAL FILL Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	200 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet
Between structural fills on same property	500 feet

3.17-2.3 Other Waste Management Facilities

Except as noted, the following facilities are subject to the General Requirements listed above.

A. Waste Incinerators

A Waste Incinerator shall meet the following setbacks and spacing requirements.

WASTE INCINERATORS Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet

Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

B. Recycling Facilities and Recovered Materials Processing Facilities

All Recycling Facilities and Recovered Materials Processing Facilities as defined in this Article shall be subject to the following requirements.

A Recycling Facility or a Recovered Materials Processing Facility whose operation is totally contained within a building and that does not deal with Hazardous Chemicals as defined in this Ordinance, produce noxious or foul odors, or produce noise in excess of 45 decibels shall be considered under this Ordinance as Industrial Uses.

- 1) Recycling Facilities and Recovered Materials Processing Facilities shall also comply with the provisions of Article 2 to the extent that it does not conflict with this Section.
- 2) All outside storage of material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or pelletized.
- 3) The site shall be maintained free of litter and any other undesirable materials, shall be cleaned of loose debris on a daily basis, and shall be secured from unauthorized entry and removal of materials when attendants are not present.
- 4) If the facility is open to the public, space shall be provided on-site for the anticipated peak load of customers to circulate, park, and deposit recyclable materials.
- 5) Recycling Facilities and Recovered Materials Processing Facilities shall meet the following setbacks and spacing requirements.

RECYCLING FACILITIES and RECOVERED MATERIALS PROCESSING FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Utilities	50 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

C. Waste Transfer Stations

A Waste Transfer Station shall meet the following setbacks and spacing requirements.

WASTE TRANSFER STATION Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet

Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

D. Waste Processing Facilities

A Waste Processing Facility shall meet the following setbacks and spacing requirements.

WASTE PROCESSING FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	50 feet

E. Composting and Wood Chipping/Shredding Facilities

Composting and Wood Chipping Facilities will follow the same setback/ spacing requirements as Class One Landfills.

3.17-2.4 Infectious Waste Management Facilities

Infectious Waste Management Facilities shall be subject to the following requirements in addition to the General Requirements listed above:

1. In addition to the application requirements described for all waste facilities, infectious waste facilities shall provide to the County upon obtaining DHEC approval: (a) a spill plan; (b) contingency plans for alternate treatment, storage and/or disposal sites, and (c) an emergency preparedness and response plan that will be filed with the appropriate emergency service officials and the County's Office of Emergency Management.
2. Storage of waste must not be outdoors. Storage buildings must display the universal biohazard symbol, must be locked, and must allow access to authorized personnel only.
3. The facility must be connected to the public sanitary sewer system.
4. Infectious Waste Facilities shall meet the following setbacks and spacing requirements, along with the Dimensional Requirements found in Table 3.

INFECTIOUS WASTE FACILITIES Spacing/Setback Requirements	
Property line	100 feet
Residence, residential subdivision, school, daycare, church, hospital or public park	500 feet
Drinking water well	100 feet
Surface water bodies	200 feet
Rights-of-way	Outside of right-of-way without approval from right-of-way holder
Wetlands	Compliance with USACE

Section 3.18 Communication Towers

The intent of this Section is to aid in the siting of Communication Towers in the County of Spartanburg by establishing regulations, which allow for the harmonious co-existence of Communication Towers with other land uses. It is also the intent of this Section to reduce the impact of Communication Tower by providing setbacks from residential property, encouraging Communication Tower locations in commercial/industrial areas, and encouraging co-location of Communication Towers and innovative locations (i.e., church steeples, other nonresidential buildings, outdoor advertising signs, water tanks and electric transmission towers, etc.) when technically feasible.

Section 3.18 shall apply to any tower or antenna used for communication purposes. It includes any new tower and/or antenna location unless it is a previously approved communication tower that is not being increased in height for the purposes of accommodating the additional equipment.

Section 3.18-1 Standards

The following standards shall apply for the permitting of Communication Towers:

Section 3.18-1.1 A pre-application conference with the Development Project Team review Staff from the Planning Department is required prior to applying for a development permit.

Each applicant for an antenna and or tower shall provide to the Planning Department an inventory of its existing towers that are either within Spartanburg County or within one-quarter mile of the border thereof, including:

1. correct, up-to-date information on the Assessor's map and parcel reference,
2. map showing exact location on the parcel,
3. height,
4. design,
5. number of antenna that can be accommodated on the tower,
6. year constructed,
7. correct street address, and
8. current co-locators.

The Planning Department may share such information with other applicant applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate antennas within Spartanburg County, provided however that the Planning Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

The applicant must provide expert testimony that demonstrates to the satisfaction of the Planning Department that any existing tower, building, or other structure within one-half (½) mile of the proposed site is unavailable, at a reasonable cost or other business terms, to accommodate the equipment or purpose for which a new tower or an existing tower's increase in height is proposed. The need for structural or equipment modifications shall not alone be sufficient to demonstrate non-availability. Any one or more of the following shall be considered to demonstrate non-availability:

- i. Evidence with reference to EIA-RS 222, in its current adopted revision, that the structural capacity of existing and approved towers cannot accommodate the planned equipment and cannot be reinforced to accommodate the planned equipment at a reasonable cost. The applicant shall be required to calculate the capacity of existing or approved towers based on information on file with the County or requested from the tower owner if supplied.
- ii. Evidence that the planned equipment may and/or will cause objectionable radio frequency interference with other existing or planned equipment on that tower, which cannot be made better at a reasonable cost.
- iii. Evidence that existing or approved towers do not have space to locate the planned equipment where it can function effectively and at the strength of signal required by the FCC.

- iv. Evidence that the addition of the planned equipment to existing or approved towers would result in non-ionizing electromagnetic radiation (NIER) levels in excess of those permitted by OST-65 and ANSI C95.1 or any revisions thereto, or any adopted local standard.
- v. Evidence that the fees and/or cost to be charged to the collocating company, or contractual provisions required by the owner, including the cost to adapt existing facilities to the proposed use based on comparable terms, exceed the current fair market value to locate on a build to suit tower.

Section 3.18-1.2 Setbacks from Property Lines and Certain Residential Uses

A Communication Tower shall be set back from all property lines of the parcel on which it is located, a distance equal to the height of the Communication Tower minus twenty (20') feet, except as modified below: Towers shall also observe external setbacks from certain residential land uses as described below. See Table 3 for additional information.

- a. A Communication Tower with a center point closer than one thousand (1,000') feet from the nearest property line of any platted residential subdivision, as defined herein, containing twenty-five (25) or more lots, shall observe a setback from the nearest property line in the subdivision(s) as set forth below. Also, a Communication Tower that has a total of fifty (50) Dwelling Units, as defined herein, located within a one thousand (1,000') foot radius from the center point of the Communication Tower shall observe a setback, as set forth below, from the nearest residential structure, but not to include residential structures on the subject property upon which the Communication Tower is to be constructed.
 - i. For a Communication Tower, which is less than two hundred (200') feet in height from the ground on which it rests, the setback shall be two (2) times the height of the Communication Tower from the nearest residential structure or the nearest applicable residential subdivision property line, whichever applies.
 - ii. For a Communication Towers, which is two hundred (200') feet or more in height from the ground on which it rests, the setback shall be three (3) times the height of the Communication Tower from the nearest residential structure or the nearest applicable residential subdivision property line, whichever applies.
- b. For the purpose of measuring the applicable setback, distance measurements on monopole and guyed Communication Towers will be made from the center point of the Communication Tower. Distance measurements on lattice Communication Towers will be made from the closest legs of the lattice Communication Tower to the point of reference.
All guy wires (if any) shall be located within the applicable setback, and no residential dwelling (except one located on the same parcel) shall be located within any applicable setback.
- c. The height of the Communication Tower shall be the distance from the ground on which the Communication Tower rests to the top of the tower structure.
- d. For purposes of Section 3.18-1.2(a) a platted residential subdivision is defined as being either that shown in an approved final or summary plat as defined in Section 1 of this ordinance, together with any additional adjacent phases to such plat shown on a subsequently approved final or summary plat, or a map showing a subdivision of land which was recorded in the Office of the Register of Deeds for Spartanburg County prior to November 2, 1977, together with any additional adjacent phases to such subdivision of property shown on a subsequently recorded map.
- e. For purposes of Section 3.18-1.2(a) and for purposes of determining the number of dwelling units within the one thousand (1,000) foot radius from the center point of the Communication Tower, a Dwelling Unit shall be defined as a single unit providing complete, independent living facilities designed, arranged, used or intended for use by one or more persons living together and maintaining a common household, and which shall include permanent provisions for living, sleeping, eating, cooking and sanitation, (but excluding lodging units located in hotels or motels), including and limited to the following types of residences:
 - i. Single Family Dwelling: A building designed, constructed and used for one dwelling unit.
 - ii. Two Family or Duplex Dwelling: A building designed, constructed or reconstructed and used for two dwelling units that are connected by a common structural wall. However, for purposes of determining the number of dwelling units within the one thousand (1,000)-foot radius of the

Communication Tower site, any two-family or duplex dwelling will only be considered as a single dwelling unit. Furthermore, a two-family or duplex dwelling shall not include any such structure(s) utilized for the housing of transients.

- iii. Limited Multiple Family Dwelling: A building designed, constructed, or reconstructed and used for more than two (2) Dwelling units but for no more than five (5) Dwelling units, with each Dwelling unit having a common wall with any other Dwelling unit. However, for purposes of determining the number of dwelling units within the one thousand (1,000) foot radius of the Communication Tower site, any Limited Multiple Family Dwelling will only be considered as a single dwelling unit. Furthermore, a Limited Multiple Family dwelling shall not include any such structure(s) utilized for the housing of transients.
- iv. For purposes of Section 3.18-1.2(a), a dwelling unit shall not be defined as including the following types of residences:
 1. Multiple Family dwelling: A building designed, constructed, or reconstructed and used for more than five (5) Dwelling units, with each Dwelling unit having a common wall with any other Dwelling unit.
 2. Resident Group Care Homes: A facility or dwelling unit housing persons unrelated by blood or marriage and operating as a group family household. A Group Care Home may include nursing homes, extended care facilities, retirement homes, halfway houses, recovery homes, and homes for orphans, foster children, the elderly, battered children and women. It could also include a specialized treatment facility providing less than primary health care.
 3. Mobile Home Parks: A lot or lots used, designed or intended to be used for the purpose of supplying parking spaces for three (3) or more occupied mobile/manufactured homes and which includes, buildings, structures, or enclosures used or intended to be used as a part of such mobile home park, but not including a Mobile Home Subdivision as defined by the Spartanburg County Unified Land Management Ordinance.
- f. To encourage the location of Communication Towers in commercial and industrial areas, the required setback for Communication Towers located in areas of Medium/High Intensity Commercial, Industrial, and/or Institutional areas, including properties containing apartment buildings, shall be as follows:
 - i. If the proposed tower is within 1000 feet of the residential uses described in Section 3.18 1-2(a), then the tower must be set back from that residential use as described in that section. As long as the proposed structure can meet said setback, it may take advantage of the 30-foot setback as described in this section.
 - ii. Thirty (30') feet from the property line of the property on which the Communication Tower is located provided the setback requirement of the height of the Communication Tower minus 20 feet is on like use property. Otherwise, the setback shall be the height of the tower minus 20 feet from the property line of the property on which the Communication Tower is located.
 - iii. For the purpose of measuring the applicable setback, distance measurements on monopole and guyed Communication Towers will be made from the center point of the Communication Tower. Distance measurements on lattice Communication Towers will be made from the legs of the lattice Communication Tower.
 - iv. For purposes of Section 3.18-1.2(d), and for purposes of determining the applicability of the setbacks set forth in this Section 3.18-1.2 (2)(d), the Medium/High Intensity Commercial, Industrial, and/or Institutional use must exist over an area of five (5) or more acres within one (1) or more contiguous Medium/High Intensity Commercial, Industrial, and/or Institutional use properties regardless of common ownership. In addition to those uses considered to be Medium/High Intensity Commercial, Industrial, and/or Institutional as set forth in Article Six of the Spartanburg County Unified Land Management Ordinance, the use of any subject property shall be considered to be Medium/High Intensity Commercial, Industrial, and/or Institutional so long as any one of the following conditions exist:
 1. The property has a present and ongoing Medium/High Intensity Commercial, Industrial, and/or Institutional use;

2. The property was last used for Medium/High Intensity Commercial, Industrial, and/or Institutional purposes, the use is not presently ongoing or active, but the use of the property has not been changed;
3. The property is undeveloped but its location and proximity to other uses make it highly unlikely to be developed for residential purposes such as commercial and/or industrial properties located along the boundaries of interstates.
- v. For purposes of Section 3.18-1.2(d), and for the purpose of determining the amount of property subject to Medium/High Intensity Commercial, Industrial, and/or Institutional use, subject to the conditions set forth herein, the land area of any easements or rights of way touching upon or located within any property may be included in the calculation, but any such land area included shall not exceed fifty (50%) percent or two and one-half (2.5) acres of the total five (5) acres. The Planning Department staff shall make the consideration of any land area of any easements or rights of way on a case by case basis. The Planning Department staff shall take into account all relevant information, including, but not limited to, the existence of a transitional commercial area, in considering any land area of any easements or rights of way.

The applicant for the construction of a Communication Tower in an area of Medium/High Intensity Commercial, Industrial, and/or Institutional use pursuant to this Section 3.18-1.2(d), shall not be required to lease or purchase the entire five (5) acres but only so much land area that is necessary for its purposes and to meet the setback requirements set forth herein.

The Spartanburg Planning Department Staff shall conduct a survey of land uses for each proposed Communication Tower location proposed in a commercial and/or industrial area and make a finding of fact for the Public record. To encourage the location of Communication Towers and/or antennae on existing buildings and structures, only the height of the Communication Tower and/or antennae (and not the building or structure on which the Communication Tower and/or antennae are located) shall be considered in determining any required setback under this Section 3.18-1.2(d).

For purposes of Section 3.18-1.2(d), and for purposes of determining the applicability of the setbacks set forth in this Section 3.18-1.2(d), the definition of Medium/High Intensity Commercial, Industrial and/or Institutional areas shall not include properties containing churches, synagogues or any other building improvements for the purpose of religious worship.

Section 3.18-1.3 Two (2) copies of a site development plan (in lieu of the information required in Table 2 for a Minor Land Development site plan) shall be drawn to scale and show, at a minimum, the following information;

1. the height and precise location of the tower on the parcel (as most previously subdivided) along with guy anchors, if any,
2. any new property lines/lease property lines that may be a result of the project,
3. all applicable setbacks, including the herein-described setbacks from certain residential uses,
4. transmission buildings and other accessory uses,
5. access,
6. landscaped areas,
7. fence, and
8. adjacent land uses.

Section 3.18-1.4 All proposed Communication Towers shall provide for controlled access to the Communication Tower facility with an eight (8') foot high chain link fence surrounding the Communication Tower facility and any guy wire abutments. Access to the tower shall be through a locked gate.

In addition, a row of evergreen shrubs capable of forming a continuous hedge at least five (5') feet in height shall be provided around the outside perimeter of the fence to the extent the outside perimeter is not otherwise obscured by existing trees and natural vegetation.

The owners and their agents shall be responsible for maintaining all required landscaping material in a healthy condition, replacing unhealthy or dead plant materials by the next planting season. Replacement material shall be as described in the previous paragraph.

Section 3.18-1.5 All Communication Towers shall be constructed to accommodate at least two (2) additional communication antennas. The applicant must submit an affidavit stating that space on the proposed tower will be made available to future users when technically possible at a comparable market rate.

Section 3.18-1.6

- a. With the exception of Communication Towers for aeronautical purposes, Communication Towers may not penetrate any imaginary surface, as described in Chapter 14 of the Code of Federal Regulations, Federal Aviation Regulation (FAR) Part 77 as amended, associated with existing or proposed runways at any publicly owned airport. All Communication Towers located within the first 12,000 feet of the approach surface on an existing or proposed runway, or within the horizontal surface associated with such runway(s) as described in FAR Part 77, shall be lighted. Strobe lights during the daylight and twilight hours and red lights shall illuminate such Communication Towers during nighttime hours.

Prior to issuance of a building permit, applicants shall provide documentation that the proposed Communication Tower has been reviewed by the Federal Aviation Administration (FAA), if so required, and that finding of no hazard to air navigation has been determined.

The applicant shall also provide copies of the site development plans for comment to Greenville-Spartanburg International Airport and Spartanburg Downtown Memorial Airport to be delivered at least ten (10) days prior to staff approval. Prior to approval, documentation must be received by the Spartanburg County Planning Department that the proposed Communication Tower has been reviewed by each of the said airports and that neither airport has an objection. If either airport has an objection to the proposed Communication Tower, an Advisory Conference composed of Airport officials, County Officials, and representatives of the communication company's shall be convened. The results and findings of such conferences shall be presented to the County Planning and Development staff for evaluation and final action. Because proximity and lighting of Communication Towers near these aeronautical facilities affects the safety of the public, careful consideration should be given to the results and findings and such may be grounds for denial of the issuance of a permit or requiring that certain additional requirements be imposed as a condition for the issuance of a permit.

- b. Care shall also be taken in locating Communication Towers in the vicinity of any private airport whether or not it is open to the public.
- c. All Communication Towers shall be lighted in accordance with Federal Aviation Administration Circular 70-7460, "Obstruction Marking and Lighting," as amended from time to time.
- d. Communication towers not requiring FAA painting/markings shall have either a galvanized finish or be painted a dull blue or gray finish.

Section 3.18-1.7 All Communication Towers shall be designed and constructed so as to withstand winds in accordance with ANSI/EIA/IIA 222 (latest revision) standards.

Section 3.18-1.8 No advertising of any type may be attached to a Communication Tower. However, a Communication Tower and/or antenna may be placed upon an outdoor advertising sign subject to the requirements of Section 3.18-1. The placement of a Communication Tower and/or antenna upon an outdoor advertising sign shall not change the principal nature or classification of the outdoor advertising sign.

Section 3.18-1.9 Communication towers shall be removed at the owner/operators expense within 120 days of the date such tower ceases to be used for its intended purpose.

Section 3.19 Junk and Salvage Yards

Section 3.19-1 Findings

Spartanburg County finds that junkyards:

- (1) Pose a hazard to the health, safety, and general welfare of the citizens of Spartanburg County;
- (2) Depreciate the value of surrounding property;
- (3) Pose environmental and fire hazards;
- (4) Are a breeding ground for mosquitoes or other insects, snakes, rats and other pests;
- (5) Pose a threat of injury to children and other individuals who may be attracted to the premises;
- (6) Are a visual blight and patently offensive to the aesthetic quality of the environment of Spartanburg County

Section 3.19-2 Purpose

To preserve the physical integrity of established neighborhoods for the quiet enjoyment of family, safety of children, and the maintenance of residential property values; to protect the citizens and residents of Spartanburg County from possible injury at junkyards; to achieve responsible economic growth in areas of Spartanburg County that is compatible with growth and development in nearby areas; to protect the public from health nuisances and safety hazards by controlling vectors, concentration of volatile or poisonous materials, and sources of danger to children; and to preserve and enhance the natural scenic beauty of areas in the vicinity of the primary and secondary roads of Spartanburg County, it is declared to be in the public interest of Spartanburg County, and necessary and proper for the general welfare, convenience, safety and health of the people of the County, to regulate the operation and maintenance of junkyards in areas adjacent to public roads and highways within Spartanburg County, including those regulated by the South Carolina Department of Highways and Public Transportation to the extent that this division is not in conflict with such regulations. Spartanburg County Council hereby finds and declares that junkyards which do not conform to the requirements of this ordinance are public nuisances.

Section 3.19-3 Fencing and Screening

All junkyards shall be enclosed on all sides by one of the following that shield the junkyards from view:

1. A chain link fence with evergreen screening of an approved type; or
2. Where evergreen screening is not possible, a chain link fence with vinyl strips or slats woven into the fence fabric may be used upon approval by the ordinance administrator; or
3. A wooden or masonry privacy fence; or
4. Other type material which has been given approval by the ordinance administrator.

Section 3.19-4 General Requirements

1. Anchoring - All metal or wooden fence posts shall have at least one-fourth of their length below ground level and shall be set in hard packed clay or concrete. All metal fence posts shall be treated with an anti-corrosive coating. All wooden posts shall be pressure treated or creosote coated lumber.
2. All junkyard business shall be conducted entirely within the screened area of the property.
3. No junk shall be stacked, stored or maintained at a height greater than the opaque screen around the junkyard.
4. Adequate off-street customer parking must be provided, and must be graveled or paved in an acceptable manner.
5. If a junkyard closes, it must comply with the provisions of Section 3.19-5 for new junkyards to re-open. Evidence of closing shall be established by inspection of the property, written notification or non-renewal of a junkyard permit.

6. Any person, company, business or corporation not covered by this division or exempted from this division shall comply with state statutory law regarding disposition of abandoned or derelict motor vehicles as provided by S.C. Code Ann. § 56-5-5610, 56-5- 5810, et. seq. and 44-67-10 et. seq. (1976).
7. All junkyards shall be maintained to protect the public from health nuisances and safety hazards. The Spartanburg County Health Department may inspect each junkyard to determine that the junkyard does not create a nuisance or safety hazard. Should a nuisance or safety hazard be identified, the owner, operator or maintainer shall submit satisfactory evidence to the health department and planning department that the nuisance or safety hazard has been eliminated. Failure to comply with this provision shall result in revocation of permit as well as other penalties and remedies for violation of this division.

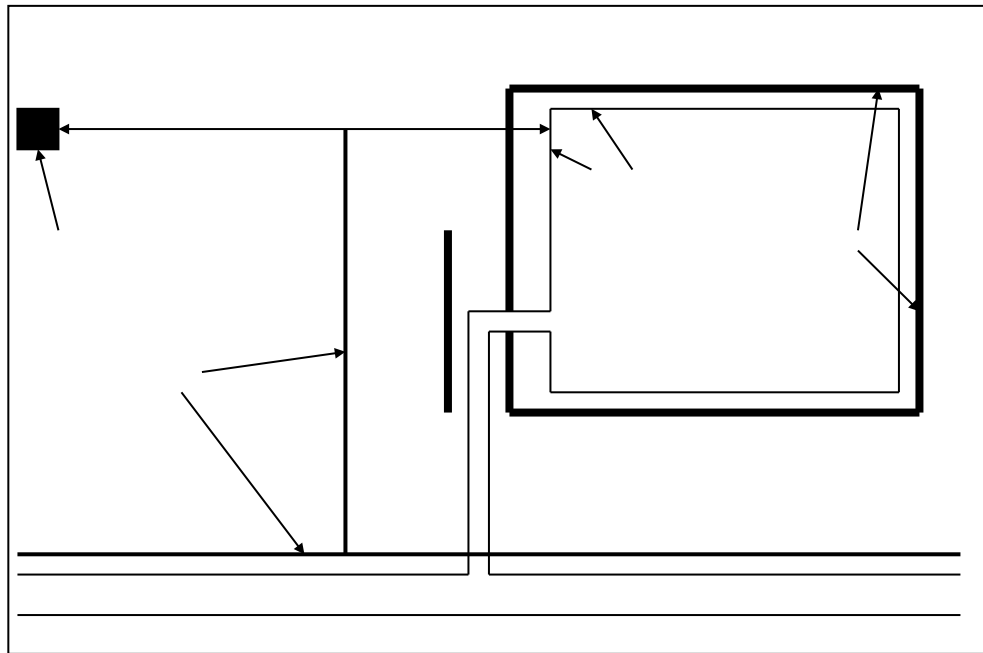
Section 3.19-5 Operation of New Junkyards

The following standards shall be applicable to junkyards that open, re-open, or begin operations or business after December 31, 1999:

1. New junkyards shall be situated on a continuous parcel of at least five acres excluding rights-of-way that are undivided by road rights-of-way or public dedication.
2. Have a minimum front lot line of 100 feet on a public right-of-way. Wrecker, towing and impoundment services as defined by Section 3.19-7(e) of this ordinance, shall have a minimum front lot line of sixty (60) feet on a public right-of-way. Reference minimum sixty (60) foot front lot line requirement for commercial property pursuant to the Development Standards Ordinance.
3. All driveway entrances shall be from side property lines. The centerline of the driveway shall not be closer than 30 feet from the side property line. An opaque gate shall be utilized. The view toward the gate from the adjacent property shall be screened by a continuous hedge row not less than 30 feet wider than the gate.
4. Have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 50 feet. Wrecker, towing and impoundment services as defined by Section 3.19-7(e) of this ordinance, shall have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 25 feet.
5. No junkyard shall be established closer than 1,000 feet to a church, school, daycare center, nursing home, health care facility, hospital, public building, public recreation facility, a concentration of ten or more contiguous residences, or closer than 500 feet from any single residence. An on-site residence at the junkyard by the owner or its agent is permitted. No junkyard shall be established closer than 1,000 feet of the following scenic corridors: S.C. Highways 9, 11, 56, 110 (Battleground Road), and U.S. Highways 26 and 85.
6. The junkyard shall be entirely surrounded by an opaque fence at least eight feet in height or by either a woven or welded wire (11-gauge minimum) or chain link fence a minimum of 8 feet in height and with an opaque evergreen screen with a minimum height of not less than eight feet when mature. The evergreen vegetation shall be planted between the property line and the outbound side of the fence. The distance spacing of the evergreen vegetation from the fence and the property line should allow for maintenance of the mature vegetation from inside the property line. Evergreen vegetation that serves as screening shall be of an approved type that can reach a minimum height of eight feet when mature from the date planted and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken screen (without gaps or open spaces) will exist to a height of at least eight feet along the length of the fence surrounding the junkyard. The evergreen screen shall be maintained as a continuous, unbroken screen for the period the property is used as a junkyard. Acceptable species include, but are not limited to, Ligustrum, Euonymus, Leyland Cypress, White Pine, Cedar, Arborvitae, Hemlock, and upright varieties of Junipers, Holly and Yew. Each owner, operator, or maintainer of a junkyard shall utilize good husbandry techniques by pruning, mulching, and fertilizing, so that the vegetation can reach a height of eight (8) feet within five years of the date planted and will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.
7. A junkyard plan prepared by the owner or operator of any new junkyard shall be submitted prior to the junkyard permit being granted by Spartanburg County. The plan shall indicate setbacks, location of public rights-of-way, all proposed structures, all structures within 500 feet of a junkyard,

driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of junkyard, gross acreage, owner(s)' name(s), address(es), preparer of plan name(s) and address(es). Submission of information shall establish pre-existing conditions. Plan may be drawn at a scale of one inch equals 400 feet or less.

8. When, for reasons of topography, it is determined by the ordinance administrator that the fencing and screening requirements of the new junkyard will not produce a result that sufficiently shields the junkyard from view and otherwise preserves the policy and intent of this division, the following alternatives are available:
 - a. The junkyard may locate at the site if its fenced boundaries are no closer than 1,000 feet to any adjacent residence; or
 - b. Topographic features shall be graded to adjacent roadway levels so that the provisions for fencing and screening can be effective; or



- c. The developer of a junkyard may seek another site that is more suitable to junk yard development.
9. In addition to the spacing requirements of paragraph five (5) and nine (9) herein, all junkyards established after December 31, 1999 shall be restricted to property located in areas characterized by light, medium or heavy "Industrial Uses" as defined by this Ordinance and shown on the Future Land Use Map in the approved "Spartanburg County Comprehensive Plan."

Section 3.19-6 Licensing, Inspection, and Annual Fees for Junkyards

1. Licensing and Fees
 - a. A license shall be required to open and/or operate a junkyard and shall be subject to annual renewal due January 1st. The license fee shall be set per the Fee Schedule adopted by Resolution of County Council.
 - b. For an owner who fails to renew the annual license by the deadline, there shall be a monthly late fee equal to half of the above base rate.
 - c. An owner may not renew a license if his yard is not in compliance with this ordinance. Late fees will continue to accrue for those yards that are found to be non-compliant.
 - d. Late fees will continue to accrue for an owner who is in compliance and does not pay the annual license fee.

- e. Failure to comply with the requirements of this Ordinance may result in the revocation of license to operate a junkyard. After the annual fee is 60 days delinquent, the owner shall be considered in violation of this Ordinance for the lapsed license.
 - f. A Junkyard license is not transferrable.
 - g. Successors or assigns of a junkyard shall be responsible for payment of any delinquent or due fees, penalties or fines.
2. Annual Inspection; Violation
- a. All junkyards registered in Spartanburg County shall undergo an annual inspection to ensure compliance with this Ordinance.
 - b. When a violation is determined, notice shall be given in writing by the code enforcement officer, together with an established time period within which the violation must be corrected.
 - c. A junkyard license may be revoked by the Spartanburg County Environmental Enforcement Department Director for a violation of this Ordinance or other applicable regulations governing the operation of such uses based on inspection of the premises.
3. Suspension of License
- a. Failure to correct the violation(s) within the established time period will result in license suspension.
 - b. Any person who has received notice that his license will be suspended unless certain conditions or practices at the junkyard are corrected, may request and shall be granted a hearing on the matter before the Board of Zoning Appeals by filing a petition with the Planning and Development Department. The petition for such hearing must be filed within ten calendar days following the day on which delivery of the notice of license suspension was delivered to such person. If no petition is filed within ten calendar days following the delivery of the notice of license suspension, the license shall be deemed to have been automatically revoked.
 - c. A junkyard, upon the owner's loss of license based on violations of this Ordinance, shall meet the requirements of all County Ordinances in order to reopen. Otherwise, the yard must be closed.
4. Providing false or incorrect information on any application form, registration form, permit form or license renewal form under this division shall constitute a misdemeanor. Any license not containing the current mailing address of the license holder or the current mailing address of the record owner of the parcel of land upon which the junkyard is located, is void. Any application form submitted by a lessee or tenant for a license under this division shall contain the signature and current mailing address of the landlord, leaser, or record owner constituting an affirmation that the license applicant is in fact a lessee or tenant of the landlord, leaser, or record owner of the parcel of land upon which the junkyard is located.

Section 3.19-7 Exemptions

Although the following are junkyards as defined by this ordinance and are subject to the provisions of this section, the following limited exemptions are granted:

- a. Service stations are exempt from Section 3.19-5 and Section 3.19-6 of this division. All other provisions of this division shall apply. A service station is any establishment or place of business which provides retail sales of fuel, lubricants, air, water or other items for the operation or maintenance of motor vehicles or for making mechanical repairs, servicing or indoor washing of motor vehicles.
- b. Wrecker, towing and impoundment services, as defined herein, are exempt from the five (5) acre requirement of Section 3.19-5(1) for the operation of new junkyards under this ordinance. All other provisions of this division shall apply including the fencing and anchoring requirement of Sec. 3.19-3. A wrecker, towing or impoundment service is any establishment or place of business which provides towing or temporary storage services of no more than twenty five (25) currently licensed and currently registered motor vehicles which have been wrecked, or whose possession is by virtue of court order, a copy of which is in the possession of the proprietor of such service or affixed to the vehicle. Temporary storage is defined as not exceeding ninety (90) days from the date possession or custody of the vehicle is obtained except when possession is pursuant to a court order.

Section 3.20 Accessory Buildings and Uses/Non-Residential

(1) Accessory Uses to Observe Required Setbacks

Unless specifically provided herein, all accessory uses and structures shall observe the required setback requirements on Table 3.

(2) General Requirements

- a. There is no limit to the number of accessory buildings.
- b. Accessory uses shall observe the setback requirements for the principal use to which they are accessory when located contiguous to a residential use.

(3) Location

Without exception, no accessory use may be located in a required bufferyard area. Accessory buildings and uses are permitted anywhere within the buildable area of a lot or parcel unless specifically regulated. They may be permitted within required yards and setback areas, but not in bufferyards, under the following conditions:

a. Off-Street Parking and Loading Space

Off-street parking and loading spaces are permitted in required yards and setback areas

b. Buildings, Sheds, and Structures for Dry Storage; Greenhouses

Building sheds and structures for dry storage and greenhouses may be located in rear yard and rear setback areas only.

c. Swimming Pools, Tennis Courts, Recreational Uses

These uses may be located in required rear yard and side yards; provided said uses shall be no closer than 10 feet to the nearest property line, and shall have all lighting shielded or directed away from adjoining residences.

d. Ground Supported Communication and Reception Antennas

These uses may be located in required rear and side yards only, and if located in the buildable area shall not extend or be located in front of any principal building.

e. Fences and Walls

May be located in all required yards and along any property line.

Section 3.21 Temporary Uses

All temporary uses shall submit a sketch plan for review, and upon approval shall be issued a temporary permit. The uses listed in this Section are not a complete list and staff will determine the proper category of a temporary use not listed. Temporary uses, their location, duration, and conditions applicable thereto, are as follows:

1. Fairs, Carnivals, Festivals, and Outdoor Concerts with no public sponsorship

Uses with less than 500 attendees/day shall be located in an area where there are less than 10 residential dwellings with 500 feet radius of a circle located in the center of the proposed site. Uses with 1000 or more attendees/day shall locate in a area where there are less than 10 residential dwellings with 1000 feet radius of a circle located in the center of the proposed site and shall take access from a collector or arterial roadway. Maximum length of stay shall be (15) days for fairs and carnivals and (3) days for festivals and concerts. Extensions of the temporary permit may be considered by staff for good cause. Operations for such uses shall cease between 12:00 PM midnight and 6:00 AM. Off street parking shall be provided at the rate of 3 persons/car and all parking areas shall be roped off.

2. Religious Tent Meetings

Religious meetings in a tent or other temporary structure shall not exceed (30) consecutive days per permit. Extensions of the temporary permit may be considered by staff for good cause. The tent/structure shall not be closer than 400 feet to any residential dwelling. Uses with more than 1000 attendees/day shall take access from a collector or arterial roadway. Off street parking shall be provided at the rate of 3 persons/car and a parking area shall be roped off.

3. Seasonal uses such as Snow Cone Stands, Firework Stands, Produce Stands, Christmas Tree Sales Lots, Haunted Houses, Haunted Trails and Similar Uses

Uses in this category may be issued a temporary permit for a period of up to 90 days. Temporary structures must remain out of the road right of way. Adequate parking shall be provided and parking may not be so arranged that vehicles are forced to back into traffic on the primary access street. Sites used for these purposes shall not be used for another (6) months for any temporary use.

4. Modular Real Estate Sales Office

Real estate sales offices, representing sales of land on which the use is located may be permitted for up to 2 years, provided no cooking or sleeping accommodations are maintained in the structure. Extensions of the temporary permit may be considered by staff for good cause.

5. Modular Contractor's Office

Contractor's office and equipment sheds may be permitted for a period covering the construction phase of the project but not to exceed 2 years provided that such office be placed on the property to which it is appurtenant. Extensions of the temporary permit may be considered by staff for good cause.

6. Temporary Shelter

When fire or natural disaster has rendered a single family or duplex residence unfit for human habitation, the temporary use of a mobile home located on the single family or duplex lot during rehabilitation of the original residence or construction of a new residence is permitted, provided that (a) adequate water and sewer facilities are available, (b) maximum length of the permit shall be (6) months, (c) the mobile home shall be removed from the property upon issuance of a Certificate of Occupancy for the new or rehabilitated residence. Extensions of the temporary permit may be considered by staff for good cause.

7. Clean Up After Use

The site on which a temporary use is located shall be cleared of all debris at the end of the time for which the use is permitted and cleared of all temporary structures in connection therewith. Failure to do so shall constitute a violation of this Ordinance.

8. Temporary Rural Event Venue

Uses in this category may be issued a temporary permit for a period of up to 90 days. Extensions of the temporary permit may be considered by staff for good cause. Temporary structures and vehicles must remain out of the road right of way. Adequate parking shall be provided and parking may not be so arranged that vehicles are forced to back into traffic on the primary access street. Staff may require necessary documents or plans to verify how the structure will be utilized temporarily.

Section 3.22 Nuclear Wastes and Hazardous Waste Management and Disposal Facilities

Due to consideration for the public health and safety as well as potential pollution to the environment, nuclear waste and hazardous waste management and disposal facilities are prohibited from locating new facilities or expanding existing facilities in Spartanburg County.

Section 3.23 Certain Public Service Uses

Section 3.23-1 Uses Identified

Due to the nature of certain public uses and the need to locate such uses in various areas of the County, the following uses or expansion of said uses thereto must be located on adequate streets:

- Prisons
- Area-wide Sewerage Treatment Facilities
- Cemeteries

The Planning Commission, at a regular monthly meeting, reviews and approves these uses. The Planning Commission may impose special requirements for these uses to protect public health and safety. These special requirements may include, but are not limited to, the following:

1. Full disclosure of all emergency procedures and an analysis of the adequacy of those procedures;
2. Environmental analysis of water and air quality.
3. Roads accessing these uses, where significant truck traffic is projected, must be upgraded to meet the County's industrial/commercial road standards.
4. Bufferyard requirements.

Section 3.24 All Other Commercial and Industrial Uses

1. Road Access

Any commercial or industrial use will take its primary access off the highest classified street onto which it fronts.

2. Setbacks and Other Requirements

See Table 3 for specific setbacks, lot frontage, and related requirements. See Table 4 for bufferyard requirements. See Table 6 for Off-Street Parking Requirements.

Section 3.25 Tattoo Facilities

In order to enhance land use compatibility between tattoo facilities and certain other land uses, the following development standards shall apply:

1. A permit must be obtained from the South Carolina Department of Health and Environmental Control (DHEC) prior to securing a County permit. The permit shall have been issued within six (6) months of the date of the request for the County permit.
2. Location of Tattoo Facilities
 - a. The place of business cannot be located within one thousand feet of a church, school, or playground.
 - b. There must be a 500-foot spacing between tattoo facilities.
 - c. A tattoo facility cannot be located within 500 feet of a bar.
 - d. These distances shall be computed by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of the church, school, or playground.
3. A tattoo facility shall not be allowed as a home occupation.
4. No tattoo facility shall be operated in a non-permanent structure such as a tent, mobile home, trailer or temporary structure.

5. Meet any and all applicable requirements specified by Table 3- Commercial Setbacks and Other Requirements, Table 4-Side and Rear Bufferyard Requirements, and Table 6-Off-Street Parking Requirements.

Section 3.26 Flea Markets, Swap Meets, and Open-Air Markets

Applications for flea markets, swap meets, and other open-air markets shall include a site plan professionally-drawn by an engineer or surveyor to scale of the layout of buildings, sales area, driveways, walkways, and parking spaces. The information required to support an application is found in Table 2 under the category of Minor Land Development.

Farmer's markets shall be exempt from these requirements.

The following regulations apply:

1. The use shall have a minimum of at least two acres with principal access along a collector or higher capacity road. An encroachment permit must be obtained from the appropriate agency.
2. No flea markets, swap meets, or other open-air markets shall be developed within 200 feet of a residential structure or within 200 feet of the nearest property line of a residential subdivision containing 25 or more lots. No business sales or activities shall be allowed within this setback (residential separation area). The distance shall be measured from the closest portion of improved area of the site (including parking) containing the market.
3. Setbacks shall be as follows:
 - Front - 50 feet
 - Rear - 30 feet
 - Side - 30 feet

No sales activity shall be allowed in setbacks. The residential separation requirement in #2 will supersede other setbacks.

4. The site shall conform to all building and mechanical codes. Any DHEC requirements must be met.
5. Customer parking and vehicular traffic shall be separated from vendor areas during operating hours. In no case shall vendors set up in the customer parking area. Customer parking and traffic shall not be allowed in vendor sales areas.
6. Parking shall be provided in accordance with the provisions of Article 2, Section 2.02-5.
7. In addition to any buffers required under Article 2, Section 2.02-2, Table 4, flea markets, swap meets, and other open-air markets shall provide landscape screening at the street. This buffer, which must begin at least 15 feet off the right of way and wrap around the sides of the market property so as to screen the operation from the view of the roadway, must include a combination of evergreen trees and shrubs that will create an opaque screen within two years. The minimum tree size at planting shall be six or more feet in height and two or more inches in trunk diameter at the height of 18 inches above the ground. There shall be no parking between the landscape screening and the road.
8. All sales items must be returned to storage and not left out overnight. Covering sale items with a tarp or other material is not an acceptable means of storage.
9. No RVs or campers shall be allowed on the property overnight.
10. Goods shall not be sold from enclosed trucks or trailers.
11. Owners of vacant or abandoned, non-residential properties shall not allow transient merchants or vendors to offer goods for sale on their property. Transient merchants or vendors shall not be permitted by Spartanburg County to sell from vacant or abandoned, non-residential properties notwithstanding the permission of the property owner.
12. Sale of merchandise is prohibited in road rights-of-way. In no case shall a merchant or vendor set up in a way that obscures the view of the traveling public.
13. There shall be no less than one (1) trash receptacle per 75 feet of aisle space.

14. This Section does not include roadside agricultural stands as described in the South Carolina Right to Farm Statutes (S.C. Code Ann. §§ 46-45-10 to 46-45-80).

Section 3.27 Asphalt Batch Plants

Due to considerations for the public health and safety and potential pollution to the environment, Asphalt Batch Plants shall be permitted in Spartanburg County only under the following conditions:

1. A site plan shall be prepared by an individual licensed to practice engineering or land surveying in the State of South Carolina, as applicable. The site plan must show the Facility's property boundaries; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; wells, benchmarks and permanent survey markers; on-site buildings and appurtenances, tanks, dikes, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total facility area including planned staged development of the facility's construction and operation; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show adjacent property lines, public parks, schools, religious institutions, hospitals, day care facilities, and nursing homes. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
2. All facilities shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road.
3. Entrance/exists shall provide a minimum 50-foot turning radius.
4. A storm water runoff and sedimentation plan as defined by the County's Storm Water Ordinance No. O-09-02, as amended, showing all on-site and off-site drainage. (See also County Code, Chapter 30, Article IV.).
5. All structures and appurtenances shall be located and constructed to provide adequate safeguards and not constitute a hazard to adjoining and nearby uses and the general public.
6. Asphalt Batch Plants shall follow the Heavy Industry buffer requirements in Table 4 Bufferyards.
7. Approvals from Other Agencies
 - a. Any Asphalt Batch Plant proposing to locate within the jurisdiction of this Ordinance shall provide to the Ordinance Administrator a certificate from the Department of Health and Environmental Control or other outside agency that regulates the facility indicating compliance with the rules and regulations administered by those agencies.
 - b. When a land development application from an Asphalt Batch Plant requires state government, federal government or other outside agencies' permit or approval and the applicant presents an application and site plan that is "approvable" under this ordinance, the Planning and Development Department will issue a letter to that agency, if required, stating that a land development permit will be issued upon receipt of their permit/approval as long as the proposed facility still meets the requirements of this ordinance after obtaining their approval.
 - c. The applicant must report any changes required by outside agencies upon their review that affect a change in the submitted site plan and submit a revised site plan.
 - d. All required permits and approvals must be obtained from outside agencies, as applicable, prior to the County issuing a land development permit. Only until such certification is received shall the facility be permitted for occupancy by Spartanburg County.
8. Meet any and all applicable requirements specified by Table 3.
9. Nothing contained herein shall be intended to preempt or abrogate the requirements for an Asphalt Batch Plant to adhere to the regulations of state or federal agencies.

Section 3.28 Scrap Metal Processor

The intent of this section is to provide standards for Scrap Metal Processing sites so as to distinguish them from the Recycling requirements found in Section 3.17 Waste Management Facilities and Section 3.19 Junk and Salvage Yards.

All Scrap Metal Processors as defined in Article 6, Definitions shall be subject to the following requirements except Indoor Scrap Metal Processors, as defined by this Ordinance, which shall be considered as Industrial Uses, and except locations operated by Scrap Metal Processors which do not involve the handling of scrap metal.

Section 3.28-1 Application and Site Plan Submittal

1. The Planning and Development Department shall not begin the review of an application for a permit until the applicant has submitted a complete application to the Planning and Development Department.
2. All applicants must submit four (4) hard copy sets and one (1) PDF set of the following plans for the specific type of facility being proposed.
 - a. A site plan shall be prepared by an individual licensed to practice engineering and/or land surveying in the State of South Carolina, as applicable. The Site plan must show the facility's property boundaries, as certified by an individual licensed to practice land surveying in the State of South Carolina; off-site and on-site utilities (such as, electric, gas, water, storm, and sanitary sewer systems), rights-of-way and easements; the names, addresses, and tax map numbers of abutting property owners; benchmarks and permanent survey markers; on-site buildings and appurtenances, fences, buffers/screening, gates, roads, parking areas, drainage culverts, and signs; required setbacks and spacing; the delineation of the total facility area including planned staged development of the facility's construction and operation; the location and identification of metal scrap handling areas; and site topography with five feet minimum contour intervals; and any other relevant information as necessary for proper operation. The site plan shall show property surface water bodies. The plan shall show all structures, to include residential and school properties within 1000 feet. The plan shall be on a scale of not greater than 200 feet per inch unless otherwise approved by the Planning and Development Department.
 - b. After conditional approval by the Planning and Development Department of the site plan described in subsection 2(a), a full set of plans as defined by the County's Storm Water Management Ordinance No. O-09-02, as amended, shall be submitted to the Engineering Division of Public Works for review and approval. Final approval shall be contingent upon approval by the Engineering Division of the Public Works Department. (See also County Code, Chapter 30, Article IV.)
 - c. If the owner of the site on which the Scrap Metal Processor is to be placed is not the project applicant, written permission must be obtained from the owner to apply for the project's approval.
3. All required permits and approvals must be obtained from other entities, as applicable, prior to the County issuing a land development permit.

Section 3.28-2 Standards

1. All Scrap Metal Processors shall have adequate access to a collector or arterial roadway. If the facility is not served directly by such a roadway, a road must be constructed or reconstructed in accordance with County roadway construction standards to link the proposed facility with a collector or arterial road. Scrap Metal Processors shall not be allowed on Minor Streets. County staff will examine public road access to the site and make a determination based on the data provided by the applicant and the construction of the road, regardless of functional road classification, regarding the adequacy and safe use of the public road to support projected truck traffic resulting from projects on county roads. If the construction and/or capacity of the road is found to be inadequate pursuant to professional engineering standards, the project will not be approved.
2. Entrance/exits shall provide a minimum 50-foot turning radius.
3. The view toward any driveway entrances shall be screened or positioned as necessary in a manner such that materials stored in the open are not visible through the driveway entrance.

4. Scrap Metal Processors shall be situated on a parcel of at least five contiguous acres that are undivided by road rights-of-way or public dedication.
5. The Scrap Metal Processing property must have a minimum front lot line of 100 feet on a public right-of-way.
6. Parking shall be provided in accordance with Table 6.
7. All Scrap Metal Processor business shall be conducted entirely within the screened area of the property.
8. No scrap metal shall be stacked, stored or maintained at a height greater than 75 feet.
9. An on-site residence at the Scrap Metal Processing site which is used by the business owner or its agent is permitted.
10. Setbacks and Spacing
 - a. Setback and spacing requirements shall be as follows:

SCRAP METAL PROCESSOR Spacing/Setback Requirements	
Property line	50 feet
1-24 Residences	500 feet (measured from source of noise to primary residential structure)
25+ Residences	1000 feet (measured from source of noise to primary residential structure)
Residential subdivision with 25 or more platted lots	1000 feet (measured from source of noise to primary residential structure)
School, daycare, church, nursing home, residential healthcare facility, public building, hospital or public recreation facility or park	1000 feet (measured from source of noise to nearest school, daycare, church, nursing home, residential healthcare facility, public building, hospital or public recreation facility or park property line)
Surface water bodies (except storm water pond)	Outside of right-of-way without approval from right-of-way holder
Utility rights-of-way	Outside of right-of-way without approval from right-of-way holder

- b. Setback measurements shall be made from the source of noise on the subject property to the property line of the neighboring use or to the primary structure as set forth in the table above. Setbacks from surface water bodies and utility rights of way shall be measured from the nearest point of improvement on the subject property to the feature itself.
- c. For the purposes of this Section, source of noise shall include any non-office structure, metal storage area, grinder, crane, shredder, shearer, or other machinery or fixed equipment capable of producing noise in excess of 80 decibels as measured at the property line of the Scrap Metal Processor, but excluding parking areas.
- d. In addition to the Setback/Spacing Requirements Table above, no Scrap Metal Processor shall be established within 1000 feet of the following Scenic Corridors: SC Highway 9, SC Highway 56, SC Highway 110 (Battleground Road), SC Highway 80 (J Verne Smith Parkway). Scrap Metal Processors shall be prohibited on or within 1000 feet of SC Highway 11 (Cherokee Foothills Scenic Highway). No person shall establish, operate, or maintain a Scrap Metal Processor, any portion of which is within one thousand (1,000) feet of the nearest edge of the right-of-way of Interstate 85 and Interstate 26, unless screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main-traveled way of the aforementioned interstates, or otherwise obscured from sight. If the Ordinance Administrator determines that the above-mentioned screening requirements will not produce a result that shields the Scrap Metal Processor from view of the interstates set forth herein, a Scrap Metal

Processor shall be compelled to engage in land grading or the erection of additional screening, but only to the minimum extent required to achieve the desired screening.

- e. Have a minimum setback to the fence from front, side and rear property lines excluding road rights-of-way of at least 50 feet.

11. Screening

- a. Where a Scrap Metal Processor's property abuts or adjoins residential uses, public parks, schools, religious institutions, hospitals, day care facilities, nursing homes, office/institutional uses, light industry, commercial uses or public roadways, a continuous visual screen shall be provided and maintained between any improvements on the Scrap Metal Processor's property and the property line with such other properties. The screen shall be a minimum 8-foot wall, opaque fence, berm, or evergreen plant material or combination thereof.
- b. Where required evergreen vegetation that serves as screening shall be of an approved type that shall reach a minimum height of eight feet within five years from the date of final inspection and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken screen (without gaps or open spaces) will exist to a height of at least eight feet along its length. The evergreen screen shall be maintained as a continuous, unbroken screen for the period the property is used for Scrap Metal Processing.
- c. Acceptable species include, but are not limited to, Ligustrum, Euonymus, Cedar, Arborvitae, Hemlock, Leyland Cypress, and upright varieties of Junipers, Holly and Yew. The species to be planted must meet the required height of 8 feet within 5 years. White Pine is not acceptable for screening.
- d. Each owner, operator, or maintainer of a Scrap Metal Processing site shall utilize good husbandry techniques by pruning, mulching, and fertilizing, so that the vegetation can reach a height of eight (8) feet within five years of the date planted and will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

12. Health and Safety

- a. Dust, odors, fire hazards, litter and vectors shall be effectively controlled at all Scrap Metal Processing sites so they do not constitute nuisances or hazards.
- b. Open burning at any Scrap Metal Processing site shall be prohibited.

Section 3.29 Mixed Use Projects/Mixed Use Projects—Residential Only

The purpose of a Mixed-Use Project is to utilize innovative land planning and site design concepts that support a high quality of life and integrate a variety of uses into a unified development and, therefore, create opportunities for more desirable living and working environments. This project type is intended to be used to encourage land developments with lasting value. It is further intended to achieve economies in land development, maintenance of street systems and utility networks while providing building groupings for privacy, usable and attractive public open space, green space, buffer zones, safe circulation, natural storm water features, and the general well-being of the inhabitants.

Section 3.29-1 Application and Approval of Mixed-Use Projects

The application process for Mixed-Use Projects will follow that of a Major Land Development and will include all items identified in Section 3.29. Project applicants are required to attend a Pre-Application Meeting.

Section 3.29-2 Qualifications for Mixed-Use Project

In order to qualify for a Mixed-Use Project, the site must meet the following criteria:

1. Project site must be at least five (5) acres in size.
2. One of the project site entrances must be within 1,500 linear feet measured along the roadway to the intersection with a Collector or Arterial Street.

3. Only the Conditional Uses numbered 3.01-3.06, 3.20-3.21, and 3.24-3.26 may be included in Mixed Use projects.

Section 3.29-3 Design Requirements

1. **Compatibility with Surrounding Areas:** The architectural style must reflect the character of the area, especially in historical or natural areas. Compatible character is identified based on densities/intensities, lot size and dimensions, street and block grid pattern, building height, building mass and scale, colors and materials used (See Section 2.3.5 of the Performance Zoning Ordinance.), hours of operation, exterior lighting, landscaping, and siting of service areas.
2. A Mixed-Use Project must include at least two different uses from the following: Residential Single Family, Attached Multi-Plex Development Project, Commercial, Office, Institutional, and Light Industrial. The percentage of any use shall not be less than ten (10) percent of the acreage of the project.
3. Mixed-Use Projects (including Mixed-Use Project – Residential Only). Any portion of the project that is subdivided must remain an identifiable part of the integrated development and remain subject to the recorded restrictive covenants and the requirements of the property owners' association.
4. Parking shall be determined based on the individual uses as found in Table 6 in Section 2.02-5 Off-Street Parking and Loading. Parking may be located on adjacent property or across a Minor Road.
5. The project will require no internal buffers to separate uses. Instead, a landscaping plan will be required that includes buffering the perimeter of the project as required by Table 4 Side and Rear Bufferyard Requirements in Section 2.02-2 and canopy trees (per Section 6.2.54 of the Performance Zoning Ordinance) along any perimeter roadway unless the road has been designated as an Appearance Corridor in the PZO in which case it will follow these requirements in the PZO. The purpose of the buffer area is to minimize any potential adverse impact between adjacent land uses and across minor streets to promote land use compatibility. For projects that are expected to have high levels of noise and light, an enhanced perimeter buffer will be required that will mitigate the noise and light to the levels found in the PZO, Section 2.3.70 Noise and Light. All landscaping and screening shall be shown on the project site plan.
6. Height will be regulated by Table 3a and Table 3b. An existing building that is to be reused as a part of the Project shall be allowed to remain at its existing height and setback as long as it does not pose a danger to the public.
7. Mixed uses in the same building are allowed.
8. **Common Open or Green Space Requirements** - The total common open or green space within a Mixed-Use Project shall be a minimum of 20% percent of the gross acreage of the project. The definition of Common Open Space is found in Section 2.02-4. For Mixed-Use Projects that are entirely non-residential, the required open space may be 10% of the gross acreage of the project.
9. Adjacent public blueways, trails, or parks should be connected by integrating them into the project design through dedicated easements.
10. **Signs** - All proposed signage shall be in character with the surrounding area, the locations shall be shown on the site plan, and signs shall follow the requirements for Business Signs in the Performance Zoning Ordinance, Article 7, Chapter 7. Mixed-Use Projects on Minor Streets shall follow the requirements for an Appearance Corridor – S1 found in Section 7.7.50.
11. **Access and Circulation** - A circulation system shall be designed so as to provide for safe and convenient access to dwelling units, open space, community facilities, commercial uses, and light industrial uses in Mixed-Use Projects. At least two principal vehicular access points are required for projects having 1000 trips per day (per the required traffic study in #13), separated by no less than 300 feet if located on the same road. Principal vehicular accesses may be located on the property's frontage on two different roads. In any case, the road system shall be designed to permit smooth traffic flow and minimum hazards to vehicular, bicycle, or pedestrian traffic. Adequate access and circulation for emergency and service vehicles shall be provided. If the site cannot accommodate two principal access points, one principal entrance must be provided together with:

- a. a secondary access through an inter-neighborhood tie, or
- b. a boulevard section containing a median with no less than 20-foot-wide travel lanes on either side that runs for a distance of at least 100 feet.

All outparcels fronting on existing roads shall be required to access the internal road system and shall not be permitted to access the existing county or state road.

- 12. Cross-access easements shall be required for shared storm water facilities, parking, access, or other shared facilities.
- 13. Traffic and Operational Safety Studies shall be required by the Engineering Division of the Spartanburg County Public Works Department for developments with at least 100 peak hour trips. If there are known issues and/or concerns, then the County shall require a Traffic Impact Study even if the expected peak trip generation is less than 100 trips. The recommendations of the study shall be implemented subject to the County's approval.
- 14. Access to SCDOT-maintained roads will meet State requirements for Traffic Impact Studies.
- 15. Sidewalks, walking trails and bicycle lanes shall be encouraged.

Section 3.29-4 Qualifications for Mixed-Use Project Density Bonus

A. In order for a Mixed-Use Project to qualify for a density bonus, the site must meet the following criteria:

- 1. Project site must be at least ten (10) acres in size and must be identifiable as an integrated development even if it is subdivided.
- 2. Must be a site where a textile mill exists or previously existed, an industrial site abandoned for at least five (5) years, a site listed on the National Register of Historic Places, or a Significant Historic Site if declared so by the Spartanburg County Council by resolution.
- 3. In lieu of #2 in Section 3.29-3 above, a minimum of five (5) percent of the gross floor area must be a different use. If eighty (80) percent of the frontage of the parcel is located on a Minor Road, then the second required use may be reduced to two (2) percent of the gross floor area.

B. The density bonus shall be applied as follows:

- 1. Residential Density on a Collector Road shall not exceed 25 units per acre.
- 2. Residential Density on a Minor Road shall not exceed 15 units per acre.

In order to enhance compatibility with the surrounding area, the following items shall be required for the density bonus.

- 1. Signage Plan shall be subject to the standards under Appearance Corridor S-1 criteria, Article 6.

Section 3.29-5 Plan Requirements

The plans shall be prepared in accordance with the standards set forth in this Ordinance and the following including, but not limited to:

- 1. The applicant shall demonstrate compliance with the following requirements. A plan is recommended.
 - a. lighting per Section 2.3.90 in the PZO
 - b. glare (photometric) per Section 2.3.93 of the PZO
 - c. noise per Section 2.3.80 of the PZO
 - d. an amenities plan to determine landscaping and parking requirements
- 2. Identify the on-site transportation circulation system, including all public and private streets, existing or projected transit corridors, pedestrian and bicycle pathways, and how such on-site improvements will connect with existing adjacent facilities.

3. Identify streams, wetlands, stream and wetland buffers (as required by the Spartanburg County Storm Water Design Manual - Stream Protection and Restoration), open space, floodplains as required by the Floodplain Ordinance, Sections 38-64; and
4. Architectural renderings and elevations per Section 2.3.50 of the Performance Zoning Ordinance.
5. Signage Plan as required in 3.29-3 above, as applicable.

Section 3.29-6 Changes to a Mixed-Use Project

- A. The uses allowed in the Mixed-Use Project shall remain those that were approved by the Planning and Development Commission. Any additions to or changes in the Mixed-Use Project plan after it has been approved shall be resubmitted to the Planning and Development Commission for approval. These include:
 1. Increasing the density,
 2. Changing the outside (exterior) boundaries of the project,
 3. Changing the location or amount of land devoted to specific land use,
 4. Significantly changing the exterior appearance from what is shown on approved plans, or
 5. Shifting locations of buildings, proposed streets, public or private ways, utility easements, parks or other public open spaces, or other features of the approved plan.
- B. A change in an approved use will require an application and review by the Planning and Development Department Staff to ensure that the project remains in compliance with this Ordinance.

ARTICLE 4 – GENERAL AND ANCILLARY REGULATIONS

The regulations set forth in this Article are intended to clarify, supplement, or modify the regulations set forth elsewhere in this Ordinance.

Section 4.01 Application of Regulations

The regulations established herein are declared to be the minimum requirements necessary to carry out the purposes of this Ordinance. These regulations are the minimum standards for all site clearing, development, buildings, structures, or alterations to land or structures within the jurisdiction of this Ordinance.

No part of a yard, open space, or off-street parking required in connection with any building for the purpose of complying with the regulations of this Ordinance shall be included as part or all of the required yard, open space, or off-street parking for another building or structure, except as hereinafter provided.

Section 4.02 Exceptions and Modifications

1. Setbacks - Corner Lots

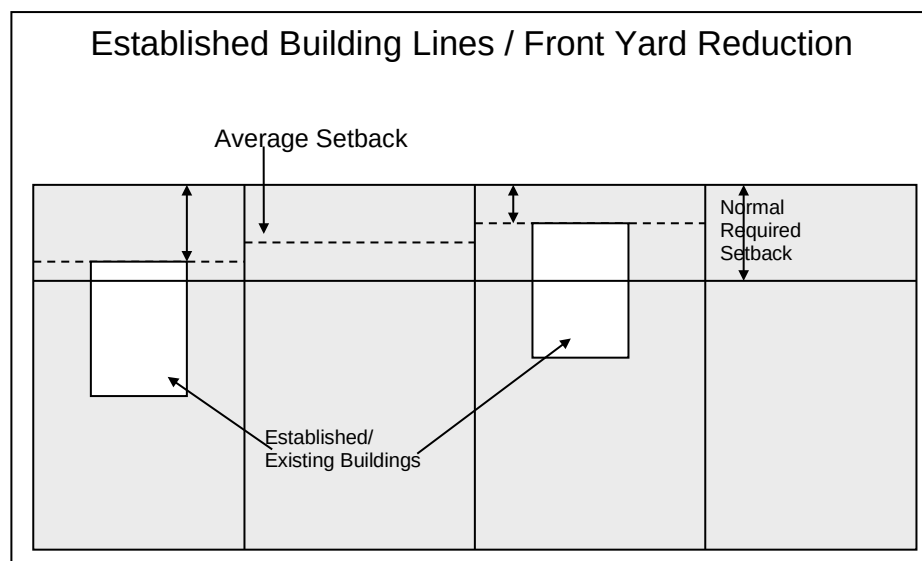
The setback from the street upon which the principal building will face shall be the minimum required front yard setback. The setback from the street upon which the side of the building will face shall be established by Table 3 for the use in question.

2. Setbacks - Partially Developed Areas

Where the majority of lots in a block fronting on the same side of a street between two intersecting streets are lawfully occupied with buildings having greater or lesser front yard depth than required by these regulations, no building hereafter erected or altered shall vary in the front yard setback by more than five (5) feet from the average depth of said existing front yard setbacks without written approval of contiguous property owners. However, in no case shall setbacks be less than 15 feet.

Section 4.03 Measurements

1. Yards, Setbacks, Buildable Area



The required front, side, and rear yards for individual lots, as set forth for by Table 3 shall be measured inward toward the center of said lot from all points along the respective front, side, and rear property lines of the lot. Once the yard areas of a given lot have been established, the remaining area of the lot which is not included in any required front, side, or rear lot shall be known as the "buildable" area within which the approved structure(s) shall be placed.

2. Height

The height of a building or structure shall be measured from the lowest grade elevation of the structure or from the base of a tree when computing height in the Airport Environ Zones, to the highest point of the building, structure, or tree.

Section 4.04 Conversion of Residential Property

When the conversion of a house to a commercial use is proposed, the house shall be made to meet all applicable codes for commercial buildings. Where a house will be used for a dwelling and a commercial use, that section of the house that will be open to the public shall meet all requirements for a commercial building. All parking, landscaping, buffering, and other requirements of this Ordinance for the commercial use of the property shall be met.

Section 4.05 Transitioning Land uses on Arterial Streets

In cases where it is determined by the Planning Department staff that residential land uses along arterial streets are in the process of transitioning to commercial, industrial, and office development, Planning Department staff, upon review and approval of the Planning Director, has the option of reducing the required bufferyard between an existing residential use and a proposed commercial or office use by one bufferyard class increment. The Planning Department staff will utilize the future land use map of the County Comprehensive Plan to assist in evaluating these transitioning area requests.

Section 4.06 Nonconformities

Section 4.06-1 Continuation (Grandfather Clause)

Nonconforming uses, buildings, or structures are deemed by this Ordinance to be incompatible with new permitted construction.

Section 4.06-2 Types of Nonconformities

Land uses may be nonconforming with respect to this Ordinance in the following ways:

- a. Violates height requirements
- b. Insufficient bufferyard
- c. Insufficient setback from street right-of-way or property line
- d. Excessive density as defined by the floor area ratio
- e. Excessive impervious surface ratio
- f. Not enough parking or loading spaces
- g. Does not conform with respect to the size and spacing of curb cuts
- h. Does not conform with respect to entrance/exit spacing
- i. Does not conform with respect to access to the street system (road classification system)

Except as otherwise provided nonconforming uses may not be enlarged, extended, reconstructed or structurally altered except in compliance with the provisions of this Article.

Section 4.06-3 Existing Nonconforming Use

1. Continuation

A use that is in existence at the effective date of this Ordinance may continue provided it does not require an increase in the total square footage of buildings or other structures or change to a more intense land use. Such buildings or other structures may be structurally altered or reconstructed as long as the total square footage of such buildings does not increase. Existing mining operations may continue until the existing body of ore or rock is exhausted.

2. Nonconforming Sexually Oriented Business

Any sexually oriented business lawfully operating on the effective date of this Ordinance that is in violation of this Ordinance shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a use identified on Table 3 within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

3. Nonconforming Manufactured Home Parks

This Section shall regulate Manufactured Home Parks which are legal nonconformities.

A. Measurement of Period until Required Compliance

The period until required compliance for each nonconforming manufactured home park, as described in B., shall be measured from the effective date of May 21, 2012.

B. Required Conformance of a Manufactured Home Park

Any Manufactured Home Park, which is a legal nonconformity, may be continued for a period of two years, without increasing the degree of nonconformity. After two years, the Manufactured Home Park may continue only through compliance with lighting and garbage removal requirements found in Section 3.04-4 (3) and (15).

C. General Provisions

1. Abandonment

Whenever all manufactured/mobile homes within a Manufactured Home Park are removed or become unoccupied for a continuous period of 12 months, the Manufactured Home Park may be reestablished only through compliance with all the requirements applicable to a new park.

2. Damage

If a structure in a legally nonconforming Manufactured Home Park is damaged or destroyed during the period until required compliance, the structure may be repaired or replaced without increasing the degree of nonconformity. After the period until required compliance, a damaged structure may be repaired or replaced only in compliance with Section 3.03 and 3.04.

3. Vacant Single Non-Conforming Structures

A non-conforming structure that has been removed for one year or more may not be replaced unless it can comply with the requirements found in this Ordinance

4. Repairs and Alterations

Nothing in this Section shall be deemed to prevent the ordinary maintenance and repair of a structure in a legally nonconforming Manufactured Home Park. However, no alterations are allowed except in compliance with Sections 3.03 and 3.04.

5. Change in Use

If a nonconforming Manufactured Home Park is replaced by another allowed use, and the owner wishes to reestablish the Manufactured Home Park before the 12-month abandonment period for the park elapsed, the reestablished park must comply with all requirements applicable to a new park.

6. Nonconformity and Highway Expansion

The relocation of a road right-of-way by the South Carolina Department of Transportation or Spartanburg County Public Works shall not be deemed to create or increase nonconformity with respect to the required setback from the road right-of-way. When a park is located on more than one right-of-way, each of its frontages shall be treated separately under this Section.

4. Non-Conforming Bulk Storage and Distribution Facility for Fuel Products

Bulk Storage and Distribution Facility for Fuel Products which are legal nonconformities are subject to the applicable requirements of non-conforming uses and structures found in this Article, except as follows.

- a. A nonconforming use of this kind may hereafter be replaced or brought back online on the parcel as it existed on September 16, 2013.
- b. The County Fire Marshal must receive an inspection report from the American Petroleum Institute on any bulk storage tank/vessel that is put back into service.

5. Nonconforming Flea Markets

This section shall regulate Flea Markets which are legal nonconformities.

a. Abandonment

If a Flea Market is unoccupied for a continuous period of 12 months, the Flea Market may be reestablished only through compliance with all the requirements applicable to a new Flea Market in Section 3.27

b. Damage

If a structure within a legally nonconforming Flea Market is damaged or destroyed during the period until required conformance, the structure, may be repaired or replaced without increasing the degree of nonconformity. After the period until required compliance above, a damaged structure may be repaired or replaced only in compliance with Section 3.27.

c. Repairs and Alterations

Nothing in this Section shall be deemed to prevent the ordinary maintenance and repair of a structure in a legally nonconforming Flea market. However, no alterations are allowed except in compliance with Section 3.27.

6. Nonconforming Scrap Metal Processors

- a. Existing Scrap Metal Processors in operation on 2/17/2013 shall be exempt from Section 3.29 and allowed to continue operation, but only as to such Existing Scrap Metal Processors' locations which are in operation on 2/17/2013 or which have final site plan approval on 2/17/2013 and which commences operation within six months after the effective date. Where the Existing Scrap Metal Processor's property abuts or adjoins residential property, school property, church property, or recreational property or parks and along the front of public roadways, the Existing Scrap Metal Processor shall remain subject to and comply with all the fencing and screening requirements of Section 3.19-3.

- b. An Existing Scrap Metal Processor shall be allowed to expand its land area by 20 percent onto contiguous properties and shall be exempt from the requirements of Section 3.29-2 except the following subsections of Section 3.29-2: subsection 11(Screening) and subsection 12 (Health and Safety).
- c. Existing Scrap Metal Processors wishing to expand in excess of 20 percent may request a variance from the Planning Commission.
- d. If an Existing Scrap Metal Processor closes, it must re-open within twelve (12) months or else it must comply with the provisions of Section 3.29 in order to re-open.

Section 4.06-4 Intermittent Use

The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a non-conforming use and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

Section 4.06-5 Change of Nonconforming Use

Land uses existing on the effective date of this Ordinance may expand to any size provided the use can meet setback, bufferyard and parking requirements of this Ordinance.

A change to a more intense land use or movement of buildings/structures on site may be permitted if the new or relocated use can meet bufferyard, setback requirements, parking requirements, curb cut size and spacing requirements, and entrance/exit requirements if applicable.

Section 4.06-6 Replacement of Nonconforming Use

A use that is destroyed beyond 50 percent of the fair market value immediately prior to the damage must meet all applicable requirements of this Ordinance in order to rebuild or reconstruct.

A use that is damaged 50 percent or less of fair market value immediately prior to the damage may repair or reconstruct such use, provided that repair and reconstruction are completed within twelve (12) months of the date of damage and provided the use is no greater size or land use intensity.

Section 4.06-7 Extension of Use within Existing Building

The nonconforming use of a building may be hereafter extended throughout those parts of a building which are primarily arranged or designed for such use at the time of enactment of this Ordinance.

Section 4.06-8 Discontinued Nonconforming Uses

If a use which was in existence and occupied on the date of enactment is discontinued for a period of six (6) months or more, it must comply with the Ordinance in as much as it is physically possible to do so in order to reopen. Discontinued for the purpose of this section is defined as the discontinuation of occupancy and utility services which can be clearly documented by the utility provider (i.e., electricity, water, sewer, gas, and telephone).

The provisions of this section shall not apply to any residential use.

Section 4.06-9 Lot of Record

Where a lot of record existed before September 30, 1974, or where a lot of record was created in accordance with applicable county ordinances between the dates of October 1, 1974, and December 31, 1999, and does not contain sufficient land to conform to the dimensional requirements of this ordinance or where such lot does not have sufficient frontage on a privately or publicly maintained road or street, such lot may nonetheless be used as a building site for a single-family dwelling or one manufactured home, and the Building Official is hereby authorized to issue a permit for the use of the property which conforms to the requirements (setbacks, heights, bufferyards, parking, etc.) established in Table 3 of this Ordinance. Applicable setback requirements shall not be reduced by more than twenty-five (25%) by the Planning Department staff. Setback reductions greater than twenty-five (25%) percent shall be referred to the Board of Appeals for consideration and final action.

ARTICLE 5 – REESTABLISHMENT, POWERS AND DUTIES OF SPARTANBURG COUNTY PLANNING COMMISSION AND BOARD OF ZONING APPEALS

Section 5.01 Spartanburg County Planning Commission

Section 5.01-1 Reestablishment of Planning Commission

The Spartanburg County Planning Commission is hereby reestablished under the provisions of the S.C. Code, §6-29-320.

Section 5.01-2 Powers and Duties of the Planning Commission

It is the function and duty of the Planning Commission to undertake a continuing planning program for the physical, social, and economic growth, development, and redevelopment of the unincorporated areas of Spartanburg County. The Planning Commission may make, publish, and distribute maps, plans, and reports and recommendations relating to the development of its area of jurisdiction to County officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens. The Planning Commission, its members and employees, in the performance of its functions, may enter upon any land with consent of the property owner or after ten days' written notification to the owner of record, make examinations and surveys, and place and maintain necessary monuments and marks on them, provided, however, that the Planning Commission shall be liable for any injury or damage to property resulting therefrom. In general, the Planning Commission has the powers as may be necessary to enable it to perform its functions and promote the planning of its political jurisdiction.

In the discharge of its responsibilities, the Spartanburg County Planning Commission has the power and duty to:

1. Prepare and revise periodically plans and programs for the development and redevelopment of its area of jurisdiction; and
2. Prepare and recommend for adoption to the County Council as a means for implementing the plans and programs in its area:
 - a. Land use (Zoning) ordinances to include district maps and appropriate revisions thereof;
 - b. An official map and appropriate revision on it showing the exact location of existing or proposed public street, highway, and utility rights-of-way, and public building sites, together with regulations to control the erection of buildings or other structures or changes in land use within the rights-of-way, building sites, or open spaces within its political jurisdiction or a specified portion of it;
 - c. A landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
 - d. A capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by County Council for implementation prior to preparation of the capital budget;
 - e. Policies or procedures to facilitate implementation of planning elements; and
 - f. Regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that may be adopted. In overseeing the administration of subdivisions and major land developments, the Planning Commission has the authority to:
 1. To Hear and Decide Appeals from staff decisions where it is alleged there is error in any order, requirement, decision, or determination made by the staff in the administration of subdivision and/or major land development applications.
 2. To grant variances in specific cases from the regulations pertaining to subdivisions and major land developments as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in the unnecessary hardship so that the spirit of the Ordinance shall be observed, public

safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship if the Commission finds:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- b. These conditions do not generally apply to other property in the vicinity;
- c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the area.

The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Section 5.01-3 Composition of the Commission

The Planning Commission shall consist of nine members appointed by County Council for overlapping terms of four (4) years. Three (3) members first appointed shall serve two (2) years, three (3) members first appointed shall serve three (3) years, and three (3) members first appointed shall serve four (4) years.

Of the nine (9) members, six (6) shall be appointed from council districts, one (1) from each district. Three members shall be appointed at large.

To the extent possible, membership shall represent a broad cross section of the interests and concerns of the Spartanburg Community, and shall be representative of the racial and gender composition of the County. No member shall be the holder of an elected public officer in Spartanburg County.

Members shall serve until their successors are appointed and qualified.

Section 5.01-4 Compensation

Compensation will be provided to members of the Planning Commission at an amount of compensation determined by Spartanburg County Council. Reimbursement for actual expenses incurred in the performance of official duties may be paid from budgeted funds pursuant to reimbursement policies and procedures for employees of the County. Spartanburg County will also provide training and workshop training for Commissioners.

Section 5.01-5 Removal of Members

County Council may remove members of the Planning Commission at any time for cause. The existence of cause shall be discussed by the Council in executive session as permitted by the Freedom of Information Act, South Carolina. Code, §30-4-70(a)(1), and the determination of removal shall be by vote in public session declaring a vacancy in the position without a statement of cause. Any fact which, in the discretion of Council, is deemed to adversely affect the public interest, including lack of attendance at meetings, may constitute cause.

Section 5.01-6 Organization and Rules of Procedure

The Planning Commission shall organize, elect officers, and adopt rules of procedure as required by South Carolina Code, §6-29-360.

Section 5.02 – Spartanburg County Board of Zoning Appeals

Section 5.02-1 Reestablishment of Board of Zoning Appeals

The Spartanburg County Board of Zoning Appeals is hereby reestablished under the provisions of the South Carolina Code, §6-29-780 and Chapter 2 of Article 9 of the Spartanburg County Performance Zoning Ordinance.

Section 5.02-2 Powers and Duties of the Board of Zoning Appeals

The Board of Zoning Appeals shall have the following powers and duties:

1. **To Hear and Decide Appeals, Generally.** To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcement officer of this Ordinance.
2. **To Grant Variances, Generally.** To authorize upon appeal in specific cases a variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance will, in an individual case, result in the unnecessary hardship so that the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship if the Board makes and explains in writing the following findings:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
 - b. These conditions do not generally apply to other property in the vicinity;
 - c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
 - d. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the area will not be harmed by the granting of the variance.

The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.

Section 5.02-3 Decisions of the Board of Zoning Appeals

In exercising the above powers, the concurring vote of two-thirds of the members present and voting shall be required to reverse, wholly or in part, or modify any order, requirement, decision, or determination of the County Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, and to that end, shall have the powers of the officer from whom the appeal is taken and may direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and, in case of contempt may certify such fact to the Circuit Court having jurisdiction.

All final decisions and orders of the Board shall be in writing and be permanently filed in the office of the Board as public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board which must be delivered to parties of interest by certified mail.

ARTICLE 6 – DEFINITIONS

Words not defined herein shall have the meanings stated in the Standard Building Code, Standard Plumbing Code, Standard Gas Code, or Standard Fire Prevention Code. Words not defined in the Standard Codes shall have the meanings in Webster’s Ninth New Collegiate Dictionary, as revised.

Words in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

The word “shall” is always mandatory.

The word “may” is permissive.

The word “lot” includes the word “plot” or “parcel.”

The word “person” includes a firm, association, organization, partnership, trust company, or corporation, as well as an individual.

The word “used” or “occupied” as applied to any land or building shall be construed to imply that said land or building is in actual use or occupancy and shall be construed to include the words “intended,” “arranged,” or “designed to be used or occupied.”

The term “Planning Commission” refers to the Spartanburg County Planning Commission, as reestablished by Article 6 of this Ordinance.

The term “Council” refers to the Spartanburg County Council.

Other words and terms defined herein are as follows:

Abutting – Sharing a common border; physically touching.

Airport – Any landing area, runway, or other facility designed, used, or intended to be used either publicly or by any person or persons for the landing or taking off of aircraft including all necessary taxiways, aircraft storage and tie down areas, hangars, and other necessary buildings and open spaces.

Aviation Easement – The right of aircraft to fly above the plane formed by the approach, transition, horizontal, and conical zones as defined in Ordinance No. 75 of Spartanburg County and to generate noise not to exceed levels projected in the 1995 Ldn noise contours as defined in this ordinance.

Airport Hazard – Any structure, tree, or use of land which obstructs the airspace required for or is otherwise hazardous to the flight of aircraft in landing or taking off at the airport.

Area of Shallow Flooding – A designated AO or VO Zone shown on Flood Insurance Rate Maps (FIRM) with base flood depths of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard – The land in the flood plain subject to a one percent or greater chance of flooding in any given year.

Asphalt Batch Plant – An establishment engaged in manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials to be used in building or construction; and the recycling of old asphalt into asphalt-type material. This does not include a Temporary Asphalt Batch Plant. These facilities are also known as hot mix asphalt plants, drum mix plants, or batch mix plants among others.

Asphalt Batch Plant, Temporary – A temporary Asphalt Batch Plant on an active construction site that processes asphalt only for use in a particular construction project and only for the duration of that project.

Asphalt Distribution Terminal, Liquid – Facility where liquid asphalt is received from a petroleum refinery and stored for distribution to an Asphalt Batch Plants.

Bar – (Also, Nightclub, Tavern, Pub, Cocktail Lounge, Disco) – An area primarily devoted to the servicing of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (percentage of alcohol sales exceeds food sales).

Base Flood – The 100-year flood elevation at any point within the flood plain of any given stream as determined by the Federal Emergency Management Agency on their Flood Boundary and Floodway Maps (FHBM) #450176, dated November 15, 1982.

Big-Box Retail – A singular retail or wholesale user who occupies no less than 50,000 square feet of GFA, typically requires high parking to building area ratios.

Breakaway Wall – A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Buildable Area – That portion of any lot which may be used or built upon when the front, side and rear yard, open space, and applicable buffer area requirements have been met.

Building – Any structure built for support, shelter, or enclosure for any occupancy or storage.

Building, Accessory – A subordinate structure on the same lot as the principal or main building or use occupied or devoted to a use incidental to the principal use. Included in this definition are private garages, storage sheds, workshops, domestic animal shelters, pool houses, etc., when detached from the principal buildings, and carports attached to the principal building when at least 75 percent open or unenclosed.

Building, Alteration – Any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction, or removal of any structure.

Building, Principal – A building in which is conducted, or in which is intended to be conducted, the main or principal use of the lot on which it is located.

Bulk Storage and Distribution – The manufacture of or the receiving of liquids, gases, or solids by truck, tank vessel, pipelines, tank car, or tank vehicle, and storing, processing, or blending them in bulk for the purpose of distributing such liquids, gases, or solids by truck, tank vessel, pipeline, tank car, tank vehicle, portable tank, or container.

Bulk Storage and Distribution Facility – A facility where Bulk Storage and Distribution occurs which has a combined capacity of 100,000 gallons or more. The facility may include terminal facilities, bulk stations, surge and storage tanks.

Bulk Storage and Distribution Facility for Fuel Products, Existing – A Bulk Storage and Distribution Facility for Fuel Products that existed as of September 16, 2013.

Business, Permanently Maintained – Any business which has at least one employee present at the site, providing goods and/or services to the community and available to the public for at least 36 hours per week on at least 4 days per week for 48 weeks per year. The activity, or a major portion of it, must be conducted from a permanent building, modular unit, or an open air use which the applicant can prove is considered part of the real estate and is taxed as a commercial use by the Spartanburg County Tax Assessor's Office.

Canopy Tree – A deciduous tree that forms the top layer of vegetation in a forest. Examples of such trees include oaks, hickories, maples, poplars, and others.

Certificate of Occupancy – A document allowing the occupancy or use of a building or certifying that the structure or use has been constructed or will be used in compliance with all applicable provisions of this Ordinance and the Building Code.

Church – A building or structure or group of buildings or structures, other than a private dwelling, where organized religious services are usually conducted.

Cluster Home Development – A development design technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive features.

Commercial Use – Any use or establishment of which the primary activity is the offering of goods or services to the public for a fee or other compensation. Lawful home occupations shall not be considered commercial uses for purposes of this ordinance. Any use meeting the definition of industry as well as of commercial use shall be considered industry.

Conditional Use – A use of land or structure that, owing to special characteristics attendant to its operation or installation, is subject to specified conditions different from the general development requirements of this Ordinance.

DBH – Diameter at breast height, or the diameter (in inches) of a tree measured at four and one-half (4½) feet above the existing grade.

Density – The number of dwelling units per acre of land developed or used for residential purposes. Density requirements in this Ordinance are expressed in dwellings units per gross acre; that is, per acre of land devoted to residential use is based on the total land area within a development tract or subdivision, excluding nothing.

Developer – An individual, partnership, or corporation (or agent therefore) that undertakes the activities covered by these regulations.

Development – Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DHEC – South Carolina Department of Health and Environmental Control.

Distressed Property – A vacant commercial or industrial building which, after a 30-month period of reasonable marketing efforts, has not been sold, leased, or otherwise placed into service.

Domestic Animal Shelter – A pen, shelter, or structure where no more than three dogs or small domestic animals, not to include horses, cows, goats, swine including pot-bellied pigs, sheep, ponies, grazing animals, and fowl of any kind, are boarded and kept.

Drainage – The removal of surface water or groundwater from land by drains, grading, or other means.

Drainage way – Minor watercourses where water is concentrated which are defined either by topography or by the presence of intermittent or perennial streams or by legal description.

Driveway – A paved or unpaved area used for ingress and egress of vehicles and allowing access from a street to a building or other structure or facility.

Dwelling – A building or portion of a building arranged or designed exclusively for human habitation.

Dwelling, Apartment – (See dwelling, multi-unit)

Dwelling, Condominium – A multiplex dwelling unit in which the dwelling unit is individually owned, and the land is held in common.

Dwelling, Detached – A single dwelling unit, surrounded by open space or yards and which is not attached to any other dwelling by any means.

Dwelling, Duplex – A building containing two dwelling units.

Dwelling, Group Occupied – A dwelling unit occupied by five (5) or more individuals unrelated by blood, marriage, adoption, or guardianship living together as a single housekeeping unit.

Dwelling, Mobile Home – A single family dwelling that is wholly, or in substantial part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the *Federal Manufactured Housing Construction and Safety Standards, June 15, 1976*.

Dwelling, Multi-Family – A building containing three (3) or more dwelling units on a single parcel of land.

Dwelling, Patio House – A single-family detached dwelling unit. It is built on a small lot generally enclosed by walls which provide privacy.

Dwelling, Quadraplex – A build containing four (4) dwelling units.

Dwelling, Residential Designed Manufactured Home – A single-family dwelling built according to the *Federal Manufactured Housing Construction and Safety Standards (245 CFR 3280) HUD Code*, which:

- a. Has a minimum width over 20 feet (multiple-section);

- b. Has a minimum of 900 square feet of enclosed living area;
- c. Has a nominal minimum 3:12 roof pitch; and has a type of shingle commonly used in standard residential construction;
- d. Is covered with an exterior material customarily used on site-built homes, including vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction; and
- e. Has a roof overhang of not less than eight (8) inches.

Dwelling, Single-Family – A building containing one (1) dwelling unit.

Dwelling, Standard Designed Manufactured Home – A single family dwelling unit built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the definition of a Residential Designed Manufactured Home.

Dwelling, Townhouse – A series of attached single-family dwelling units on separate lots which may or may not have a common roof and are separated from each other by common vertical walls.

Dwelling, Triplex – A single building containing three (3) dwelling units.

Dwelling, Zero Lot Line – A zero lot line dwelling is a single-family detached unit which instead of being centered on a lot, is placed against at least one of the side lot lines.

Dwelling Unit – A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Easement – A right-of-way granted to another party for specific limited use.

Elevated Building – A non-basement building constructed to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, (post and piers), shear walls, or breakaway walls.

Evergreen Tree – A coniferous or deciduous tree that remains green throughout the year.

Family – One or more persons related by blood, marriage, adoption, or guardianship, and not more than five (5) persons not so related, except that mentally and physically handicapped persons for whom care is provided on a 24-hour basis shall be construed to be a family, in accord with the provisions of 6-7-830 of the South Carolina Code of Laws.

Family, immediate – The children, grandchildren, sibling, or parents of an individual, whether by blood, marriage or legal adoption.

Farmer's market – The seasonal offering of home-grown agricultural products directly to the consumer in an open-air market or pre-designated area where the vendors are generally individuals who have raised the vegetables or produce or taken the same on consignment for retail sale.

Federal Manufactured Home Construction and Safety Standards – Regulations promulgated by the Department of Housing and Urban Development (HUD) governing the design and construction, strength and durability, transportability, fire resistance, energy efficiency, and quality of manufactured housing. These standards also set performance requirements for heating, plumbing, air conditions, thermal, and electrical systems.

Flea market – Any activity:

- (i) at which two or more persons offer personal property for sale or exchange; and
- (ii) at which a fee is charged for the privilege of offering or displaying personal property for sale or exchange; or
- (iii) at which a fee is charged to prospective buyers for admission to the area where personal property is offered or displayed for sale or exchange; or
- (iv) regardless of the number of persons offering or displaying personal property or the absence of fees, at which personal property is offered or displayed for sale or exchange if the event is held more than two days per month or more than twelve days per calendar year.

The term flea market is interchangeable with and applicable to “swap meet,” “open air market,” “jockey lot” or other similar terms where events are held under a semi-enclosed building or shelter

or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business. Such activities that take place in a fully enclosed and secured building shall be treated in this Ordinance as medium-high intensity commercial use.

This term does not include sidewalk sales or other such merchandise owned by shopping centers or individual retail operations, sales conducted by nonprofit organizations, farmer's markets, or residential yard sales.

Flood - A general and temporary condition of partial or complete inundation of normally dry land areas.

Flood Hazard Boundary Map (FHBM) – An official map issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard are defined.

Flood Insurance Rate Map (FIRM) – An official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones.

Flood Insurance Study – An official study provided by the Federal Emergency Management Agency.

Flood-resistant Material – Any building material capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage which requires more than low-cost cosmetic repair.

Floodway – The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floor – The top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include floor of a garage used solely for parking vehicles.

Floor Area Ratio – An intensity measure of land use derived at by dividing the total floor area of a building by the total site area.

Fuel Product – Any solid, gas or liquid that is used for fuel purposes and which is detonable, ignitable, or flammable. This term shall include, but not be limited to butane, propane, hydrogen, petroleum, diesel, natural gas, ethanol, methanol and other fuels and bio-fuels.

Garage, Private – (As defined by the Standard Building Code.)

Garage, Public – (As defined by the Standard Building Code.)

Gross Floor Area (GFA) – The sum of the floor area for each of a building's stories measured from the exterior limits of the faces of the structure, including basement floor area. It does not include unenclosed porches or any floor space in an accessory building or in the principal building which is designed for parking of motor vehicles.

Group Assembly, Limited – A meeting place at which the public is assembled regularly or occasionally for the purposes of, but not necessarily limited to, schools, daycares, churches, hospitals, banquet halls, auditoriums, conference centers, stadiums, theaters, public parks, and public or private clubs and lodges with occupancy levels of less than 200.

Group Assembly, Extensive – A meeting place at which the public is assembled regularly or occasionally for the purposes of, but not necessarily limited to, schools, daycares, churches, hospitals, banquet halls, auditoriums, conference centers, stadiums, theaters, public parks, and public or private clubs and lodges with occupancy levels of 200 or greater.

Habitable Dwelling – A dwelling meeting the minimum habitability requirements of this Ordinance, and other applicable regulations.

Hazard to Air Navigation – An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Hazardous Chemical – Any gas, liquid or solid that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released. Materials and substances considered as Hazardous Chemicals shall be those contained within the listing published by the Environmental Protection Agency, as amended, under the provision of the Toxic Substances Control Act of 1976. A further listing of such materials

is found in Regulation No. 61-79.1 of the Rules and Regulations of the State of South Carolina, appended to the 1976 Code of Laws, as amended.

Height – The vertical distance of a structure or vegetation. In measuring for setbacks over 35 feet as found in Tables 3a and 3b, height measurements shall be taken from the ground adjacent to the building on the side where the setback is required.

High Intensity Commercial – Uses in this category may have some or all of the following characteristics:

- ♦ Drive-through windows or service lanes;
- ♦ Large scale and size; High traffic generation rates (300 or more vehicle trips/1000 square feet gross floor area);
- ♦ Live entertainment, amplified music or other activities that regularly generate noise that can be heard outside the building or off the premises;
- ♦ A type of business typically open for operation after 9 p.m. or before 6 a.m.;
- ♦ Outdoor storage of equipment, materials, and trash; and
- ♦ Servicing of vehicles and equipment.

Home Occupation – Any use of the principal building/structure on a residential lot which is incidental to the use for dwelling purposes and conducted for compensation by the resident thereof.

Improvement – Any man-made immovable item which becomes part of, placed upon, or is affixed to real estate.

Individual Waste Disposal System – A system which will treat and dispose of domestic sewage from a single house or residence without creating a nuisance or a potential health hazard.

Industry – The processing or handling of goods other than in a retail setting. Processing includes the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity or any other treatment thereof in such a manner as to change the form, character or appearance thereof. Handling of goods includes storing and shipping goods and specifically includes storage elevators, truck storage yards, warehouses, wholesale storage and similar activities.

Industry, Light – An industrial use or building which, (1) does not utilize process water and which does not produce waste water, (2) contains all aspects of the industrial process within the building, (3) does not exceed a maximum height of two stories and a maximum floor area ratio of 50 percent, and (4) does not produce sound pressure (noise) level in excess of 45 decibels, measured at the nearest property line; (5) does not typically involve more than six trips per day of heavy trucks; and (6) does not involve regular or frequent maintenance or on-site operation of refrigerator or other heavy trucks;

Industry, Heavy – Any industrial use not classified as Light Industry.

Institutional Use – The use of land, buildings or structures for public and non-profit purposes, including religious, charitable, educational and health, and includes such uses as churches, places of worship, public or private schools, community centers, hospitals, etc.

Junkyard or Salvage Yard – terms used interchangeably to describe any business (property, structures) registered as such by Spartanburg County and whose purpose is to buy, sell or trade wrecked, dismantled or disabled motor vehicles or parts thereof, dismantled or inoperable industrial or commercial equipment, or machinery being salvaged for parts. These terms include vehicle dismantlers; auto salvage yards; auto recyclers; pick-a-part yards; and property used for wrecker, towing and impoundment purposes. The term does not include scrap metal processors.

Kennel – Any building(s), facility/facilities, or land that is used for the care or housing of dogs, cats, or other household pets for the purpose of breeding, boarding, training, show, grooming, or sale and where profit or reward is the intended end purpose. Uses that do not involve outdoor facilities for housing, boarding, training, or exercise are exempt from this definition.

Land Development – The changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, commercial parks, shopping centers, industrial parks, manufactured home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

Letter-of-Credit – See definition of Performance Guarantee.

Lot – A parcel or single tract of land. The terms “lot”, “lot of record”, “property”, or “tract”, whenever used in this Ordinance are interchangeable.

Lot, Corner – A lot located at the intersection of two or more streets.

Lot, Flag – a lot with access provided to the bulk of the lot by means of a narrow corridor or stem/pole.

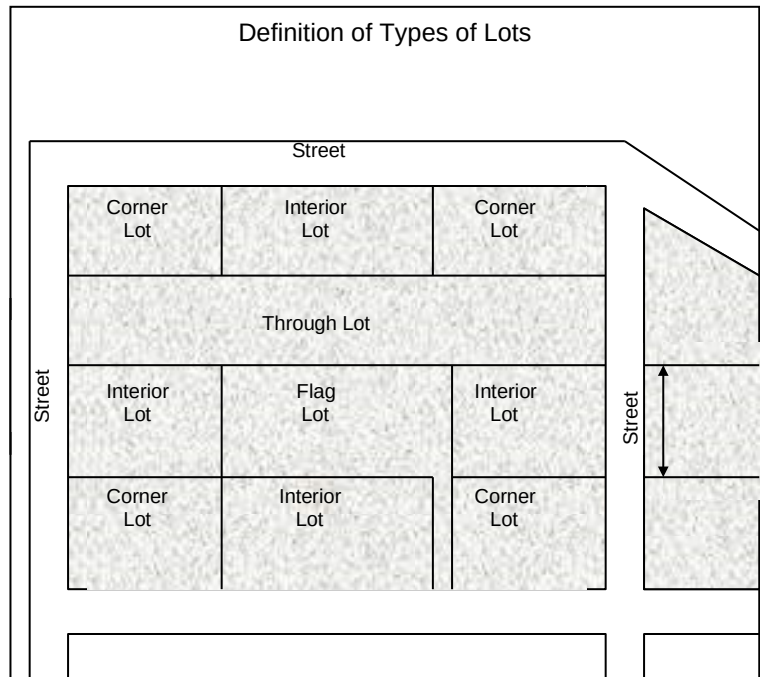
Lot, Interior – A lot, other than a corner lot, which has frontage on only one street other than an alley.

Lot, Reverse or Double Frontage – A lot having frontage on two non-intersecting roads, as distinguished from a corner lot.

Lot Area – The area contained within the boundary line of a lot.

Lot Depth – The horizontal distance between front and rear lot lines.

Lot Width – The width of the lot at the front building line.



Lot Frontage – Lot width measured at the street lot line. When a lot has more than one street lot line, lot width shall be measured, and the minimum lot width required by this Ordinance shall be provided, at each such line.

Lot Line – A line bounding a lot which divides one lot from another or from a street or any other public or private space.

Lot of Record – A parcel of land, created and recorded in compliance with all county ordinances at the time of recordation or that were recorded on or before September 30, 1974. Lots of record may or may not be buildable lots.

Lot of Record, Nonconforming – A parcel of land, which was created and/or recorded which was not in compliance with all County Ordinances at the time of creation and/or recordation or which was not approved by the Spartanburg County Planning Commission.

Low Intensity Commercial – Uses in this category have low traffic generation rates (less than 20 vehicle trips per day and/or 1,000 square feet gross floor area), operate primarily during the day, and do not include vehicle service stations, convenience stores, liquor stores, eating or drinking establishments.

Manufactured Home – A Manufactured Home, Residential Designed or a Manufactured Home, Standard Designed.

Manufactured Home Park – Three or more Manufactured/Mobile Homes or Manufactured Home Park Spaces which are located adjacent to one another and operated in a coordinated manner. The park may be located on a single parcel or multiple parcels. Multiple adjacent manufactured homes must meet the requirements for a Manufactured Home Park or the requirements of the subdivision regulations and Table 3 of this ordinance.

Manufactured Home, Residential Designed – A single-family dwelling built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which:

- Has a minimum width of 20 feet (multiple-section);
- Has a minimum of 900 square feet of enclosed living area;
- Has a minimum nominal 3:12 roof pitch; and has a type of shingle commonly used in standard residential construction;

- d. Is covered with an exterior material customarily used on site-built homes, including vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction; and
- e. Has a roof overhang of not less than eight (8) inches.

Manufactured Home, Standard Designed – A single-family dwelling unit built according to the Federal Manufactured Housing Construction and Safety Standards (24 CFR 3280) HUD Code, which does not meet the definition of a Residential Designed Manufactured Home.

Manufactured Home Park Space – A plot or ground within a manufactured home park designed for the accommodation of one unit.

Mobile Home – A single-family dwelling that is wholly, or in substantial part, fabricated in an off-site manufacturing facility for installation or assembly at the building site, designed to be a permanent residence, and built prior to the enactment of the Federal Manufactured Housing Construction and Safety Standards HUD Code, June 15, 1976.

Medium Intensity Commercial – Typical uses in this category include entertainment uses and commercial uses such as auto accessory stores, blueprint and photostat stores, bowling alleys, private indoor clubs, commercial and trade schools (e.g., dance studios, schools for martial arts), funeral homes, mortuaries, garden supply and/or greenhouses (provided all sales on premises are retail), grocery stores and supermarkets (excluding convenience stores), hospitals, hotels/motels, ice cream stores, etc.

Mixed-Use Project – A Mixed-Use Project is a development which shall include at least two different uses from the following: Residential Single Family, Residential Multi-Plex Development, Commercial, Office, Institutional, and Light Industrial in one integrated project. The uses shall be planned and built per the percentages prescribed in the Ordinance.

Mixed-Use Project - Residential Only – A Mixed Use Project is a development which must include both Single Family Residential and an Attached Multi-Plex Development Project as described in Section 3.02 of this Ordinance. The uses shall be planned and built per the percentages prescribed in the Ordinance.

Modular Building Unit or Modular Structure – Any building of closed construction, regardless of type of construction or occupancy classification, other than a mobile or manufactured home, constructed off-site in accordance with the applicable codes, and transported to the point of use for installation or erection.

Nonconformity – A nonconformity is any lot of record (see Lot of Record-Nonconforming), use, building, structure or vegetation in existence prior to the effective date of this Ordinance, but which fails, by reason of such adoption, revision or amendment, to conform to the present requirements of the Ordinance.

Non-residential Use – A principal use of land for other than residential purposes, i.e. commercial, industrial, institutional.

Off-Site Hazardous Chemical Storage Facility – An establishment providing storage for Hazardous Chemicals for a period not to exceed two (2) years. These locations are not part of a manufacturing plant that uses Hazardous Chemicals in a manufacturing process on their site. Further, Off-site Hazardous Chemical Storage does not refer to active chemical distribution warehouses.

Open Space Ratio – The open space ratio is a measure of the intensity of land use. It is arrived at by dividing the total amount of open space within the site by the Total Site Area.

Parcel – A land area bounded by property lines that is recognized as such by the Spartanburg County Assessor's Office and which has been assigned a parcel identification number (PIDN) by the Spartanburg County Assessor's Office.

Park-Private – These are lots or parcel of land devoted to recreational pursuits both active and passive. The facilities can range from open landscaped area to tot lots, playgrounds, neighborhood parks, and playfields.

Park-Public – A public facility open for recreation, with commercial activities for recreational uses only, open space and public gardens.

Performance Guarantee (Letter-of-Credit) – A financial guarantee to ensure that all improvements, facilities, or work required by this Ordinance will be completed in compliance with the Ordinance, regulations, and the approved plans and specifications of a development.

Perimeter – The outermost property line in a development.

Plat – A map showing a plan for the development of land which is submitted for approval and is ultimately in final form for recording.

Playground – A place, other than grounds at a private dwelling, that is provided by the public or members of a community for recreation.

Public Improvement – Any improvement, facility, or service, together with customary improvements and appurtenances thereto, necessary to provide for such public needs as: vehicular and pedestrian circulation systems, storm sewers, flood control improvements, water supply and distribution facilities, sanitary sewage disposal and treatment, public utility and energy services.

Public Sponsorship – Sponsorship provided by local government or quasi-public organization (e.g., fire district, rescue squad, water district).

Premises – A lot, plot, or parcel of land including the buildings or structures thereon, under control by the same owner or operator together with all adjacent land.

Right-of-Way – A strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses; generally, the right of one to pass over the property of another.

Road – See definition of Street.

Roadside Stand – A temporary structure not permanently affixed to the ground with no space for customers inside and readily removable in its entirety, which is used solely as a location at which an individual farmer sells his/her produce directly to consumers. This is in contrast to a group or association of farmers selling their produce at a farmers' market.

Rural Event Venue – an intermittent use located in a rural setting, on a parcel of at least 5 acres, that may utilize temporary or permanent structures for the purpose of holding a private event to include weddings and private social events.

School – A building or structure or group of buildings or structures, other than a private dwelling, where the usual processes of education are conducted.

Scrap Metal Processor – Any person, firm or corporation whose principal business sells scrap metal to steel mills, foundries, exporters or other entities for re-melting, reusing, recycling, or other uses. Such firms or corporations are those operating from a fixed location and utilizing heavy machinery such as cranes, balers, grinders, and shearers for processing and manufacturing iron, steel, or non-ferrous metallic scrap.

Scrap Metal Processor, Existing – A Scrap Metal Processor in operation at a fixed location in Spartanburg County on [the effective date of this amendment].

Scrap Metal Processor, Indoor – A Scrap Metal Processor whose operations are contained wholly within an enclosed building and whose noise decibel level does not exceed 45 at any adjoining property line.

Shoulder – The graded part of a right-of-way that lies along the edge of the main pavement (main traveled way). This area of the roadway is often used to park vehicles in emergencies.

South Carolina Manufactured Housing Board – The Board authorized by State Statute to regulate the construction, repair, modification, installation, tie-down, hook-up, and sale of manufactured homes in South Carolina, which Board has adopted for regulation of manufactured homes the Federal Manufactured Housing Construction and Safety Standards, promulgated by HUD, and contained in the Board's Manufactured Housing Regulations, May 26, 1990.

Stall, flea market – An area (such as tables, booths, spaces, rooms, etc) within a flea market or open air market that is rented to an individual retailer.

Street – Any thoroughfare (drive, road, highway, avenue, boulevard, etc.) which has been dedicated, deeded or designated for vehicular traffic, public or private.

Street, All Weather – A street or road constructed on a compacted sub-base of suitable material with a compacted stone base, a cross-section consisting of a crowned center, shoulders stabilized side slopes and a drainage system.

Street, Arterial – A street/road that carries traffic from region to region. These streets/roads are intended to provide for high speed travel between or within communities or to and from collectors and expressways. The concept of service to abutting land should be subordinate to the provision of travel service and major traffic movement.

Street, Collector – A street that connects minor streets to the highway systems major and high-speed arterial roads. The collector street provides both land access service and traffic service within residential neighborhoods, commercial and industrial areas. Collector roads form barriers between neighborhoods and are designed for higher speeds and traffic volumes than minor streets.

Street, Cul-de-sac – A street with a single common ingress and egress and with a turnaround at the end.

Street, Major Residential – an access street that provides frontage for residential lots and may carry a small amount of residential streets. Generally these streets serve 116 or more dwelling units and have an average daily traffic (ADT) volume greater than 1600.

Street, Minor Residential – A street that has the sole purpose of providing frontage for service and access to residential lots. These streets carry only traffic having either origin or destination on the street itself. Generally these streets serve 115 dwelling units or fewer, and have an average daily traffic (ADT) of 1159 vehicles or fewer.

Street, Public – Any street that serves two or more properties and is not necessarily within the maintenance responsibility of any public entity, but not to include private driveways. Property owners along said street have full and free access and may have one dwelling per lot of record.

Street/Road, Minor – a street/road that serves traffic to and from residences and a small amount of low intensity commercial development. A minor street/road typically serves up to 140 dwelling units and has an average daily traffic (ADT) of 1400 vehicles or fewer.

Structure – (As defined by the Standard Building Code.)

Structural Alteration – Any change in the supporting members of a building, such as the bearing walls, beams, or girders, or any change in the dimension or configuration of the roof or exterior walls.

Substantial Improvement – Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) any project of improvement to a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions (does not include Americans with Disabilities Act compliance standards); or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure. Permits shall be cumulative for a period of five years.

Tattoo Facility or Tattoo Parlor – Any room, space, location, area, structure, or business, or any part of these places where the business of tattooing is conducted.

Temporary Use – A prospective use, intended for a limited duration, and not involving the placement of permanent buildings or structures.

Transient merchant or vendor – Any person who engages in the temporary business of the retail sale and delivery of goods, wares or merchandise within the jurisdiction of Spartanburg County, and who does not operate inside a permanent structure that meets the commercial standards of this ordinance and the International Building Code. This definition shall not include merchants having regularly established places of business within the county if they are operating from their established place of business, persons who have obtained a temporary use permit from Spartanburg County, persons making sales at any annual fair, festival, annual celebration or observance, or regularly employed route salespeople.

Travel Trailer or Recreational Vehicle – A structure that (1) is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and (2) is

designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile or manufactured home or modular unit.

Understory Tree – A small deciduous tree that forms the layer of vegetation under the canopy trees in a forest. Examples of such trees include dogwoods, sourwoods, fruit trees and others.

Use – The purpose or activity for which land or any building thereon is designed, arranged or intended, or for which it is occupied or maintained.

Use, Accessory – See Building, Accessory.

Use, Principal – The primary purpose for which land is used.

Use, Temporary – A temporary use is one established for a fixed period of time with the intent to discontinue such use upon the expiration of such time. Such uses do not involve the construction or alteration of any permanent structure.

Vacant Lot – An unimproved lot which is classified as vacant by the Spartanburg County Assessor's Office.

Variance – A modification of the area regulations of this Ordinance, where such modification will not be contrary to the public interest, and where, owing to conditions peculiar to the property, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

Vegetation – Any object of natural growth.

Wetlands – Areas of one-quarter (.25) acre or more where standing water is retained for a portion of the year and unique vegetation has adapted to the area. Jurisdictional wetlands are those over which the U.S. Corps of Engineers has permitting jurisdiction.

Yard – An open space that lies between the principal or accessory building or buildings and the nearest lot line.

Yard, Front – A yard extending the full width of the front of a lot between the front (street) right-of-way line or property line and the front building line.

Yard, Rear – A yard extending the full width of the lot in the area between the rear lot line and the rear building line.

Yard, Required – That part of a yard between a lot line and the minimum required building setback line, within which no structure shall be located except as provided by this Ordinance.

Yard, Side – A yard extending the full length of the lot in the area between the side lot line and a side building line.

Yard Sale – All general sales open to the public, conducted from or on a residential premise for the purpose of disposing of personal property including, but not limited to, all sales entitled “garage,” “yard,” “attic,” “porch,” “room,” “backyard,” “patio,” or “rummage” sale. Selling items purchased for the purpose of resale (on an ongoing basis) shall not be considered a yard sale, but a business and shall meet the commercial requirements of this Ordinance, including buffers, setbacks and parking requirements.

ARTICLE 7 – LEGAL STATUS PROVISIONS

Section 7.01 Conflict with Other Laws

Whenever the regulations of this Ordinance require a greater width or size of yards, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statutes, the requirements of this Ordinance shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

Section 7.02 Validity

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 7.03 Repeal of Conflicting Ordinances

The following ordinances and parts of ordinances in conflict herewith are repealed to the extent necessary to give this Ordinance full force and effect.

1. Spartanburg County Development Standards Ordinance, No. 452, and subsequent amendments thereto.
2. Spartanburg County Flood Damage Prevention Ordinance, No. 365, and subsequent amendments thereto.
3. Spartanburg County Subdivision Regulations, No. 429, and subsequent amendments thereto.
4. Spartanburg County Mobile Home Ordinance, No. 477, and subsequent amendments thereto.
5. Spartanburg County Junkyard Control Ordinance, No. 453, and subsequent amendments thereto.
6. Spartanburg County Sign Ordinance, No. 359, and subsequent amendments thereto.
7. Spartanburg Downtown Memorial Airport Environs Ordinance, No. 549.
8. Spartanburg County Multi-Family Development Ordinance, No. 336.

Section 7.04 Effective Date

This Ordinance shall take effect and be in force from and after 5:00 PM on December 31, 1999.

Section 7.05 Enforcement

1. All enforcement procedures, remedies, legal and equitable, processes, and penalties, provided in enabling statutes for local government ordinance violations, including ordinance summons, injunctions, mandamus, stop orders and warrants, and other applicable provisions of Section 56-7-80, et seq. and Section 6-29-950(a) et seq., Code of South Carolina 1976, are hereby adopted and incorporated by reference as if fully set forth.
2. The County Administrator is authorized to prescribe and approve such administrative policies and procedures, including forms, as he may deem appropriate for the proper administration and enforcement of this ordinance.

ENACTED AND ORDAINED into an Ordinance this 20th day of December 1999, by the Spartanburg County Council.

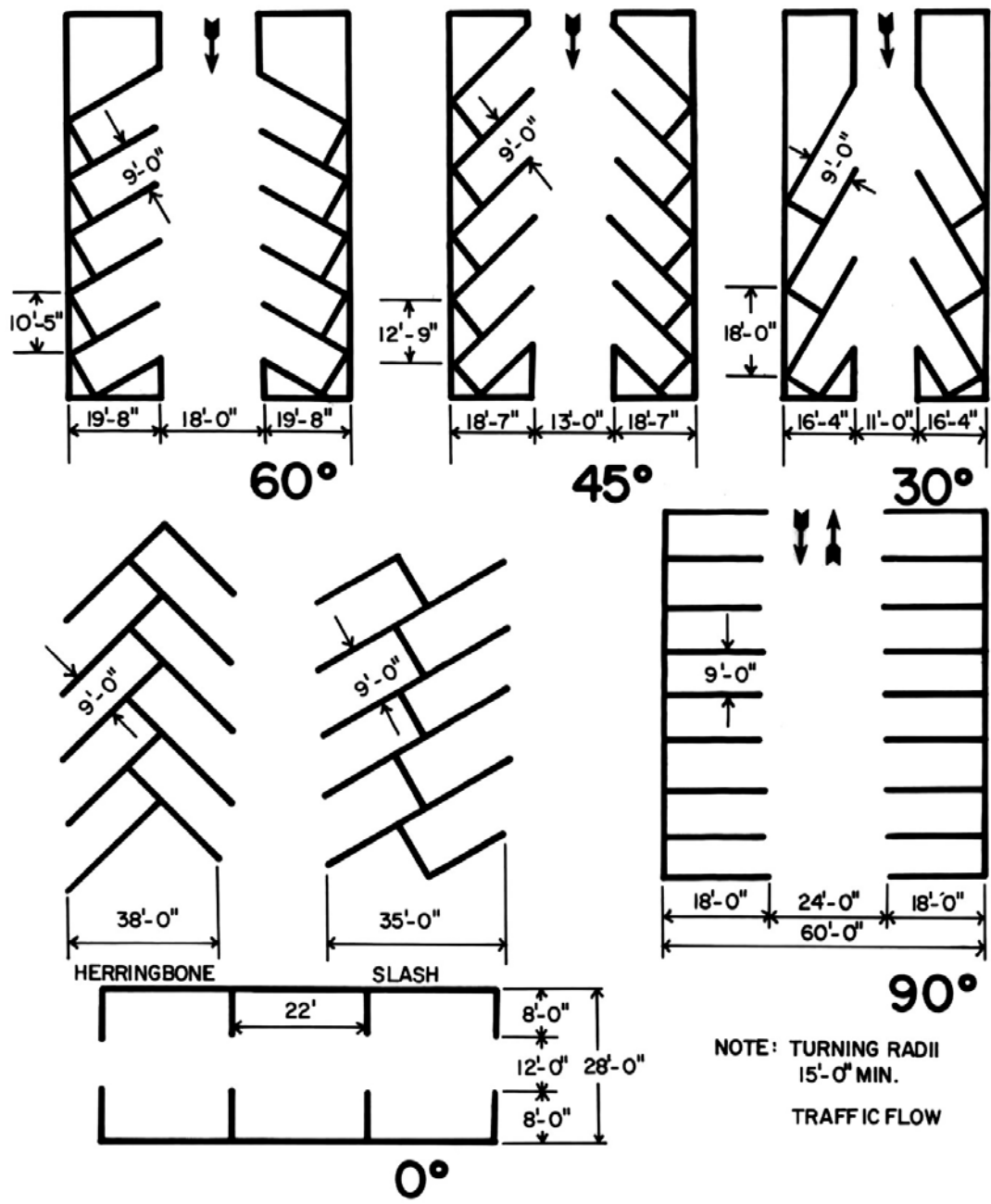
Chairman, County Council

ATTESTED:

County Administrator

RESERVED

PARKING STANDARDS



APPENDIX C

EXHIBIT 2

Spartanburg County Planning Commission Rules and Procedures

Adopted: February 8, 2000
Revised: March 7, 2000
Revised: March 6, 2012
Revised: May 5, 2020
Revised: April 2, 2024

Article I Organization

Section 1. Rules.

These rules of procedure are adopted pursuant to S.C. Code 6-29-360 and Spartanburg County Ordinance O-99-015 for the Spartanburg County Planning Commission, which consists of nine members appointed by the Spartanburg County Council.

Section 2. Officers.

The officers of the Commission shall be a chairman, vice-chairman, and secretary elected for one-year terms at the first meeting of the Commission in each calendar year. The Commission shall designate a member of the staff of the Spartanburg County Planning Department to assist as the secretary of the Commission.

Section 3. Chairman.

The chairman shall be a voting member of the Commission and shall:

- a. Call meetings of the Commission;
- b. Preside at meetings and hearings;
- c. Act as spokesperson for the Commission;
- d. Sign documents for the Commission;
- e. Transmit reports and recommendations to Council;
- f. Perform other duties as approved by the Commission.

Section 4. Vice-Chairman.

The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, the Commission secretary shall exercise said duties.

Section 5. Secretary.

The secretary or staff designee shall:

- A. Provide notice of meetings;
- B. Assist the chairman in preparation of agendas;
- C. Keep minutes of meetings and hearings;
- D. Maintain Commission records as public records;
- E. Attend to Commission correspondence; and
- F. Perform other duties as needed.

Article II Meetings

Section 1. Time and Place.

Pursuant to Section 30-4-80 of the S.C. Code of Laws, an annual schedule of regular meetings shall be adopted, published and posted via the County website at the beginning of the calendar year. Special meetings may be called by the chairman upon at least a 24-hour notice, posted and delivered to all members and local news media. Regular meetings shall be held at the place stated in the notices and shall be open to the public.

Section 2. Compliance with the S. C. Freedom of Information Act (FOIA) and the Americans with Disabilities Act (ADA).

The Commission shall comply with the requirements of the State of South Carolina Freedom of Information Act and with the Americans with Disabilities Act.

Section 3. Agenda.

A written agenda shall be furnished by the secretary or staff designee to each member of the Commission, all persons, organizations, and the news media requesting notice, and shall be posted on the bulletin board at the entrance to the Administration Building at least five (5) days prior to each regular meeting, and at least twenty-four (24) hours prior to a special meeting. Items requiring a variance may not be added to the agenda at a meeting.

Section 4. Quorum

A majority of the members of the Commission shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 5. Rules of Order

In conducting all business of this Commission, the Rules of Procedure adopted by Spartanburg County Council on November 13, 1995, as amended, shall be followed. In the event that County Council Rules cannot be applied; Robert's Rules of Order (current edition) shall apply. In case of a conflict of Rules or Procedures the more stringent shall apply.

Section 6. Voting.

A member must be present to vote. Each member shall vote on every question unless disqualified by law due to a conflict of interest. The question of disqualification shall be decided by the member affected, who shall announce the reason for disqualification, give it to the chairman in writing, and refrain from deliberating or voting on the question. The concurring vote of at least a majority of the members present and voting shall be required to reverse or affirm, wholly or in part, or modify any order, requirement, decision; or determination of the County Official, to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance, or to take action on any matter arising under this Ordinance. An abstention for purposes of these rules, shall be construed as a "yes" vote.

Section 7. Conduct.

Except for public hearings, no person other than Commission members and appointed staff shall speak at a Commission meeting unless recognized by the Chairman and invited to speak. All persons speaking shall state their name for the public record.

Article III Public Hearings

Section 1. Notice.

The secretary or designated staff shall give the notice required by statute or ordinance for all public hearings conducted by the Commission.

Section 2. Procedure.

2.1 In matters brought before the Commission for public hearing which were initiated by an applicant, appropriate staff shall first give Commission an Overview of the application; the applicant, his agent or attorney shall be heard next, followed by members of the public. Individuals speaking must record their name with the Commission. The applicant shall have the right to reply last. No person speaking at a public hearing shall be subject to cross-examination. All questions shall be posed by members of the Commission. In matters not initiated by an applicant, members of the public shall speak in the order in which requests were received, or in such order as the Commission shall determine.

2.2 Such public hearings shall be advertised as required by County Ordinance O-99-015. If there is no applicable law, public hearings shall be advertised in a newspaper of general circulation in the community at least fifteen (15) days prior to such hearing with notices and agenda publicly posted following procedures outlined in "Meetings": Section 1.

2.3 A public hearing is understood to be a forum for people interested in the subject matter to present information to the Commission for their consideration as they deliberate an issue. It is

not a forum for opponents and proponents to debate their differences and neither is it a forum for debate or argument between members of the Commission and opponents or proponents, or each other.

2.4 Each speaker shall be limited to five (5) minutes unless the Commission authorizes one (1) extension of three (3) minutes.

2.5 The presiding officer may terminate a presentation that is covering the same information as presented by a previous speaker. Such speakers shall be encouraged to simply state their agreement with a previous speaker and bring new information to the subject.

2.6 In addition to verbal presentation, written material may be submitted to the Commission for their consideration.

2.7 Proponents and opponents will each be limited to a total of thirty (30) minutes for formal presentations on any agenda item. Notwithstanding the time limitations in Section 2.4, the proponents or opponents may opt to devote their entire time allocation to one or more speakers with the total time of all speakers not exceeding thirty (30) minutes. The presiding officer shall determine if this approach will be used by either side prior to recognizing the first speaker.

Article IV Records

Section 1. Minutes.

The secretary or designated staff shall record, to the best of his/her technical capability, all meetings and hearings of the Commission on tape or by digital media and shall preserve them until final action is taken on all matters presented. The secretary or designee shall prepare minutes of each meeting for approval by the Commission at the next regular meeting. Minutes shall be maintained as public records.

Section 2. Reports.

The secretary or designee shall assist in the preparation and forwarding of all reports and recommendations of the Commission in appropriate form. Copies of all notices, correspondence, reports, and forms shall be maintained as public records.

Section 3. Attendance.

The minutes shall show the members in attendance at each meeting as well as those absent.. In the event a meeting is required to be held virtually, each Commissioner participating with active camera and microphone will be counted as present. The Commission will recommend to the Spartanburg County Council the removal for cause of any member who is absent as provided in Section 2-121 of the County Code.

Article V Review Procedure

Section 1. Amendments.

The Commission may initiate amendments to the Subdivision Regulations, Performance Zoning Ordinance, and Unified Land Management Ordinance. The Commission may appoint appropriate study committees to study land use issues for possible inclusion in the ordinances. The Commission shall hold a public hearing on any proposed amendments to the regulations and ordinances, as required by 6-29-1110(2), S. C. Code, as amended, the notice of which shall be publicly posted and advertised in a paper of general circulation within the County at least fifteen (15) days prior to the hearing date or at least thirty (30) days prior to the hearing date for amendments to the Subdivision Regulations. The Planning Commission shall forward said amendments to the County Council within thirty (30) days after completion of work on the proposed amendments unless additional time is granted by County Council.

Section 2. Subdivision Plats.

All subdivisions as defined by 6-29-1110(2), S. C. Code, as amended, which have been submitted for review shall be reviewed by designated staff members who may approve the plats for recording in the Register of Deeds Office. The Commission shall be informed in writing of all staff approvals pursuant to the Spartanburg County Subdivision Regulations at the next regular meeting, and the Commission shall vote to approve for the public record all such staff actions.

Section 3. Comprehensive Plan.

All Unified Land Management Ordinance, Performance Zoning Ordinance, and Subdivision Regulation amendments shall be reviewed for conformity with the adopted County Comprehensive Plan. Conflicts with the comprehensive plan shall be noted in any report to the governing body on a proposed amendment. The elements of the comprehensive plan shall be reviewed and updated on a schedule adopted by the Commission meeting the requirements of S.C. Code. 6-29-510(E).

Article VI Finances

Section 1. Budget and Expenditures

Members of the Planning Commission shall be reimbursed for all required travel and other direct expenses incurred as provided for in Article 5 of the Unified Land Management Ordinance. In addition, at the discretion of the Spartanburg County Administrator, the Commission may receive compensation for services and expenses may be provided for special meetings and Commission training/seminars.

Article VII

Adoption and Amendment

Section 1. Adoption.

These rules were adopted by vote of a majority of the members of the Spartanburg County Planning Commission on February 8, 2000, and as amended March 7, 2000, March 6, 2012, May 5, 2020, and April 2, 2024.

Section 2. Amendment.

These rules may be amended at any regular meeting of the Commission by majority vote of the members of the Commission at least seven (7) days after the proposed written amendment is delivered to all members. Rules of Procedure, as amended, of Spartanburg County Council shall serve as a guide for amendment.

APPENDIX D

EXHIBIT 3



PUBLIC NOTICE
Draft Air Synthetic Minor Construction Permit

Comment Period

Notice Date: July 18, 2025
End of Comment Period: August 16, 2025

Permit Applicant: Valara Holdings High Performance Compute Center
4000 South Pine Street
Site Location: Spartanburg, South Carolina 29302
Spartanburg County

Air Permit Number: CP-50000316 v1.0
Agency Air Number: 2060-0674

BAQ Permit Writer: Tyler D. Dunlop

Valara Holdings has applied to the Department for a synthetic minor construction permit to establish federally enforceable limits on NO_x, CO, VOC, Single HAP, and Total Combined HAP. The facility will construct a data center providing cloud computing services to its clients. This data center is powered by twenty-four 2103 kW natural gas generators equipped with selective catalytic reduction and oxidative catalyst technology.

A draft permit and draft statement of basis have been written outlining this proposed project and applicable regulations. This permit will enable the facility to construct and operate in compliance with state and federal air quality regulations. The draft permit has not yet been approved and is open to comment from the public, and the United States Environmental Protection Agency (EPA).

Emissions generated by this facility include:

- Particulate Matter (PM)
- Particulate Matter less than 10 micrometers in diameter (PM₁₀)
- Particulate Matter less than 2.5 micrometers in diameter (PM_{2.5})
- Sulfur Dioxide (SO₂)
- Nitrogen Oxides (NO_x)
- Carbon Monoxide (CO)
- Volatile Organic Compounds (VOCs)
- Hazardous Air Pollutants (HAPs)

If this permit is approved, federally enforceable facility-wide limits will be established as follows:

- For Prevention of Significant Deterioration (PSD) avoidance
 - Less than 250.0 tons per year (TPY) of NO_x



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Draft Air Synthetic Minor Construction Permit

- Less than 250.0 tons per year (TPY) of CO
- Less than 250.0 tons per year (TPY) of VOC
- For Title V avoidance
 - Less than 100.0 TPY of NO_x
 - Less than 100.0 TPY of CO
 - Less than 100.0 TPY of VOC
 - Less than 10.0 TPY of any single HAP and
 - Less than 25.0 TPY of any combination of HAPs
- For major source avoidance under Part 63 National Emission Standards for Hazardous Air Pollutants for Source Categories
 - Less than 10.0 TPY of any single HAP and
 - Less than 25.0 TPY of any combination of HAPs

If approved, and upon issuance of the draft construction permit, the facility may obtain a Conditional Major Operating Permit from the BAQ with no additional public comment period, unless a significant change in the original construction permit has occurred. All emissions limitations and conditions in the draft construction permit have been written to ensure that this facility operates as a Conditional Major Source.

Interested parties may review the draft permit, draft statement of basis, modeling summary, and permit application at the Department's Columbia Office, or on the Department's website at: <https://epermweb.dhec.sc.gov/ncore/external/publicnotice/info/-2568974221410861480/details> and submit comments on the draft permit by the end of the public notice period listed above.

Comments must be received no later than the above mentioned "End of Comment Period" date and can be submitted through one of the following methods:

- Website (<https://epermweb.dhec.sc.gov/ncore/external/publicnotice/info/-2568974221410861480/commentss>).
- Postal mail to Bureau of Air Quality, Air Permitting Division Director, 2600 Bull Street, Columbia SC 29201
- Email at AirPNComments@des.sc.gov

Comments should specify, in as much detail as possible, the air quality related issues and identify the portion(s) of the state and/or federal air quality regulations that are of concern and have not been adequately addressed in the draft permit. All comments received by the end of the notice period (Should the comment period end on a weekend or state holiday, comments will be accepted up until close of business the next working day), will be considered when making a decision to approve, disapprove, or modify the draft permit. Please bring this notice to the attention of persons you know will be interested in this matter.

Where there is a significant amount of public interest, the Department may hold a public hearing and/or meeting to receive additional comments. Public hearing and/or meeting requests should be made to the Director of Air



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Permitting Division at 2600 Bull Street, Columbia, SC 29201 or through the Department's website (<https://epermweb.dhec.sc.gov/ncore/external/publicnotice/info/-2568974221410861480/details>). Any requests for a public hearing and/or meeting must be made within the 30-day public comment period. If a public hearing is requested and scheduled, notice of said public hearing will be given thirty (30) days in advance.

Copies of a draft permit or other related documents can be made for a fee by contacting the Freedom of Information Office (803-898-3882).

APPENDIX E

EXHIBIT 4



Company Name:	Valara Holdings High Performance Compute Center	Permit Writer:	Tyler D. Dunlop
Agency Air Number:	2060-0674	Date:	DRAFT
Permit Number:	CP-50000422 v1.0		

DATE APPLICATION RECEIVED: March 04, 2026

PROJECT DESCRIPTION

Valara Holdings High Performance Compute Center (Valara) is proposing to construct five simple cycle 17 MW natural gas fired Baker Hughes combustion turbines and six simple cycle 54 MW natural gas fired General Electric combustion turbines. These turbines will provide continuous on-site power to the facility. The facility will not be selling power to the grid. Each turbine will be equipped with selective catalytic reduction (SCR) to control nitrogen oxide (NO_x) emissions and oxidation catalysts (OX) to control carbon monoxide (CO), volatile organic compound (VOC), formaldehyde, and other hazardous air pollutant (HAP) emissions. In addition, the facility plans to install continuous emissions monitoring systems (CEMS) for NO_x on the turbines. The project also details the construction of equipment considered exempt from air construction permitting but are included for the calculation of facility wide emission totals. This includes one 100 hp emergency diesel-fired fire pump engine, four natural gas fired hot water boilers, and sixteen cooling towers.

Air construction permit CP-50000316 was issued on September 17, 2025 for the installation of 24 natural gas fired generators. That construction permit established synthetic minor limits of less than 250.0 tons per year (TPY) to become a minor source with respect to SC Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration and synthetic minor limits of less than 100.0 TPY avoid being a major source under SC Regulation 61-62.70 Title V Operating Permit Program. The facility will retain the synthetic minor limits of less than 250.0 TPY for prevention of significant deterioration (PSD) avoidance. This construction permit will remove the synthetic minor Title V avoidance limits established in the construction permit CP-50000316. With this project, the facility will become major source under SC Regulation 61-62.70 Title V Operating Permit Program. The facility will be required to submit an application for a Title V operating permit within 12 months of when the first turbine or generator becomes operational.

FACILITY DESCRIPTION

SIC CODE: 7374 – Computer Processing and Data Preparation and Processing Services

NAICS CODE: 518210 – Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services

Valara Holdings High Performance Compute Center will host computing services to common ownership entities. The facility will provide its own on-site power using twenty-four natural gas fired generators (permitted under CP-50000316) and the proposed eleven simple cycle natural gas fired turbines of varying size. Each generator and turbine will be equipped with selective catalytic reduction control devices to control nitrogen oxide (NO_x) emissions and oxidation catalyst control devices to control carbon monoxide (CO), volatile organic compound (VOC), formaldehyde, and other hazardous air pollutant (HAP) emissions.

OPERATING PERMIT INCORPORATION

The facility will have twelve months to submit a Title V operating permit application after beginning operation of the first turbine or generator.



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Agency Air Number:	2060-0674	Date:	DRAFT
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EMISSIONS

Turbines

The facility is proposing to install five 17 MW Baker Hughes natural gas fired turbines and six 54 MW General Electric natural gas fired turbines. The vendor of the turbines provided data detailing several operating scenarios for each turbine type. Normal operation of the turbines is expected to be at 100% load, so these datasets are used to estimate potential emissions. Additionally, datasets where the ambient temperature is less than 0°F are not considered to be representative of the normal climate of South Carolina. The following table provides a summary of the vendor guaranteed emission factors used to determine the facility's potential to emit.

Turbine Dataset Summary				
Pollutant	Individual 17 MW Turbine Emission Rate (lb/hr)		Individual 54 MW Turbine Emission Rate (lb/hr)	
	Uncontrolled	Controlled	Uncontrolled	Controlled
PM/PM ₁₀ /PM _{2.5}	0.36*	0.36*	5.04	5.04
SO ₂	0.09*	0.09*	0.25*	0.25*
NO _x	10.32	1.56	48.32	4.59
CO	6.28	1.52	29.42	3.36
VOC	0.34	0.34	2.02	1.21

*See following clarifying examples

With the exception of the following examples, the vendor of the turbines provided emission rate guarantees for criteria pollutants.

Example Calculation for SO₂

To calculate sulfur dioxide (SO₂) emissions, it is assumed that natural gas contains 2000 grains S/MMscf (AP-42 Chapter 1.4 – Natural Gas Combustion). It is assumed that 100% of the sulfur in the natural gas is converted to SO₂ during combustion. The 17 MW turbines have a capacity of 158 MMBtu/hr each and the 54 MW turbines have a capacity of 453.4 MMBtu/hr each.

$$SO_2(17 \text{ MW Turbines}) = \frac{2000 \text{ grains S}}{10^6 \text{ scf}} * \frac{1 \text{ lb S}}{7000 \text{ grains S}} * \frac{1 \text{ scf}}{1038 \text{ Btu}} * \frac{158 * 10^6 \text{ Btu}}{1 \text{ hr}} * \frac{64 \text{ lb SO}_2}{32 \text{ lb S}} = \frac{0.09 \text{ lb SO}_2}{\text{hr}}$$

$$SO_2(54 \text{ MW Turbines}) = \frac{2000 \text{ grains S}}{10^6 \text{ scf}} * \frac{1 \text{ lb S}}{7000 \text{ grains S}} * \frac{1 \text{ scf}}{1038 \text{ Btu}} * \frac{453.4 * 10^6 \text{ Btu}}{1 \text{ hr}} * \frac{64 \text{ lb SO}_2}{32 \text{ lb S}} = \frac{0.25 \text{ lb SO}_2}{\text{hr}}$$

Example Calculation for PM

PM emissions for the 17 MW turbines are based on vendor data for a 16.5 MW turbine and then multiplied by a safety factor of 1.2.

$$PM(17 \text{ MW Turbines}) = \frac{1.304 \text{ ton}}{\text{yr}} * \frac{\text{yr}}{8760 \text{ hr}} * \frac{2000 \text{ lb}}{\text{ton}} * 1.2 = \frac{0.36 \text{ lb PM}}{\text{hr}}$$



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Startup and shutdown emissions are calculated separately from normal operation emissions using emission rate data provided by the turbine vendor. Startup and shutdown times are excluded from yearly operational time. Taking this into account, the 17 MW turbines are assumed to operate 8746.95 hours per year, and the 54 MW turbines are assumed to operate 8717.75 hours per year under normal operation. The facility estimated that there may be 29 startup/shutdown events for each 17 MW turbine and 65 startup/shutdown events for each 54 MW turbine per year for the purposes of calculating the facility's potential to emit. Startup and shutdown emissions are required to be calculated when calculating the 12 month rolling sums.

Startup and Shutdown Summary				
Pollutant	Individual 17 MW Turbine Emission Rate (lb/event)		Individual 54 MW Turbine Emission Rate (lb/event)	
	Startup	Shutdown	Startup	Shutdown
PM/PM ₁₀ /PM _{2.5}	0.10	0.07	2.6	0.5
SO ₂	0.02	0.02	0.1	0.0
NO _x	2.71	1.76	19.7	3.2
CO	7.10	2.78	21.5	21.1
VOC	0.02	0.13	2.3	1.0

Example Calculation for NO_x (other listed pollutants calculated in a similar manner)

$$\frac{51.59 \text{ lb NO}_x}{\text{hr}} * \frac{8746.95 \text{ hr}}{\text{yr}} + \frac{2.71 \text{ lb NO}_x}{\text{event}} * \frac{29 \text{ events}}{\text{yr}} + \frac{1.76 \text{ lb NO}_x}{\text{event}} * \frac{29 \text{ events}}{\text{yr}} = \frac{225.93 \text{ ton NO}_x}{\text{yr}}$$

$2000 \frac{\text{lb}}{\text{ton}}$

$$\frac{7.78 \text{ lb NO}_x}{\text{hr}} * \frac{8746.95 \text{ hr}}{\text{yr}} + \frac{2.71 \text{ lb NO}_x}{\text{event}} * \frac{29 \text{ events}}{\text{yr}} + \frac{1.76 \text{ lb NO}_x}{\text{event}} * \frac{29 \text{ events}}{\text{yr}} = \frac{34.34 \text{ ton NO}_x}{\text{yr}}$$

$2000 \frac{\text{lb}}{\text{ton}}$

Most HAP emissions are calculated using AP-42 Chapter 3.1 – Stationary Gas Turbines emission factors (Table 3.1-3). Note that the turbines have SCR and oxidation catalysts, so the formaldehyde and benzene emission factors are taken from the footnotes of that table. The oxidation catalyst controls HAP emissions by 33% for both turbine types.

$$54 \text{ MW Turbine Uncontrolled Formaldehyde Emissions} = \frac{2.0 * 10^{-5} \text{ lb}}{\text{MMBtu}} * \frac{453.4 \text{ MMBtu}}{\text{hr}} = \frac{9.07 * 10^{-3} \text{ lb}}{\text{hr}} \text{ per turbine}$$

$$9.07\text{E-}03 \text{ lb/hr} * 6 \text{ turbines} = 5.44\text{E-}02 \text{ lb/hr}$$

Hexane emissions from the turbines are calculated using an emission factor from the California Air Resources Board's (CARB) California Air Toxic Emission Factor (CATEF) database. This database is based primarily on data collected in the 1990s and has not been updated since 1996. The other HAP emission factors from AP-42 Chapter 3.1 are based on a



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more robust sample of data, but AP-42 does not provide a factor for hexane from turbines. For this reason, the use of AP-42 emission factors is preferred when calculating the facility's potential to emit HAP other than hexane.

CATEF Hexane Emission Factor: 0.381653151 lb/MMcf

$$54 \text{ MW Turbine Uncontrolled Hexane Emissions} = \frac{0.381653151 \text{ lb}}{\text{MMcf}} * \frac{453.4 \text{ MMBtu}}{\text{hr}} * \frac{\text{scf}}{1038 \text{ Btu}} = \frac{0.17 \text{ lb}}{\text{hr}} \text{ per turbine}$$

$$0.17 \text{ lb/hr} * 6 \text{ turbines} = 1.00 \text{ lb/hr}$$

Turbine Emissions						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	32.03	140.24	--	--	32.03	140.24
PM ₁₀	32.03	140.24	--	--	32.03	140.24
PM _{2.5}	32.03	140.24	--	--	32.03	140.24
SO ₂	1.93	8.45	--	--	1.93	8.45
NO _x [†]	341.49	1494.06	12.37	158.96	341.49	<250.0
CO [†]	207.91	915.76	10.93	129.95	207.91	<250.0
VOC [†]	13.81	60.88	2.89	39.71	13.81	60.88
Formaldehyde (HAP) [‡]	0.07	0.31	0.05	0.21	0.07	<10.0
Acetaldehyde (HAP) [‡]	0.14	0.62	0.09	0.41	0.14	<10.0
Hexane (HAP) [‡]	1.29	5.65	0.86	3.79	1.29	<10.0
Total HAPs [‡]	2.44	10.67	1.63	7.15	2.44	<25.0

[†]The facility has established facility wide PSD avoidance limits for NO_x, CO, and VOC.

[‡]The facility has established facility wide limits on single HAP and total HAP emissions to avoid major source MACT applicability.

Exempt Sources/Insignificant Activities

In addition to the engines and turbines, the facility is proposing to construct four small boilers, one emergency diesel fire pump, and sixteen cooling towers. These sources are considered exempt from the needs of construction permitting, but their potential emissions are calculated in order to assess an accurate facility wide total and must be included in any facility wide limits included in the permit

100 hp (75 kW) Diesel Fire Pump

Emissions for the emergency fire pump are calculated using the emission factors from NSPS Subpart IIII Table 4 for NO_x, VOC, CO, and PM. In this table, the NO_x and VOC standard is given as a single combined limit of 4.0 g/kW-hr. 95% of this limit is assumed to be NO_x while the remaining 5% is VOC. It is conservatively assumed that PM=PM₁₀=PM_{2.5}. The HAP and SO₂ emission factors are taken from AP-42 Chapter 3.3 – Gasoline and Diesel Industrial Engines. Emergency engines are assumed to operate a maximum of 500 hours per year.



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Fire Pump Emissions						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	4.93E-02	1.23E-02	--	--	4.93E-02	1.23E-02
PM ₁₀	4.93E-02	1.23E-02	--	--	4.93E-02	1.23E-02
PM _{2.5}	4.93E-02	1.23E-02	--	--	4.93E-02	1.23E-02
SO ₂	2.05E-01	5.13E-02	--	--	2.05E-01	5.13E-02
NO _x	0.62	0.16	--	--	0.62	0.16
CO	0.82	0.21	--	--	0.82	0.21
VOC	3.29E-02	8.22E-03	--	--	3.29E-02	8.22E-03
Formaldehyde (HAP)	8.26E-04	2.07E-04	--	--	8.26E-04	2.07E-04
Acetaldehyde (HAP)	5.37E-04	1.34E-04	--	--	5.37E-04	1.34E-04
Total HAPs	4.52E-03	1.13E-03	--	--	4.52E-03	1.13E-03

Boilers

Each boiler has a capacity of 3.078 MMBtu/hr and is fired on natural gas. Emissions are calculated using AP-42 Chapter 1.4 - Natural Gas Combustion emission factors for small boilers with low NO_x burners. Heating content of natural gas is assumed to be 1026 Btu/scf. Each boiler is assumed to operate 8760 hours per year.

Boiler Emissions						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	9.12E-02	0.40	--	--	9.12E-02	0.40
PM ₁₀	9.12E-02	0.40	--	--	9.12E-02	0.40
PM _{2.5}	9.12E-02	0.40	--	--	9.12E-02	0.40
SO ₂	7.20E-03	3.15E-02	--	--	7.20E-03	3.15E-02
NO _x	0.60	2.63	--	--	0.60	2.63
CO	1.01	4.42	--	--	1.01	4.42
VOC	6.60E-02	0.29	--	--	6.60E-02	0.29
Formaldehyde (HAP)	9.00E-04	3.94E-03	--	--	9.00E-04	3.94E-03
Hexane (HAP)	2.16E-02	9.46E-02	--	--	2.16E-02	9.46E-02
Total HAPs	2.27E-02	9.92E-02	--	--	2.27E-02	9.92E-02

Cooling Towers

The facility is proposing to construct sixteen identical cooling towers. Each tower will have a flow rate of 7740 gal/min. The source water has a total dissolved solids (TDS) content of 632 ppm. The drift loss is given as 0.001%. The towers are assumed to operate 8760 hours per year. It is assumed that 70% of the total PM emissions from the towers are PM₁₀.

$$\text{Hourly PM} = \frac{7740 \text{ gal}}{\text{min}} * \frac{60 \text{ min}}{\text{hr}} * \frac{0.001}{100} * \frac{8.34 \text{ lb water}}{\text{gal}} * \frac{632 \text{ lb PM}}{1000000 \text{ lb water}} * 16 \text{ towers} = \frac{0.39 \text{ lb PM}}{\text{hr}}$$



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Cooling Tower Emissions						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	0.39	1.72	--	--	0.39	1.72
PM ₁₀	0.27	1.20	--	--	0.27	1.20
PM _{2.5}	0.27	1.20	--	--	0.27	1.20

TOTAL PROJECT EMISSIONS						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	32.56	142.37	--	--	32.56	142.37
PM ₁₀	32.44	141.85	--	--	32.44	141.85
PM _{2.5}	32.44	141.85	--	--	32.44	141.85
SO ₂	2.14	8.54	--	--	2.14	8.54
NO _x [†]	342.72	1496.85	36.57	161.74	342.72	<250.0
CO [‡]	209.74	920.38	29.55	134.57	209.74	<250.0
VOC [‡]	13.91	61.17	9.05	40.00	13.91	61.17
Formaldehyde (HAP) [‡]	0.07	0.31	0.05	0.21	0.07	0.31
Acetaldehyde (HAP) [‡]	0.14	0.62	0.09	0.41	0.14	0.62
Hexane (HAP) [‡]	1.31	5.75	0.89	3.88	1.31	5.75
Total HAPs [‡]	2.46	10.77	1.66	7.25	2.46	10.77

[†]The facility has established facility wide PSD avoidance limits for NO_x, CO, and VOC.

[‡]The facility has established facility wide limits on single HAP and total HAP emissions to avoid major source MACT applicability.

FACILITY WIDE EMISSIONS						
Pollutant	Permit CP-50000316 v1.1			New Total		
	Uncontrolled	Controlled	PTE	Uncontrolled	Controlled	PTE
	TPY	TPY	TPY	TPY	TPY	TPY
PM	16.63	--	16.63	159.00	--	159.00
PM ₁₀	16.63	--	16.63	158.48	--	158.48
PM _{2.5}	16.63	--	16.63	158.48	--	158.48
SO ₂	0.98	--	0.98	9.51	--	9.51
NO _x	614.32	61.43	<100.0	2111.17	223.17	<250.0
CO	1084.87	67.26	<100.0	2005.25	201.83	<250.0
VOC	352.91	20.94	<100.0	414.08	60.94	<250.0
Formaldehyde (HAP)	117.64	9.18	<10.0	117.95	9.39	<10.0



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BAQ Air Permitting Division

Company Name:	Valara Holdings High Performance Compute Center	Permit Writer:	Tyler D. Dunlop
Agency Air Number:	2060-0674	Date:	DRAFT
Permit Number:	CP-50000422 v1.0		

FACILITY WIDE EMISSIONS						
Pollutant	Permit CP-50000316 v1.1			New Total		
	Uncontrolled	Controlled	PTE	Uncontrolled	Controlled	PTE
	TPY	TPY	TPY	TPY	TPY	TPY
Acetaldehyde (HAP)	13.92	1.39	<10.0	14.54	1.80	<10.0
Hexane (HAP)	1.85	0.18	<10.0	7.60	4.07	<10.0
Total HAPs	149.93	12.41	<25.0	160.80	19.65	<25.0

Note the facility wide emissions table does not include emissions from any temporary sources. Neither the turbines nor the permanent engines are permitted to be operational at the same time as any temporary sources. See the statement of basis for construction permit CP-50000316 v1.1 for the quantification of emissions from temporary sources.

SOURCE TEST REQUIREMENTS

40 CFR 60 Subpart KKKKa requires the facility to conduct an initial source test for NO_x within 180 days of startup per § 60.4333a(b) and § 60.8. The facility is proposing to demonstrate continuous compliance of the NO_x standard by using CEMS. Per § 60.4333a(b), facilities performing continuous monitoring consistent with § 60.4345a, i.e. using a NO_x CEMS, are not required to conduct subsequent source testing for NO_x.

Per Subpart KKKKa § 60.4333a(d)(3), the facility must conduct an initial performance test for SO₂ according to § 60.8 following the applicable method in § 60.4415a. The facility shall satisfy this requirement by maintaining and submitting fuel records per § 60.4415a(a).

The facility has taken a limit of <10.0 TPY of any single HAP in order to be considered a minor source of HAP. The facility's total potential controlled emissions for formaldehyde are close to the major source threshold of 10 TPY. To ensure the accuracy of the facility's minor source status, the facility shall be required to conduct an initial source test within 180 days of startup for formaldehyde on each type of turbine proposed by the facility. This source test shall be utilized to develop a site-specific emission factor for formaldehyde for each type of turbine. This emission factor shall be used in the 12 month rolling sum calculations. The facility may utilize representative testing of sources as approved by the Department.

SPECIAL CONDITIONS

B.26 - The facility is prohibited from operating any turbines and any temporary sources at the same time because compliance with Standard No. 2 was demonstrated separately for these sources.

B.27 - The facility is prohibited from selling power to the grid in order to avoid applicability to 40 CFR 60 NSPS Subpart TTTTa.



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 BAQ Air Permitting Division

Company Name:	Valara Holdings High Performance Compute Center	Permit Writer:	Tyler D. Dunlop
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Permit Number:	CP-50000422 v1.0		

REGULATIONS

Applicable - Section II(E) (Synthetic Minor)

The facility originally established synthetic minor limits to avoid Title V, PSD, and major source MACT in CP-50000316 v1.0. With this new project, the facility will be major for Title V. Consequently, the facility wide limits of <100.0 TPY for NO_x, CO, and VOC have been removed. The facility will maintain the <10.0 TPY limit of any single HAP and the <25.0 TPY limit on total combined HAP to avoid major source MACT thresholds, i.e., to be considered an area source of HAP. The facility will maintain the <250.0 TPY limit on NO_x, CO, and VOC to avoid PSD applicability.

To comply with the federally enforceable limits in the following table, the facility will maintain records adequate to calculate a 12-month rolling sum for these pollutants and will operate and maintain control devices in accordance with manufacturer's emission-related written instructions. The facility shall meet specified monitoring, recordkeeping, and reporting requirements detailed in the construction permit. Facility wide totals shall include emissions from all sources at the facility, including those that are considered exempt, insignificant, or temporary.

Synthetic Minor Limits					
Permit ID	Equipment ID	Permit Issue Date	Pollutant	Emission Limit (TPY)	Explanation
CP-50000316 v1.0	Facility Wide	September 17, 2025	NO _x	<250.0	Facility has established a limit on NO _x emissions to remain below PSD thresholds.
CP-50000316 v1.0	Facility Wide	September 17, 2025	CO	<250.0	Facility has established a limit on CO emissions to remain below PSD thresholds.
CP-50000316 v1.0	Facility Wide	September 17, 2025	VOC	<250.0	Facility has established a limit on VOC emissions to remain below PSD thresholds.
CP-50000316 v1.0	Facility Wide	September 17, 2025	Single HAP	<10.0	Facility has established a limit on single HAP emissions to avoid major source MACT applicability.
CP-50000316 v1.0	Facility Wide	September 17, 2025	Total Combined HAP	<25.0	Facility has established a limit on total HAP emissions to avoid major source MACT applicability.

Algorithms

The algorithms for calculating the emissions from the turbines have been included in this permit to be consistent with the previous construction permit issued for this facility. For NO_x, the facility shall use CEMS data to derive the 12 month rolling sum. For CO, VOC, and HAP, the facility must monitor the temperature of the oxidation catalysts and maintain the catalysts according to a maintenance plan in order to use controlled emission rates when calculating the rolling sums. Additionally, the facility shall conduct an initial source test on the turbines (or a representative subset as approved by the Department) for formaldehyde in order to develop a site-specific emission factor for this pollutant. This emission factor shall be used to calculate formaldehyde emissions during normal operation.



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Startup/Shutdown Emissions

The facility shall calculate emissions during periods of startup, shutdown, and malfunctions and include those calculations in the 12 month rolling sums. As mentioned previously, the facility provided vendor emission rates for each turbine during periods of startup and shutdown. The facility shall use these emission rates when calculating emissions during these periods. The facility shall use the uncontrolled AP-42 Chapter 3.1 emission factor for benzene and formaldehyde when calculating startup emissions for these HAP. After the startup period, the facility may use the controlled emission factors found in the footnotes of Table 3.1-3 of that chapter to calculate emissions from normal operation. Once a site-specific emission factor for formaldehyde is developed, the facility shall use that emission factor to calculate formaldehyde emissions during normal operation.

Applicable - Standard No. 1 (Emissions from Fuel Burning Operations)

Fuel burning operations are defined as any "furnace, boiler, device, or mechanism used principally, but not exclusively, to burn any fuel for the purpose of indirect heating" (SC Regulation 61-62.1 Section I(31)). The facility's proposed turbines and emergency fire pump do not meet the definition of a fuel burning operation. The exempt small boilers do meet the definition of a fuel burning operation. Therefore, the boilers are subject to the requirements of this regulation. There are no permitted sources at this facility which are subject to this standard.

Not Applicable - Standard No. 3 (state only) (Waste Combustion and Reduction)

This facility does not have any waste combustion and reduction activities. The turbines and boilers only burn natural gas meeting the definition of virgin fuel as defined in SC Regulation 61-62.1 Section I(99). The emergency fire pump burns only diesel, which is also considered a virgin fuel.

Applicable - Standard No. 4 (Emissions from Process Industries)

A process industry is defined as "any source engaged in the manufacture, processing, handling, treatment, forming, storing, or any other action upon materials except fuel-burning operations" (SC Regulation 61-62.1 Section I(72)). This facility is not one of the listed process industries in the standard. Section VIII does not apply to this facility because the PM emissions at this facility are only a result of the combustion of liquids or gases used solely as fuel. Therefore, the facility does not have a process weight as defined in SC Regulation 61.62.1Section I(73).

The sources at this facility are subject to the 20% opacity limit in Section IX of this standard since their construction is after December 31, 1985.

Not Applicable - Standard No. 5 (Volatile Organic Compounds)

The facility does not meet the definition of an existing process (SC Regulation 61-62.5, Standard No. 5, Section I(A)(18)) as it was not in existence or under construction prior to July 1, 1979/1980. This facility does not match the description of any of the plants described in Section II of this standard to meet the applicability in Section I(B)(2).

Applicable - Standard No. 5.2 (Control of Oxides of Nitrogen (NOx))

The turbines at this facility are stationary combustion sources constructed after June 25th, 2004. Section I(B)(7) of this standard exempts any equipment from this standard which has a more stringent or equivalent limit from 40 CFR 60, 61, or 63.



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For simple cycle turbines <50 MW, the NO_x limit is 25 ppmv at 15% O₂. The 17 MW (158 MMBtu/hr heat input) turbines are subject to 40 CFR 60 KKKKa which has a limit of 15 ppmv at 15% O₂ for new turbines firing natural gas with a utilization rate greater than 45% with a heat input >50 MMBtu/hr and <850 MMBtu/hr. The NSPS limit is more stringent than the limit in this standard, so these turbines are exempt from this standard.

For simple cycle turbines >50 MW, the NO_x limit is 9 ppmv at 15% O₂. The 54 MW (453.4 MMBtu/hr heat input) turbines are subject to 40 CFR 60 KKKKa which has a limit of 15 ppmv at 15% O₂ for new turbines firing natural gas with a utilization rate greater than 45% with a heat input >50 MMBtu/hr and <850 MMBtu/hr. The NSPS limit is less stringent than the limit in this standard, so these turbines are subject to this standard. Per Section IV, the use of NO_x CEMS and semiannual reporting is required under this standard.

Not Applicable - Standard No. 7 (Prevention of Significant Deterioration)

This facility has control technologies equipped on its permanent generators and turbines to keep its potential to emit regulated pollutants below 250 TPY. Additionally, this facility has established federally enforceable limits on NO_x, CO, and VOC to remain below the 250.0 TPY threshold. Therefore, this facility is not a major source as defined in Section B(32)(a) of this standard. The facility isn't one of the listed categories in B(32)(a) that have a major source threshold of 100 TPY. Since the facility is a minor source for PSD, no project specific limits are required for this permit or CP-50000316.

Air construction permit CP-50000316 was issued on September 17, 2025 for the installation of 24 natural gas fired generators. That construction permit established synthetic minor limits of less than 250.0 TPY to become a minor source with respect to SC Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration. The facility will retain the facility-wide synthetic minor limits of less than 250.0 TPY for PSD avoidance with this project. Facility-wide emission limits include emissions from all generators previously permitted, the turbines being permitted in this project, and any exempt sources.

The Department recognizes the relatively short time period between this permit and air construction permit CP-50000316. The Department would have considered the two projects as one, if the facility had not demonstrated that the controlled emissions at the facility can meet the facility-wide limits already established for PSD avoidance. The limitations established for the facility are the same limitations that would have been established if the two projects had been submitted as one. The Department will continue to follow the requirements for evaluating PSD applicability and grouping for any future applications submitted.

If the facility were to remove the PSD avoidance limits in future permitting, the turbines and engines would be considered one project under PSD and would need to be evaluated together.

Applicable - 61-62.6 (Control of Fugitive Particulate Matter)

This facility is subject to the statewide requirements in Section III of this standard.

40 CFR 60 and 61-62.60 (New Source Performance Standards (NSPS))

Not Applicable - Subpart D (Standards of Performance for Fossil-Fuel-Fired Steam Generators)

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This regulation defines fossil-fuel-fired steam generating units as any furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer. This subpart applies to each fossil-fuel-fired steam generating unit of more than 73 megawatts (MW) heat input rate. This facility does not use any furnaces or boilers greater than 73 MW to generate steam.

Not Applicable – Subpart Da (Standards of Performance for Electric Utility Steam Generating Units)

This regulation applies to each electric utility steam generating unit with a heat input >250 MMBtu/hr constructed after 1978. This facility will use simple cycle turbines, which do not generate steam, to produce power for the facility. None of the proposed boilers have a heat input capacity greater than 10 MMBtu/hr. The facility is also not selling power to the grid. Therefore, the facility is not subject to this regulation.

Not Applicable – Subpart Db (Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units)

This regulation applies to each steam generating unit with a heat input >100 MMBtu/hr constructed after 1984. This facility will use simple cycle turbines, which do not generate steam, to produce power for the facility. None of the proposed boilers have a heat input capacity greater than 10 MMBtu/hr. Therefore, the facility is not subject to this regulation.

Not Applicable – Subpart Dc (Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units)

This regulation applies to each steam generating unit with a heat input <100 MMBtu/hr but >10 MMBtu/hr constructed after 1989. This facility will use simple cycle turbines, which do not generate steam, to produce power for the facility. None of the proposed boilers have a heat input capacity greater than 10 MMBtu/hr. Therefore, the facility is not subject to this regulation.

Not Applicable – Subpart GG (Standards of Performance for Stationary Gas Turbines)

This regulation applies to stationary gas turbines with a heat input at peak load ≥10 MMBtu/hr (§ 60.330(a)). However, stationary gas turbines subject to Subpart KKKKa are not subject to this subpart (§ 60.330(d)). The turbines at this facility are subject to Subpart KKKKa, so this regulation is not applicable.

Applicable – Subpart IIII (Standards of Performance for Stationary Compression Ignition Internal Combustion Engines)

This regulation applies to compression ignition internal combustion engines which commence construction after July 11, 2005 and manufactured after July 1, 2006 for fire pump engines (§ 60.4200(a)(2)). The facility's emergency fire pump is subject to this regulation. The facility shall comply with this regulation by:

- Operating a fire pump which complies with Table 4 of this subpart (§ 60.4205(c)).
- Operating the engine using only ultra-low sulfur diesel fuel (0.0015% sulfur) (§ 60.4207(b)).
- Operating and maintaining the engine according to the manufacturer's emission-related written instructions and changing only those emission-related settings as permitted by the manufacturer (§ 60.4211(a)).
- Limiting non-emergency use, including operations for maintenance and testing, to less than 100 hours per year (§ 60.4211(f)).



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	CP-50000422 v1.0		

There are no permitted sources at this facility which are subject to this regulation.

Not Applicable – Subpart KKKK (Standards of Performance for Stationary Combustion Turbines)

This regulation applies to stationary combustion turbines constructed after February 18, 2005 with a heat input at peak load >10 MMBtu/hr. However, turbines subject to Subpart KKKKa are not subject to this subpart (§ 60.4305(c)). The turbines at this facility are subject to Subpart KKKKa, so this regulation is not applicable.

Applicable – Subpart KKKKa (Standards of Performance for Stationary Combustion Turbines)

This regulation applies to stationary combustion turbines constructed after December 13, 2024 with a base load rating ≥10 MMBtu/hr (§ 60.4305a(a)). All of the proposed turbines meet this applicability criteria. This standard regulates NO_x and SO₂ emissions.

The facility must conduct an initial source test for NO_x per § 60.4333a(b) using the method described in § 60.4405a. The facility is proposing to demonstrate continuing compliance with the standard by using CEMS. By using CEMS, the facility will not need to conduct subsequent source testing for NO_x. The facility will demonstrate compliance with the SO₂ standard by maintaining and submitting fuel records (§ 60.4372a).

Not Applicable – Subpart TTTTa (Standards of Performance for Greenhouse Gas Emissions for Modified Coal-Fired Steam Electric Generating Units and New Construction and Reconstruction Stationary Combustion Turbine Electric Generating Units)

This regulation applies to stationary combustion turbines constructed after May 23, 2023 which have a base load rating greater than 250 MMBtu/hr and serve a generator capable of selling electricity to a utility power distribution system. This facility will have turbines with a rating greater than 250 MMBtu/hr, but will not be selling power to the grid. Therefore, this regulation is not applicable to this facility.

The facility is prohibited from selling electricity to the grid and must submit a letter to the Department certifying the fact that the facility lacks the connections necessary to sell power to the grid prior to the operation of any turbines. If the facility wishes to sell power to the grid in the future, they will need to request a permit modification to revise the permit.

40 CFR 61 and 61-62.61 (National Emission Standards for Hazardous Air Pollutants (NESHAP))

Not Applicable - This facility does not emit the pollutants in a way that is subject to this standard (asbestos, benzene, beryllium, coke oven emissions, arsenic, mercury, radio nuclide, radon, or vinyl chloride).

40 CFR 63 and 61-62.63 (National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories)

Applicable – Subpart ZZZZ (National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines)

The fire pump is a stationary reciprocating engine subject to 40 CFR 60 Subpart IIII. By complying with Subpart IIII, the facility will comply with Subpart ZZZZ per § 63.6590(c).



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Not Applicable - Subpart YYYY (National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines)

This regulation applies to stationary combustion turbines located at major sources of HAP. The facility has established synthetic minor limits of <10.0 TPY for any single HAP and <25.0 TPY for total combined HAP. As such, the facility is considered an area source of HAP emissions. Therefore, the facility is not subject to this regulation at this time.

Not Applicable - 40 CFR 64 (Compliance Assurance Monitoring)

This regulation applies to Title V facilities which use control devices to achieve compliance with emission limitations. While this facility will operate under a Title V operating permit and the sources at this facility use control devices, no individual source (unit) has the potential to make the facility a major source on its own (§ 64.2(a)(3)). That is to say each individual engine and turbine have uncontrolled potential emissions which are less than 100.0 tons per year. Therefore, the facility is not subject to CAM.

Not Applicable - 40 CFR 72 (Acid Rain)

This facility will not be selling power to the grid. Therefore, the facility is not considered a utility. Non-utility units are not subject to the Acid Rain Program (§ 72.6(b)(8)).

AMBIENT AIR STANDARDS REVIEW

Applicable - Standard No. 2 (Ambient Air Quality Standards)

See modeling summary dated DRAFT

The turbines were modeled separately from any temporary sources previously permitted, so the facility shall not operate these sources simultaneously without first providing the Department a revision to the modeling demonstration or using other information to demonstrate compliance with the standard.

Not Applicable - Standard No. 8 (state only) (Toxic Air Pollutants)

The facility only burns natural gas or diesel which are considered virgin fuels. This standard does not apply to fuel burning sources which burn only virgin fuel or specification used oil (Section I). Therefore, the turbines are not subject to this standard.



SC DEPARTMENT of
**ENVIRONMENTAL
SERVICES**

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PERIODIC MONITORING					
Equipment ID	Applicable Requirement (Limiting Condition)	Measured Parameter	Required Monitoring Frequency	Reporting Frequency	Monitoring Basis/ Justification (Monitoring Condition)
17T, 54T	Facility Wide Synthetic Minor Limits (B.1)	Calculated Emissions	Monthly	Semiannual	Direct comparison to limits (B.2, B.3, B.4). Proper operation and maintenance of control devices, including monitoring temperature of catalysts, is required to use controlled emission rates for CO, VOC, and HAP (B.8-B.10). Fuel usage records are needed to calculate HAP emissions. The use of CEMS is required for NO _x reporting per 40 CFR 60 Subpart KKKKa and Std 5.2. Formaldehyde emission factor shall be developed with source testing (B.28).
17T, 54T	Facility Wide Synthetic Minor Limits (B.1)	Temperature	Every 15 minutes	Semiannual	
17T, 54T	Facility Wide Synthetic Minor Limits (B.1)	NO _x CEMS	Continuous	Semiannual	
17T, 54T	Facility Wide Synthetic Minor Limits (B.1)	Fuel Usage	Monthly	Semiannual	
17T, 54T	Std. 4 20% Opacity (B.5)	--	--	--	Facility is subject to 20% opacity limit as it is constructed after December 31, 1985. Proper operation and maintenance of turbines as required under 40 CFR 60 Subpart KKKKa should be adequate (B.12-B.25). Combustion of natural gas is not expected to produce opacity. Facility is required to maintain fuel records per Subpart KKKKa and Std 5.2. No further monitoring required.
17T, 54T	Std. 2 (I.1)	Temperature	Every 15 minutes	Semiannual	Controlled emissions were modeled so demonstration of proper operation of control devices is required (B.8-B.10).



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PERIODIC MONITORING					
Equipment ID	Applicable Requirement (Limiting Condition)	Measured Parameter	Required Monitoring Frequency	Reporting Frequency	Monitoring Basis/ Justification (Monitoring Condition)
17T, 54T	Std. 2 (I.1)	Operating Time	Daily	Report in 6 months	Turbines and permanent generators were modeled separately from temporary sources permitted in CP-50000316 v1.1. Therefore, the turbines must not operate at the same time as temporary sources (B.26).
54T	Std. 5.2 NO _x Limit (B.6)	NO _x	Continuous	Semiannual	As required by regulation (B.3, B.7). The use of CEMS is also required in accordance with 40 CFR 60 Subpart KKKKa.
54T	Std. 5.2 Fuel Usage (B.7)	Fuel Usage	Monthly	Semiannual	As required by regulation (B.7). Fuel records are also required to be maintained and submitted in accordance with 40 CFR 60 Subpart KKKKa.
54T	Std. 5.2 Tune-ups (B.7)	Tune-ups	Every 24 months	On-site Records	As required by regulation (B.7).
17T, 54T	40 CFR 60 Subpart KKKKa (B.12-B.25)	--	--	--	Post 11/1990 Federal Regulation. Monitoring inherently adequate.
Facility Wide	40 CFR 60 Subpart TTTTa Avoidance	Electrical Connections	One-time	One-time	The facility shall submit a letter signed by the local power utility certifying that the facility lacks the power connections necessary to sell power to the grid (B.27).

PUBLIC NOTICE

This construction permit(s) will undergo a 30-day public notice period, in accordance with SC Regulation 61-62.1, Section II(N) and SC Regulation 61-62.1, Section II(E), to supersede limits established in CP-50000316 for Title V avoidance.

SUMMARY AND CONCLUSIONS

It has been determined that this source, if operated in accordance with the submitted application, will meet all applicable requirements and emission standards.

APPENDIX F

**IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

CONCERNED CITIZENS OF
SPARTANBURG COUNTY,

Plaintiff,

v.

VALARA HOLDINGS, LLC,
SPARTANBURG COUNTY, and
SPARTANBURG COUNTY
ADMINISTRATOR,

Defendants.

Case No. 2026CP4203416

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND
SUPPORTING MEMORANDUM**

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INTRODUCTION

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, Plaintiff Concerned Citizens of Spartanburg County respectfully moves this Court to swiftly issue a preliminary injunction preventing Defendants Spartanburg County, the Spartanburg County Administrator (together, the “County”) and Valara Holdings, LLC (“Valara”) from processing, reviewing, permitting, approving, constructing, and/or operating the Valara data center and associated gas-fired power plant as a “minor” land development, in plain violation of the Spartanburg County Unified Land Management Ordinance. *See* Amend. Compl. Ex. 1 (the “Ordinance”). As set forth below, preliminary relief is warranted to maintain the status quo and prevent further irreparable harm while litigation proceeds.

The project at issue is a nearly \$3 billion data center with a 460-megawatt gas-fired power plant to fuel the data center (the “Data Center”). Valara’s Data Center is one of the costliest developments in South Carolina history and will cover nearly 300 acres. The private power plant being built for the Data Center will generate enough energy to power every home in Spartanburg County—and then some—yet all this power will be used up by one Data Center.

Valara is rapidly building this massive project at a site on South Pine Street in Spartanburg in the middle of multiple residential neighborhoods where Plaintiff’s members have lived for years. The project has caused, and will continue to cause, devastating impacts for the surrounding community.

From the outset, Valara and the County have misled the public about the true scope of the project and flouted the public process required by the County’s own Ordinance for a “Major Land Development” such as this. The County’s review and approval of the project has occurred entirely behind closed doors, with no public input, and under the purview of unelected and

unappointed County staffers. This secretive process hinges entirely on the fiction that a multi-billion dollar Data Center and a power plant large enough to fuel a mid-sized city constitutes a “*Minor* Land Development,” akin to a “*single-family dwelling*,” or a “*sign*”—i.e., genuinely minor projects that are exempt from public review before the County Planning Commission. Ordinance at 5, § 1.02. Yet Valara’s Data Center and power plant are as far from “minor” as the mind can fathom. Under the plain text and clear English language used in the Ordinance, the project is unequivocally a “Major Land Development” that must be publicly reviewed and approved by the Planning Commission.

Once the Data Center is built or operating, Plaintiff’s members will no longer have the opportunity to participate meaningfully in the County’s review of whether and under what conditions the project should proceed—i.e., the public process that should have occurred at the outset. With Valara rapidly building the Data Center, it may be too late for Plaintiff’s members to obtain meaningful relief without a preliminary injunction. Plaintiff thus seeks preliminary relief enjoining Valara from constructing, and the County from approving or processing, this massive project as a “Minor” Land Development.

As set forth in this Memorandum, Plaintiff clearly satisfies each of the three factors warranting preliminary injunctive relief. First, Plaintiff’s members have already suffered irreparable injuries from the ongoing construction of the Data Center and power plant; these harms will continue and grow worse without an injunction. Construction of the project has made life a nightmare for longtime residents, causing loud noises and bright lights at all hours of the day; kicking up large amounts of dust that has coated houses and cars, causing respiratory issues for neighbors and preventing some from sitting outside on their own property; clear-cutting dozens of acres of beautiful trees; blighting the neighborhood; killing and harming local wildlife;

causing traffic congestion; and greatly diminishing members' use and enjoyment of their properties and neighborhood. Further construction will prolong these irreparable injuries, while subsequent operation of the Data Center and power plant will create injuries of an even graver magnitude—by Valara's own estimates, spewing hundreds of tons of toxic air pollution around the facility.

Second, Plaintiff is clearly likely to succeed on the merits. Plaintiff's claims under the Declaratory Judgment Act (Count I) and the Local Government Comprehensive Planning Enabling Act of 1994 (Count II) are both straightforward: because the Data Center and power plant cannot rationally be considered "minor" land development and are instead clearly "major," Valara's construction and the County's review and approval of the project as a minor development plainly violates the County Ordinance. Although its "minor" land development permit is clearly unlawful (Counts I–II), Valara is effectively ignoring even the minimal constraints imposed by that Permit, conducting widespread tree-clearing, grading, excavating, and other development activities far beyond the scope of its only issued development permit. These actions further violate the Ordinance; thus, Plaintiff is likely to succeed on this claim raised in Count III.

Last, there is no adequate remedy at law for these claims and irreparable harms.

For these reasons, as set forth more fully below, a preliminary injunction is clearly warranted in this case.¹

¹ Pursuant to Rule 11(a), SCRCP, prior to filing this motion the undersigned counsel for Plaintiff communicated in writing with opposing counsel attempting in good faith to resolve the matter contained in this motion.

BACKGROUND

From the outset, Valara and the County have hidden and misled the public about the nature and scale of this massive project. In February 2025, the public first became aware of the project through a *Post and Courier* article detailing the Spartanburg County Council’s plans to grant tax breaks for a secretive development by an “undisclosed company” going by “the code name ‘Project Moc-1’” at an undisclosed location in Spartanburg County.² The article quoted then-County Councilman David Britt as stating that the project was “not a data center” and would “not use more power than the [unspecified] site’s existing facility.” *Supra* note 2.

In April 2025, NorthMark Strategies announced that its subsidiary, Valara Holdings, was planning a \$2.8 billion dollar project “to transform the former Kohler manufacturing facility in Spartanburg, S.C., into a state-of-the-art high-performance computing (HPC) center.”³ NorthMark stated the project would “enhance the overall health of the building and surrounding land.” *Supra* note 3. The release did not mention that the project was a data center or that it would involve construction of a massive power plant drastically exceeding the footprint, pollution, and energy use of the former Kohler plant. The \$2.8 billion price tag would make this the second costliest development in South Carolina history and the most expensive in the history of Spartanburg County,⁴ yet the project will create less than 30 full-time jobs. *Supra* note 3.

² Max White, *Spartanburg County Could See a \$2.8 Billion Investment, One of the Largest Ever in SC. What to Know*, POST & COURIER (Feb. 18, 2025), <https://perma.cc/462Q-QQQD>.

³ NorthMark Strategies Grp., *NorthMark Strategies Announces Historic \$2.8 Billion Investment in Spartanburg, S.C. High-Performance Computing Facility* (Apr. 22, 2025), <https://perma.cc/7V6G-HJMM>.

⁴ Max White, *Computing Center Coming to Spartanburg County with \$2.8B Investment, Second Largest in SC History*, POST & COURIER (Apr. 21, 2025), <https://perma.cc/F8WZ-MBTJ>.

I. Valara's First Minor Land Development Permit.

On July 11, 2025, Valara applied to the County for a Minor Land Development permit. Ex. 1 (hereinafter the "First Minor Land Development Permit"). For context, the County Ordinance reserves "Minor Land Development" permits for smaller-scale projects such as a "single-family dwelling," a "manufactured home," and "signs." *See* Ordinance at 5, § 1.02. Major Land Development permits, by contrast, cover larger-scale industrial and commercial projects. *Id.* Whereas Major Land Development undergoes a public review and approval process before the County Planning Commission (whose members are appointed by the elected County Council), Minor Land Development is reviewed and approved behind closed doors by unappointed staffers. *See id.* at 3, § 5.01; Amend. Compl. Ex. 2 (hereinafter "Planning Comm'n Rules & Procs.") Arts. II–IV; S.C. Code Ann. § 6-29-1150(B).

Valara's application for the First Minor Land Development Permit described the project as follows:

Redevelopment of the former Kohler Industrial Plant, which currently consists of an existing Manufacturing/Industrial facility comprised of approximately 905,000 square feet of business space including a main plant, kiln, and separate utility facility. Development of the property began in 1957 with additions and modifications completed through 2006. The new developer, Valara Holdings LCC, intends to repurpose the existing facilities for the new MOC-1 High Performance Computer Center. To accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required, as well as the addition of associated exterior equipment.

On August 27, 2025, County staffers determined without explanation that the project was "minor" and issued the First Minor Land Development Permit for the work specified above. Ex. 1. The Permit did not mention land development beyond the footprint of the former Kohler plant; that a massive power plant would also be built; that the activities described were nowhere near

the full scope of the project; or that there would be additional development “phases.” The public was not afforded adequate notice, public consideration by the Planning Commission or the information publicly disclosed with such proceedings, or an opportunity to comment on this Permit—much less the full project.

II. Valara’s Clean Air Act Permit.

In July 2025, the South Carolina Department of Environmental Services (“DES”) issued a public notice for a draft permit under the Clean Air Act for the Valara facility to construct and operate twenty-four 2103 kW gas-fired generators, which is roughly 50 megawatts of energy, to power a new “data center.” Amend. Compl. Ex. 3 at 1. In September 2025, DES issued an air permit for these activities. Ex. 2.

In December 2025, just three months after receiving this air permit, Valara requested a permit modification to authorize air pollution from an additional **400 megawatts** of onsite gas-fired power generation, bringing the total wattage to nearly **460 megawatts**.⁵ For context, 460 megawatts is enough energy to power **several hundred thousand homes**—far more than the number of homes in Spartanburg County.⁶ This large power plant, which will exclusively power Valara’s Data Center, is comparable in size to public-utility owned power plants that fuel mid-sized cities.

⁵ Christian Boschult, *Spartanburg data center that got tax breaks wants 400 megawatt energy production increase*, POST & COURIER (Apr. 22, 2026), <https://perma.cc/5N4H-3H7B>.

⁶ In 2024, the average South Carolina home consumed 1,050 kWh (or 1.46 kW) per month in electricity. *See* Energy Information Administration, *2024 Average Monthly Bill – Residential* (2024), <https://perma.cc/4T34-3UKU>. According to census data, there are approximately 153,902 homes in Spartanburg County. Applying state-average consumption, Spartanburg County requires around 224.7 MW to power all of its homes in an average month—**roughly half the energy Valara will generate**.

On March 4, 2026, Valara formally applied for a modification to its air permit, requesting to operate an additional 400 megawatts of onsite power generation—an *eight-fold* wattage increase from the original air permit, bringing the total capacity of Valara’s power plant to nearly 460 megawatts. *See* Amend. Compl. Ex. 4. Under the draft modified air permit, and by Valara’s own estimates, the on-site powerplant will spew hundreds of tons of toxic air pollution into the air around the site each year. *Id.* at 4, 6.⁷ Valara’s estimates, if correct, could make its power plant the *largest industrial source* of numerous harmful air pollutants in Spartanburg County,⁸ and a top 10 source of harmful particulate matter pollution in the entire State.⁹ Valara’s projections of its own air pollution dwarf the former Kohler plant’s by several orders of magnitude.¹⁰ Suffice it to say, none of this was mentioned in Valara’s “minor” land development permit, which stated merely that Valara would “redevelop[],” “repurpose,” and “remodel[]” the old Kohler plant. *See* Ex. 1.

III. Valara’s Second Proposed Minor Land Development Permit.

On April 6, 2026, Valara filed a second Minor Land Development permit application with the County for a supposed “Phase II” of the project. Ex. 4 (“Second Proposed Minor Land

⁷ Valara substantially underestimates the amount of air pollution that its power plant will cause. But even under the company’s own projections, the Data Center will be a massive source of pollution in the community.

⁸ For example, Valara’s estimates likely make it the largest source of Nitrogen Oxides (“NOx”), Carbon Monoxide (“CO”), Particulate Matter (“PM 2.5”), Sulfur Dioxide (“SO2”), and formaldehyde in Spartanburg County. *See* Ex. 3 at 1–6.

⁹ Valara’s own projection of its particulate matter pollution (158.48 tons per year) would make it the tenth largest particulate matter polluter in South Carolina, ahead of multiple utility-scale power stations. Ex. 3 at 1, 7.

¹⁰ For example, Valara’s self-projected emissions, compared to Kohler’s actual emissions, anticipate approximately 180 more tons per year of CO; 200 more tons per year of NOx; 150 more tons per year of PM2.5; and 10 more tons per year of formaldehyde. Ex. 3 at 1, 8.

Development Permit”). In this second and currently pending application for a “minor” land development permit, Valara states that “Phase II improvements . . . consist of four (4) proposed buildings with [total] floor areas of approximately [500,000 square feet].” Ex. 4. It also includes “associated *site improvements* includ[ing] a power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.” *Id.* (emphasis added). Apparently, the “power yard” referred to as a “site improvement” is in fact a massive power plant.

IV. Ongoing Illicit Construction Activities and Harms to Plaintiff’s Members.

Under the County’s own Ordinance, a Land Development Permit is a pre-requisite to commencing construction activities. Ordinance § 1.13. Yet Valara has never obtained the required permit for a Major Land Development. Even the unlawful First Minor Land Development Permit, which is the only development permit issued thus far, only authorizes Valara to do “interior demolition and remodeling” of the former Kohler plant with “associated exterior equipment.” Yet Valara is ignoring this Permit and proceeding as if the Second Proposed Minor Land Development Permit has already been issued—it has not. As the satellite imagery below depicts, Valara has clear-cut many acres of trees and conducted widespread grading, excavation, and other development activities far beyond the footprint of the old Kohler plant.



Figure 1, above, is a satellite image of the former Kohler plant from June 2025, before the First Minor Land Development Permit was issued, and depicts the “Phase 1 Area” associated with the First Permit.

Figure 2, below, is a satellite image of the site from July 2026 depicting widespread land development well beyond the permitted boundary and footprint of the old Kohler plant.



Valara’s Data Center is being built in the middle of multiple residential neighborhoods where Plaintiff’s members and their families live. Construction has made life a “living nightmare” for long-time neighbors, severely harming their use and enjoyment of their properties

and forcing some to consider moving. *See* Exs. 5–11 (sworn affidavits of Plaintiff’s members neighboring Valara). Operation of the Data Center and power plant will inflict harms of an even graver magnitude. These significant and irreparable harms are described in Section I below.

Neighbors are further injured by Valara and the County’s unlawful transparency failures. From the start, the County refused to engage in the public review process mandated by its own Ordinance for a major land development such as this, instead opting to have unnamed County staffers review the project behind closed doors. Further, Valara has segmented the project into arbitrary “phases,” and County officials are apparently reviewing the phases in a vacuum. Because of this segmented approach, the full scope of the project is being hidden from review by the Planning Commission as a major land development. The public and neighbors have never been given notice or an opportunity to comment on the full project that Valara plans and is already constructing.

STANDARD OF REVIEW

“The purpose of an injunction is to preserve the status quo and prevent possible irreparable injury to a party pending litigation.” *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009). To obtain a preliminary injunction, a Plaintiff must show: “[1] that without such relief it will suffer irreparable harm, [2] that it has a likelihood of success on the merits, and [3] that there is no adequate remedy at law.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010) (citation omitted).

ARGUMENT

As set forth below, Plaintiff satisfies each of the three factors warranting preliminary injunctive relief.

I. Plaintiff will Suffer Irreparable Harm without a Preliminary Injunction.

Plaintiff's members have already suffered significant irreparable harms from the Valara Data Center and power plant. These harms will continue, and only grow worse, in the absence of preliminary relief.

Irreparable harm is "threatened [harm] for which there is no adequate remedy at law." *MailSource, LLC v. M.A. Bailey & Assocs.*, 356 S.C. 363, 370, 588 S.E.2d 635, 639 (S.C. Ct. App. 2003) (citations and quotations omitted). Harm is irreparable where the measure of damages is "uncertain[]," legal remedies are impractical or "successive," or where "the threatened acts may continue during the progress of an action at law." *Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 477–78, 189 S.E.2d 305, 311 (1972) (citation and quotations omitted). "[I]n a case where the nuisance is a continuous one," the difficulty of quantifying damages "often furnishes the very best reason why a court of equity should interfere." *Bethel M.E. Church v. Greenville*, 211 S.C. 442, 451, 45 S.E.2d 841, 845 (1947) (citation omitted).

"Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987). Damages are also "inadequate" when ongoing commercial activity interferes with plaintiffs' "use and enjoyment of their property," including by causing "noise and traffic in the neighborhood." *AJG Holdings*, 382 S.C. at 52, 674 S.E.2d at 509. Affidavits showing such harms are "sufficient to prove [plaintiff] suffered an irreparable harm." *Id.*

The affidavits of Plaintiff's members establish textbook irreparable injuries. For decades, Plaintiff's members have owned and lived in properties in southeast Spartanburg, enjoying the

peace, solitude, and wildlife in this forested part of town near Croft State Park. Pack Aff. ¶¶ 2–3; Felk Aff. ¶¶ 2–5, 26; Heath Aff. ¶¶ 2, 10, 12; Darwin Aff. ¶¶ 2, 10; Eilders Aff. ¶¶ 2–5; Wood Aff. ¶¶ 3–4; Stevens Aff. ¶¶ 2–6. The ongoing construction of the massive Valara Data Center on neighboring land has greatly disturbed members’ use of and enjoyment of their properties and the neighborhood, creating a “nightmare” for longtime residents. Pack Aff. ¶¶ 8–13; Felk Aff. ¶¶ 15–19; Darwin Aff. ¶ 10; Heath Aff. ¶¶ 10–12; Eilders Aff. ¶¶ 3–10; Stevens Aff. ¶¶ 7–25.

Building these facilities involves a large amount of heavy machinery, creates loud and intrusive noises, kicks up a “terrible” amount of dust, causes traffic congestion, and emits “incredibly” bright light at night—all of which harm members’ use and enjoyment of their properties and the neighborhood. Felk Aff. ¶¶ 17–19; Heath Aff. ¶¶ 12, 18; Darwin Aff. ¶ 10; Stevens Aff. ¶¶ 12–14. Construction dust from the Valara site has coated the homes, porches, and vehicles of several members, filling the air with dust they do not wish to breathe, aggravating respiratory issues, and forcing members to spend more time indoors. Stevens Aff. ¶¶ 9–11; Pack Aff. ¶ 9; Eilders Aff. ¶ 7. Valara has also begun clear-cutting large, forested areas that contributed to the neighborhood’s character, served as sound-barriers, and sheltered wildlife; these unauthorized activities have blighted the neighborhood, worsened the noise pollution, and harmed local wildlife that members so enjoy. Felk Aff. ¶ 26; Heath Aff. ¶ 10; Darwin Aff. ¶ 10; Pack Aff. ¶ 12; Eilders Aff. ¶¶ 4–5; Stevens Aff. ¶¶ 5–7. If construction continues without an injunction, Planning Commission review, or public participation, it will only worsen these irreparable injuries as this case proceeds.

Further, without a preliminary injunction, the Data Center will likely begin to *operate*, which will cause irreparable harms of a much graver magnitude. By Valara’s own estimates, the proposed Data Center and power plant will spew toxic and harmful pollutants into the air—

including high levels of formaldehyde, a human carcinogen;¹¹ particulate matter linked to heart attacks, pneumonia, cardiovascular issues, strokes, and cancer;¹² and Nitrogen Oxides, which create smog and respiratory harms.¹³ *Supra* notes 8–9; Amend. Compl. Ex. 4 at 6. In addition to fouling the air that members and their families breathe, the Data Center and power plant will likely have a myriad of other impacts, including loud noise around-the-clock, visual blight, potential toxic water pollution, and the use of a substantial amount of water that may strain local water resources. These impacts will substantially lessen members’ use and enjoyment of their properties and the neighborhood. Eilders Aff. ¶ 11; Pack Aff. ¶¶ 14–16; Heath Aff. ¶¶ 15–20; Felk Aff. ¶¶ 21–27; Darwin Aff. ¶¶ 11–12; Stevens Aff. ¶¶ 22–23. The outlook is so dire that some long-time residents who had planned to stay forever are seriously considering packing up and moving. *See, e.g.*, Pack Aff. ¶ 14–17.

Without preliminary relief, members will also suffer another form of irreparable injury—namely, loss of their rights to comment on, obtain information about, and participate in the County’s review of major land developments *before* they are constructed. *See* Ordinance at 3 (requiring Planning Commission review of proposed “Major” land developments); Planning Comm’n Rules & Procs. Arts. III & IV (outlining public notice and participation requirements for Planning Commission meetings and hearings, which must comply with the Freedom of Information Act). Members will also lose their right to have a publicly-accountable body—the Planning Commission appointed by elected members of County Council—review and vote on

¹¹ EPA, *Integrated Risk Information System Toxicological Review of Formaldehyde (Inhalation)*, at 2 (2024), <https://perma.cc/3HAQ-T88S>.

¹² *Particulate Matter (PM) Basics*, EPA, <https://perma.cc/68EU-3FH3>.

¹³ *Basic Information about NO2*, EPA, <https://perma.cc/MNL6-BQMV>.

this major project and explain their decision. *See* S.C. Code Ann. § 6-29-1150(B). To state the obvious, once the Data Center is built or operating, members will no longer have the opportunity to meaningfully participate in the County’s review of whether and under what conditions the project should proceed—rights that members would vigorously exercise if granted the opportunity. Pack Aff. ¶ 20; Eilders Aff. ¶¶ 16–17; Heath Aff. ¶¶ 22–25; Felk Aff. ¶¶ 28–31; Darwin Aff. ¶¶ 13–14, 18; Stevens Aff. ¶¶ 15–20, 25.

Courts widely recognize that procedural rights designed to inform and influence governmental decision-making are irreparably harmed when a project proceeds to the point that later review cannot meaningfully affect the outcome. *See, e.g., NRDC v. Houston*, 146 F.3d 1118, 1129 (9th Cir. 1998) (“The failure to respect the process mandated by law cannot be corrected with post-hoc assessments of a done deal.”); *Sierra Club v. Marsh*, 872 F.2d 497, 500, 504 (1st Cir. 1989) (preliminary injunction warranted given “[t]he difficulty of stopping a bureaucratic steam roller, once started,” as “[i]t is far easier to influence an initial choice than to change a mind already made up”).

In short, Plaintiff’s members are suffering, and will continue to suffer, a myriad of irreparable injuries unless the Court preliminarily enjoins the project pending proper review as a “major” development.

II. Plaintiff is Likely to Succeed on the Merits.

“In determining whether a temporary injunction should issue, the trial judge should not consider the merits of the case, except as they may enable the trial court to determine whether a prima facie showing has been made. When a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.” *Curtis v. State*, 345 S.C. 557, 576, 549 S.E.2d 591, 601

(2001) (citations omitted); *see also Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011) (applying standard).

As set forth below, Plaintiff has readily shown a likelihood of success on the merits.

A. Plaintiff Has Standing to Sue

As a threshold matter, Plaintiff has standing to sue on behalf of its injured members. Plaintiff Concerned Citizens of Spartanburg County is a non-profit organization founded to “protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center.” Darwin Aff. ¶¶ 4, 8. “[A]n organization has associational standing to bring suit on behalf of its members when (1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization’s purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Preservation Soc’y of Chs. v. SCDHEC*, 430 S.C. 200, 211, 845 S.E.2d 481, 487 (2020).

i. At least one member has standing to sue in his own right.

As to the first factor, multiple members have standing to sue on both constitutional and statutory grounds.

1. Constitutional Standing

Constitutional standing requires: (1) an “injury in fact” that is “concrete and particularized, and actual or imminent,” (2) a “causal connection between the injury and the conduct complained of,” and (3) a likelihood “that the injury will be redressed by a favorable decision.” *Id.* at 210, 486.

The irreparable injuries outlined in Section I, above, readily establish that Plaintiff's members have suffered injuries in fact. Namely, the approval, construction, and operation of the Valara Data Center and power plant as a "minor" land development causes multiple injuries in fact to Plaintiff's neighboring members, including: (1) environmental injuries to members' aesthetic and recreational interests in their properties, the neighborhood, and the natural scenery and wildlife of both, Pack Aff. ¶¶ 8–13; Felk Aff. ¶¶ 15–19; Darwin Aff. ¶ 10; Heath Aff. ¶¶ 10–12; Eilders Aff. ¶¶ 3–10; Stevens Aff. ¶¶ 7–14;¹⁴ (2) harms to members' use and enjoyment of their properties, Felk Aff. ¶¶ 17–19; Heath Aff. ¶ 12, 18; Darwin Aff. ¶ 10; Stevens Aff. ¶¶ 7–14;¹⁵ and (3) the deprivation of members' rights to participate and engage in, and obtain information about, the County's review of this major land development, Pack Aff. ¶ 20; Eilders Aff. ¶¶ 16–17; Heath Aff. ¶¶ 22–25; Felk Aff. ¶¶ 28–31; Darwin Aff. ¶¶ 13–14, 18; Stevens Aff.

¹⁴ "[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Env'tl Services (TOC), Inc.*, 528 U.S. 167, 183 (2000) (citation and quotations omitted); *Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Dep't of Natural Resources*, 345 S.C. 594, 601–02, 550 S.E.2d 287, 291–92 (2001) ("South Carolina case law has specifically recognized an injury to one's aesthetic and recreational interests in enjoying and observing wildlife is a judicially cognizable injury in fact."); *Smiley v. SCDHEC*, 374 S.C. 326, 332, 649 S.E.2d 31, 34 (2007) ("The averments in [plaintiffs'] affidavit that he recreates and views nature on the beach on an almost daily basis is a sufficient allegation of a 'concrete and particularized invasion.'"); *Town of Arcadia Lakes v. SCDHEC*, 404 S.C. 515, 531, 745 S.E.2d 385, 394 (S.C. Ct. App. 2013) ("[C]oncerns reflecting aesthetic or recreational interests have been recognized as 'judicially cognizable injur[ies] in fact.'" (quoting *Sea Pines*, 345 S.C. at 602, 550 S.E.2d at 292)).

¹⁵ "[H]arm to a legally protected interest, like property," constitutes "an injury in fact." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023); *Babb v. Lee Cty. Landfill, SC, LLC*, 405 S.C. 129, 139–40, 747 S.E.2d 468, 473–74 (2013) ("[I]nterference with the interest in the private use and enjoyment of the land" constitutes an injury to property rights, including harm to "the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land" and "[f]reedom from discomfort and annoyance," and listing as an example of interference with property interests "odors, dust, and small particles emanating from the plant" near plaintiff's home (citation and quotations omitted)).

¶¶ 18–28.¹⁶ These injuries are actual and imminent—indeed, they are already occurring and will continue unless an injunction is issued.

These injuries are caused by the County’s review and approval, and Valera’s construction and operation, of the massive Data Center and power plant as a “minor” land development—and the failure to ever review it as a major land development, as the County’s Ordinance requires. But-for Defendants’ approval and construction of the project as a “minor” development, Plaintiff’s members would have received notice; timely public information about the true scope, nature, and details of the project; review of the project by a publicly-accountable body (the County Council-appointed Planning Commission); an opportunity to submit materials to the Commission; the opportunity to comment during any comment period; and the opportunity to take part in any public hearing before the Commission. *See* Ordinance at 3; Planning Comm’n Rules & Procs. Arts. III & IV. A favorable decision from this Court would require construction to stop unless and until Defendants proceed through this lawful public process and receive final approval. This is all that is required to show causation and redressability. *Massachusetts v. U.S. Env’tl Protection Agency*, 549 U.S. 497, 518 (2007) (“A litigant who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result.” (citation and quotations omitted)); *Lujan*, 504 U.S. at 572 n.7 (“The person who has been accorded a procedural right to protect his

¹⁶ *See Lujan v. Def’s of Wildlife*, 504 U.S. 555, 572 n. 7 (1992) (noting the deprivation of “a procedural right to protect [plaintiff’s] concrete interests” constitutes an injury in fact); *see also Doe v. Public Citizen*, 749 F.3d 246, 263 (4th Cir. 2014) (“The Supreme Court consistently has held that a plaintiff suffers an Article III injury when he is denied information that must be disclosed pursuant to a statute”).

concrete interests can assert that right without meeting all the normal standards for redressability”).

2. Statutory Standing

Members also have statutory standing to bring their claims under the Declaratory Judgment Act and the Planning Enabling Act. *See Preservation Soc’y*, 430 S.C. at 210–11, 845 S.E.2d at 486 (“The concept of [constitutional] standing . . . does not limit a state’s ability to statutorily formulate standing criteria.”).

The Declaratory Judgment Act (“DJA”) grants standing to, among other parties, “[a]ny person . . . whose rights, status or other legal relations are affected by a . . . municipal ordinance” to seek a court declaration resolving any question over the construction or validity of the ordinance and to obtain a declaration of rights, status, or other legal relations under the ordinance. S.C. Code Ann. § 15-53-30. Standing under the DJA simply requires a justiciable controversy or “the ripening seeds of a controversy.” *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423–24, 593 S.E.2d 462, 466 (2004); *see also id.* (“The Act should be liberally construed to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes and of settling legal rights and relationships, without awaiting a violation of the rights or a disturbance of the relationship.”).

Here, where the County has already approved, and Valara has already begun building, parts of the Data Center as a “minor” land development, there can be no doubt that injured neighbors of the project present a justiciable controversy over whether Defendants’ construction and application of the Ordinance is lawful. *See, e.g., Citizens for Quality Rural Living, Inc. v. Greenville County Planning Comm’n*, 426 S.C. 97, 113, 825 S.E.2d 721, 730 (S.C. Ct. App. 2019) (affirming plaintiff’s standing under the Declaratory Judgment Act to challenge County

Planning Commission’s decision to approve a project because “[s]ome of [plaintiff’s] members own or reside on contiguous property or property in the vicinity of the proposed [project] and will be impacted by the additional traffic generated by the [project]”).

Additionally, the Planning Enabling Act grants standing to “an adjacent or neighboring property owner who would be specially damaged” by the violation of an ordinance to bring suit for an injunction or other appropriate relief to prevent the violative project. S.C. Code Ann. § 6-29-950. The elements of this statutory claim are addressed in Section II.B.ii. below. For standing purposes, it is sufficient to note that Plaintiff’s members are “adjacent” and “neighboring” property owners—including members who live directly across the street from Valara or only a few houses down, so close that construction dust coats their homes. *E.g.*, *Eilders Aff.* ¶¶ 3–7; *Pack Aff.* ¶¶ 4, 9; *Stevens Aff.* ¶¶ 2–4. The “specially damaged” requirement “incorporates the particularized injury requirement of general standing doctrine as a requirement for the statute to apply,” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014)—i.e., the constitutional standing requirements. For the reasons noted above, Plaintiff’s members who live and own property neighboring the proposed Data Center satisfy all of the requirements of constitutional standing, and thus, have statutory standing under Section 6-29-950 as well.

In short, multiple members have standing to sue in their own right on constitutional and statutory grounds.

ii. The interests at stake are germane to the organization’s purpose.

As to the second factor, “the germaneness requirement is undemanding.” *Preservation Soc’y*, 430 S.C. at 217, 845 S.E.2d at 490 (citations and quotations omitted). Here, the interests at stake are plainly germane to Plaintiff’s purpose, which is “to protect the health, safety, property,

environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center.” Darwin Aff. ¶¶ 4, 8.

- iii. Neither the claim asserted nor the relief requested requires the participation of individual members.

As to the final factor, Plaintiff does “not seek monetary damages on behalf of [its] members for specific instances of environmental harm.” *Preservation Soc’y*, 430 S.C. at 217, 845 S.E.2d at 490. Instead, Plaintiff asserts claims for declaratory and injunctive relief requiring the County and Valara to follow lawful procedures for review and construction of the proposed Data Center and power plant. These claims and relief do “not require the individual members’ substantial participation.” *Id.*

In sum, Plaintiff satisfies all three requirements for associational standing to sue on behalf of its members.¹⁷

B. Plaintiff is Likely to Succeed on its Substantive Claims

i. DJA Claim (Count I)

Plaintiff is likely to succeed on the merits of its DJA claim because the proposed Data Center and power plant are clearly a “major” land development unlawfully being processed as a “minor” development by the County without an opportunity for public comment, engagement, and information.

The DJA provides that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be

¹⁷ Additionally, Plaintiff and its members have standing under South Carolina’s public importance doctrine, which relaxes our State’s traditional standing requirements when a case “involves a matter of wide public importance” such that “resolution of the case is needed for future guidance.” *Eidson v. S.C. Dep’t of Educ.*, 444 S.C. 166, 177, 906 S.E.2d 345, 350 (2024); *see also Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999) (same).

claimed.” S.C. Code Ann. § 15-53-20. The Act specifically authorizes “[a]ny person . . . whose rights, status or other legal relations are affected by a . . . municipal ordinance” to “have determined any question of construction or validity arising under the . . . ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.” *Id.* § 15-53-30. “The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate,” Rule 57, SCRCP, and “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or appropriate.” S.C. Code Ann. § 15-53-120. In passing the Act, the Legislature expressly declared it a “remedial” statute whose “purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations. It is to be liberally construed and administered.” S.C. Code Ann. § 15-53-130.

As its plain text indicates, the DJA is a vehicle for resolving concrete disputes over the meaning and application of a municipal ordinance. *E.g.*, *Citizens for Quality Rural Living*, 426 S.C. at 112–114, 825 S.E.2d at 729–30; *Atkins v. Wilson*, 417 S.C. 3, 10–16, 788 S.E.2d 228, 232–235 (S.C. Ct. App. 2016); *Pinckney v. City of Beaufort*, 296 S.C. 142, 144, 370 S.E.2d 909, 910 (S.C. Ct. App. 1988). “In construing ordinances, the terms used must be taken in their ordinary and popular meaning.” *Charleston Cnty. Parks & Rec. Comm’n v. Somers*, 319 S.C. 56, 68, 459 S.E.2d 841, 843 (1995).

1. The Valara Data Center is a Major Land Development.

Spartanburg County’s Unified Land Management Ordinance requires a permit “to develop or alter the use of land.” Ordinance §§ 1.01, 1.02, 1.13. The Ordinance flatly prohibits land development activities without a Land Development Permit. *Id.* §§ 1.13, 1.07. Such permits

are classified into two categories: “Minor Land Development” and “Major Land Development.” *Id.* § 1.02(1).

A project’s classification as minor or major is highly consequential. As noted, minor land development only requires the review of County staffers, *id.* at 3, bypassing review by the Planning Commission, whose members are appointed and overseen by the elected County Council. *Id.* at § 5.01. For minor developments, staff review is entirely behind closed doors; the Ordinance does not require that the public be given notice of a proposal or of the staff’s permitting decision, much less an opportunity to comment or obtain information during staff review. *See id.* at 3. By contrast, major land development requires full review by the Planning Commission. *Id.* at 3. This is a public process where the Commission reviews the proposal and considers input from the community to determine whether a permit should be issued. The public is afforded notice and an opportunity to attend Commission meetings, an opportunity to submit comments, obtain information about the project, and to have a public and explained vote by the Commissioners. *See* Planning Comm’n Rules & Procs. Arts. II–IV; S.C. Code Ann. § 6-29-1150(B).

The Ordinance provides that Major Land Development “***includes but is not limited to***” projects such as “commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, ***and similar developments.***” Ordinance § 1.02 (emphasis added). Exhibit A of the Ordinance provides additional examples of major developments “to include” other large-scale commercial and industrial projects. *See id.* at 5. Thus, the Ordinance expressly ***does not limit*** the scope and plain meaning of “major,” instead providing an illustrative and non-exhaustive list of examples, including commercial and industrial developments.

By contrast, the Ordinance defines “Minor Land Development” by negation as “any land development or land altering activity requiring a permit from the County other than a . . . Major Land Development.” *Id.* § 1.02. The Ordinance also provides examples of minor land developments such as a “single-family dwelling,” “signs,” and a “manufactured home.” *Id.* at 5.

The Ordinance thus requires the County to engage in a common-sense, comparative analysis. In other words, to determine whether a proposed project is “major” or “minor,” the County must determine whether the development is “major” within the common meaning of that word and “similar” to the examples provided of major developments (e.g., industrial parks), or else “minor” consistent with the common meaning of that word and the examples provided of minor developments (e.g., signs, single-family homes). The County must remain faithful to the “ordinary and popular meaning” of the words major and minor. *Somers*, 319 S.C. at 68, 459, S.E.2d at 843. Webster’s Dictionary defines “major” as “notable or conspicuous in effect or scope,” and “prominent or significant in size, amount, or degree.” Merriam-Webster Dictionary (2026). It defines “minor” as “inferior in importance, size, or degree: comparatively unimportant.” *Id.*

Under every conceivable meaning of the word, the Valara Data Center and power plant are unequivocally “major” land development. Valara’s proposal is a nearly \$3 billion project, **the most expensive—the most “major”—in Spartanburg County history, and the second costliest in South Carolina’s history**,¹⁸ to: (1) build and operate a nearly 500,000 square-foot Data Center; (2) build and operate a 457-megawatt gas-fired power plant capable of powering every home in Spartanburg County and spewing hundreds of tons of toxic air pollutants each year, Ex. 2; Amend. Compl. Ex. 4; (3) clear-cut dozens of acres of forest, and (4) construct a

¹⁸ White, *supra* note 4.

power yard, internal roadways, and a host of other heavy ancillary equipment. Ex. 4. The construction and operation of these facilities will create immense amounts of noise, light, water, and air pollution, necessitating multiple federal and state permits for this pollution. *E.g.*, Ex. 2; Amend. Compl. Ex. 4. The project is not remotely similar to any of the “minor” land developments noted in the Ordinance, such as signs and single-family homes. In fact, it is even larger than the “major” developments listed, such as “industrial parks” and other industrial and commercial uses. No rational person would consider the Data Center and power plant to be a “minor” development.

2. *Valara and the County Have Unlawfully Segmented the Data Center into Two “Minor” Land Developments.*

In making the major/minor classification, the Ordinance requires the applicant to submit, and the County to consider, the “[l]ocation of all proposed structures,” not just some of them. *See* Ordinance at 6 (emphasis added). Thus, the entire project, including the Data Center, power plant, and associated facilities, must be considered to determine whether it is a major or minor development. Rather than following this procedure, the County allowed Valara to segment the project into distinct and smaller “phases,” which are apparently being considered in isolation to make separate major/minor determinations for each phase. *See* Exs. 1, 4 (two separate land development permits for the same development). This segmentation is an attempt to evade the major/minor distinction, by pretending to chop a major project into phases that the County and Valara can try to argue are minor when viewed alone. Indeed, there is little point in having a major/minor distinction if applicants can divvy-up major projects to avoid the public review process.

But even allowing Defendants’ (illegal) segmentation, each of the two “phases” standing alone is plainly a major development. Defendants are simply dividing up one \$2.8 billion project

into separate projects that each constitute at least \$1 billion or, at a minimum, hundreds of millions of dollars. The First Minor Land Development Permit, which governs “Phase I,” authorizes Valera to redevelop and repurpose the former Kohler Industrial Plant—a massive 905,000 square-foot manufacturing facility—into a Data Center, impacting 66 acres and including “interior demolition and remodeling of the current infrastructure . . . , as well as the addition of associated exterior equipment,” activities the County classifies as “Heavy Industry.” Ex. 1 at 1. Valara has requested a Second Minor Land Development permit for “Phase II,” a phase impacting 293 acres and including the construction of four new buildings totaling nearly 500,000 square feet, a “power yard”—i.e., a large power plant—“internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.” Ex. 4. If each of these two developments is not “major,” it is hard to imagine what would be. Neither phase can plausibly be considered “minor.”

In short, Valara’s Data Center and power plant is clearly a “Major Land Development” that is unlawfully being segmented, reviewed, approved, and constructed as multiple minor land developments—both because the project as a whole is major, and because each of the “phases” standing by itself is major. The review, construction, and permitting of this project as a “minor” land development without the required “major” permit plainly violates the Ordinance. *See* Ordinance § 1.07 (“No permits inconsistent with the provisions of this Ordinance shall be issued unless accompanied by an approved variance.”); *id.* (“No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued.”). Plaintiff is likely to succeed on the merits of its DJA claim that these actions violate the Ordinance.

ii. Planning Enabling Act Claim (Count II)

For essentially the same reasons, Plaintiff is also likely to succeed on the merits of its Planning Enabling Act claim, which turns on the same Ordinance violations as Count I.

The Planning Enabling Act provides that:

No permit may be issued or approved unless the requirements of . . . any ordinance adopted pursuant to [this chapter] are complied with. . . . In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, . . . an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation[.]

S.C. Code Ann. § 6-29-950(A).

Plaintiff satisfies each of the elements warranting relief under Section 6-29-950(A). First, Spartanburg County’s Unified Land Management Ordinance was adopted pursuant to the Planning Enabling Act. *See* Ordinance Preamble. Second, as explained above, the First and Proposed Second Minor Land Development Permits do not comply with the Ordinance because the Data Center and power plant authorized by these permits are major, not minor, land development—whether considered in separate “phases” or as the entire development always contemplated. Third, Valara is using, and is proposing to further use, the buildings, structures, and land of the site to construct this major land development in violation of the Ordinance—i.e., without a Major Land Development permit. Last, Plaintiff’s members are neighboring property owners who would be, and already have been, specially damaged by this unlawful development, including serious harms to their use and enjoyment of their properties and the neighborhood. *See supra* Section I, II.A.

Having satisfied each element under the Planning Enabling Act, Plaintiff is clearly likely to succeed in its claim for declaratory and injunctive relief to prevent Valara from constructing, and the County from permitting, the Data Center and power plant as a Minor Land Development.

iii. Developing without a Permit Claim (Count III)

As set out above, Valara has never obtained a Major Land Development Permit for this project, or any phase of it, and therefore has no right to proceed to develop any part of the site (Counts I–II).

On top of these violations, Valara is simply disregarding the one development permit that has been issued for the project, drastically exceeding the permitted boundary under the First Minor Land Development Permit (Count III). As satellite imagery reveals, Valara is clear-cutting trees, grading, clearing, and conducting other land development activities far beyond the approved Phase I boundary, which is the only area that the County has authorized Valara to develop at present under the First Minor Land Development Permit. *See* Figures 3–5. In effect, Valara is proceeding as if the County had already issued the Proposed Second Minor Land Development Permit, conducting large-scale Phase II activities despite the fact that this Second Permit has not yet been issued. Although no Minor Land Development Permit could lawfully authorize this project, Valara’s violation of the one minor development permit that has been issued constitutes a further violation of the Ordinance. As a result, Plaintiff is likely to succeed on the merits of Count III.

Figure 3 below depicts the County-approved “Phase I” boundary associated with the First Minor Land Development Permit. This Permit, the only Land Development Permit issued for the project to date, authorized Valara to “repurpose the existing [Kohler] facilities for the” Data Center through “interior demolition and remodeling of the current infrastructure . . . as well as

the addition of associated exterior equipment.” Ex. 1. The First Minor Land Development Permit did not authorize Valara to redevelop, clear-cut, grade, excavate, or build on the entire site.

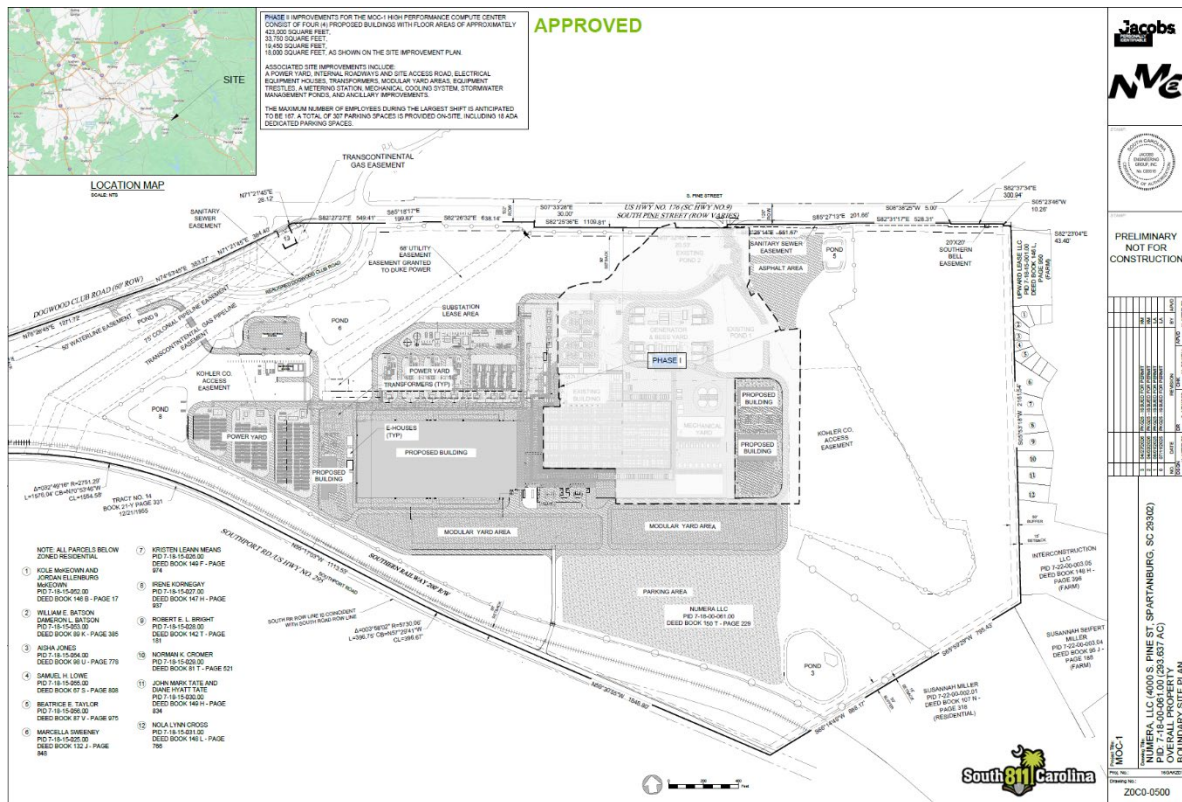


Figure 3

To illustrate site conditions before construction began, Figure 4 overlays the permitted boundary onto satellite imagery of the site from July 2025, before issuance of the First Minor Land Development Permit. Figure 5 depicts the same boundary on a satellite image from July 2026, which shows large-scale development, tree-clearing, grading, and excavating well outside the Phase I boundary. Plainly, Valara is proceeding with Phase II without waiting on the County to issue its Second Permit.

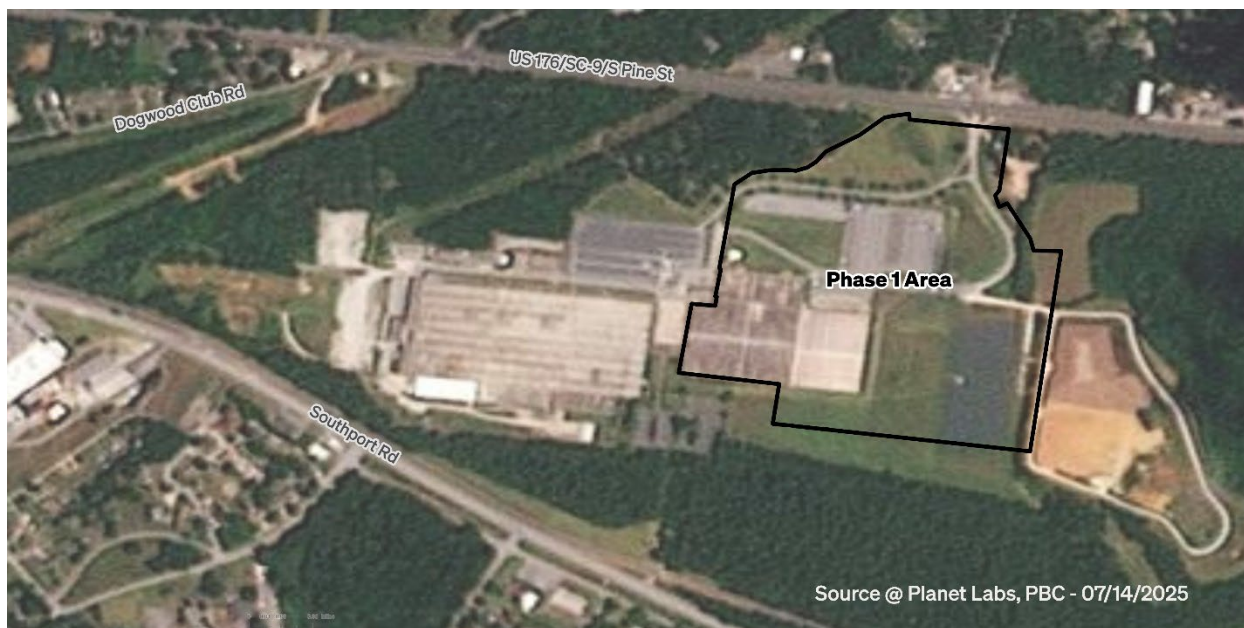


Figure 4



Figure 5

Valara's development activities exceed the scope of the First Minor Land Development Permit and violate the Ordinance. Section 1.13 of the Ordinance states that "[n]o building, other structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part, to any other use, until a Development permit, certifying compliance with this Ordinance

has been issued by the Planning Department staff” Section 1.07 of the Ordinance further provides that:

No building, structure or sign requiring a permit or any part thereof shall be erected, added to or structurally altered, nor shall any excavation or grading be commenced until the required permits have been issued. No building, structure or land shall be used; nor shall any building, structure or land be converted, wholly or in part to any other use, until all applicable and appropriate licenses, certificates and permits have been issued certifying compliance with the requirements of this Ordinance.

Valara has no Development Permit—not even an illegal minor permit—to use, develop, or convert the use of any land or structure beyond the First Minor Land Development Permit. Valara’s widespread clear-cutting, grading, excavating, and other redevelopment activities outside the scope of the First Minor Land Development Permit clearly constitute the use and conversion of land to another use without a Development Permit, in violation of Section 1.13 of the Ordinance. These activities also constitute the excavation, grading, use, and conversion of land to another use without all required and applicable permits—namely, a Development Permit—in violation of Section 1.07.¹⁹

Pursuant to the DJA, S.C. Code Ann. § 15-53-30, and the Planning Enabling Act, S.C. Code Ann. § 6-29-950(A), Plaintiff is likely to succeed on the merits of Count III, which seeks declaratory and injunctive relief against Valara’s unpermitted use, conversion, clear-cutting, grading, excavating, and other developing of land and structures outside the scope of the First Minor Land Development Permit.

¹⁹ Section 1.11 of the Ordinance requires a Land Disturbing Permit for activities that implicate the County’s stormwater management regulations, and Valara has obtained one or more such stormwater permits. These permits are necessary, but not sufficient; a Development Permit is also required.

III. There is no Adequate Remedy at Law.

Finally, there is no adequate remedy at law to address Plaintiff's claims and irreparable injuries. "In order to justify a court of equity in refusing to take jurisdiction, the remedy at law must be adequate, and must attain the full end and justice of the case. It is not enough that there is some remedy at law, but that remedy must be as practical, efficient, and prompt as the remedy in equity." *Eldridge v. Eldridge*, 398 S.C. 113, 120, 728 S.E.2d 24, 27 (2012) (quoting *Chisolm v. Pryor*, 207 S.C. 54, 60, 35 S.E.2d 21, 24 (1945)). More, an adequate remedy at law must be "certain" and "complete." *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Injunctive relief is appropriate when a legal remedy "is not so speedy, full, and complete" as to prevent permanent injury. *Crawford v. Atl. Coast Lumber Corp.*, 77 S.C. 81, 57 S.E. 670, 671 (1907). Such injury may include, for example, the destruction of trees on a property, *see id.*, or interference with the use of neighboring parcels. *See AJG Holdings*, 382 S.C. at 52, 674 S.E.2d at 509.

As a threshold matter, the Planning Enabling Act specifically affords injunctive relief to injured property owners to stop ordinance violations by neighbors "in addition to other remedies." S.C. Code Ann. § 6-29-950(A). This reflects a clear judgment by the Legislature that ordinance violations may cause irreparable injuries to neighbors, that equity should preserve neighbors' use and enjoyment of their property from such violations, and that "other remedies" alone are inadequate. As to the DJA claims, "[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." Rule 57, SCRCF.

Putting aside the Legislature's judgment, there is plainly no adequate legal remedy for Plaintiff's claims and irreparable injuries here. An after-the-fact damages award is inadequate to remedy the ongoing, irreparable injuries to Plaintiff's members' use and enjoyment of their

properties and the neighborhood—none of which can be “adequately remedied by money damages.” *Amoco Prod. Co.*, 480 U.S. at 545; *see also AJG Holdings*, 382 S.C. at 52, 674 S.E.2d at 509 (same).

Although there is a vague appeals process under the Ordinance, it affords inadequate and incomplete relief for all of Plaintiff’s claims and injuries here. The Ordinance generally allows 10 days to appeal a land development permit to the County Board of Zoning Appeals. *See* Ordinance § 1.04 & p. 4. Yet “[a] remedy at law cannot be adequate and complete if . . . the interested party must appeal to the discretion of some other person or body.” 30A C.J.S. *Equity* § 23 (2026).

Moreover, because Valara and the County have fragmented the project into “phases” being processed behind closed doors as separate minor land developments, Plaintiff and its members did not receive timely notice from the County of the issuance of the First Minor Land Development Permit—much less a full and accurate description of the project making apparent the impacts and need to appeal. As to the Second Minor Land Development Permit, which is currently pending, appealing this Permit would have no effect on the illegal issuance of the First Minor Land Development Permit; nor would it alter the fact that Valara has proceeded with development illegally without first obtaining a major development permit. Because of Defendants’ secretive and fragmented process, there is no plausible legal vehicle under the Ordinance for Plaintiff to seek complete review, much less timely and holistic relief, from Defendants’ approval and construction of the *entire project* as a “minor” land development. *See* 30A C.J.S. *Equity* § 24 (“A remedy at law cannot be considered adequate, so as to preclude equitable relief, unless it covers the entire case made in a suit in equity.”).

Finally, as to Count III, a permit appeal through the County would provide no remedy at all for Valara's ongoing permit *violations* by constructing without appropriate permits beyond the permitted boundary, which is imminently causing Plaintiff's members irreparable injuries. Thus, any appeal to the Board of Zoning Appeals would not afford "speedy" or "complete" relief on all of Plaintiff's claims. *See Crawford*, 77 S.C. at 81, 57 S.E. at 671; *see also* 30A C.J.S. *Equity* § 23 ("The legal remedy is never adequate if the injured party will sustain irreparable damage by being forced to resort to it . . .").

In sum, there is no legal remedy for Plaintiff's claims and irreparable injuries—much less one as "practical, efficient, and prompt as the remedy in equity." *Eldridge*, 398 S.C. at 120, 728 S.E.2d at 27 (citations and quotations omitted).

CONCLUSION

For these reasons, Plaintiff has satisfied all elements warranting a preliminary injunction and respectfully requests that the Court swiftly grant this motion and order as follows for the pendency of this case:

1. Defendant VALARA HOLDINGS, LLC, together with its agents, employees, contractors, subsidiaries, parent corporation(s), assigns, and any other person or entity acting in concert with Valara or on its behalf, shall be preliminarily enjoined from any construction, development, excavation, grading, tree-clearing, or other activities associated with building or operating the proposed Data Center, power plant, or any related ancillary facilities at or near 4000 South Pine Street in Spartanburg, SC, 29302 (together, the "Project"), unless and until Valara applies for and obtains a Major Land Development Permit from the County for the entire Project following the public process specified in the Ordinance;

2. Defendants SPARTANBURG COUNTY and the SPARTANBURG COUNTY ADMINISTRATOR, together with their agents, officials, employees, and any other official or entity acting on their behalf, shall be preliminarily enjoined from reviewing, approving, issuing, or modifying any Minor Land Development Permit for the Project, or authorizing any further activities related to construction, development, or operation of the Project unless and until Valara applies for and obtains a Major Land Development Permit for the entire Project following the public process specified in the Ordinance.

Respectfully submitted this 20th day of August 2026.

s/ Carl T. Brzorad
 Carl T. Brzorad (S.C. Bar No. 105413)
 Catherine Wannamaker (S.C. Bar No. 102895)
 Frank S. Holleman III (S.C. Bar No. 2564)
 Susie Carlson (S.C. Bar No. 106396)
 Southern Environmental Law Center
 525 East Bay Street, Suite 200
 Charleston, SC 29403
 (843) 720-5270
 cbrzorad@selc.org
 cwannamaker@selc.org
 holl2759@bellsouth.net
 scarlson@selc.org

APPENDIX G

EXHIBIT 1



Spartanburg County Planning and Development
366 N Church St, Suite 700
Spartanburg, SC 29303
Minor Land Development Permit (**DEVELOPPER-0725-0918**)

ELECTRONICALLY FILED - 2026 Aug 20 12:08 PM - SPARTANBURG - COMMON PLEAS - CASE# 2026CP4203416

Permit Information

Permit Type: Development Permit - ULMO
Parcel Number(s): 7-18-00-061.01
Work Classification: Minor Land Development
Issue Date: 08/27/2025
Expiration Date: 08/27/2027
Issued By: Tia Keitt, AICP
Project Name: MOC-1 High Performance Compute Center
Permit Status: Issued
Property Location: 4000 S PINE ST
SPARTANBURG, SC 29302
Description: 7-18-00-061.01 - Redevelopment of the former Kohler Industrial Plant, which currently consists of an existing Manufacturing/Industrial facility comprised of approximately 905,000 square feet of business space including a main plant, kiln, and separate utility facility. Development of the property began in 1957 with additions and modifications completed through 2006.

The new developer, Valara Holdings LCC, intends to repurpose the existing facilities for the new MOC-1 High Performance Compute Center. To accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required, as well as the addition of associated exterior equipment.
The County-approved Lot Combination was submitted for recording on 7/11/2025 (Official Receipt No. 353419).

Contact Information

Applicant

Lisa Amador

PERSONALLY IDENTIFIABLE
INFORMATION

Property Attributes

Acres: 66.40
Appearance Corridor(s):
Census Tract: 239.01
Road Classification: A
Zoning District(s): ULMO
Maintenance of Existing Road:

Specifications

Classification: Heavy Industry
Conditional Use: No
Parking: 0
Front Setback: 50' from edge of R/W
Side Setback: 25'
Rear Setback: 20'
Front Buffer: 5' strip between the road R/W and any development
Side Buffer: 5' strip between the road R/W and any development
Rear Buffer:

^ (.multi-collapse)

Type:

Minor Land Development

Status:

Issued

Project Name:

MOC-1 High Performance Compute Center

Applied Date:

07/11/2025

Issue Date:

08/27/2025

District:

UNINCORPORATED

Expire Date:

08/27/2027

Finalized Date:**Description:**

7-18-00-061.01 - Redevelopment of the former Kohler Industrial Plant, which currently consists of an existing Manufacturing/Industrial facility comprised of approximately 905,000 square feet of business space including a main plant, kiln, and separate utility facility. Development of the property began in 1957 with additions and modifications completed through 2006.

The new developer, Valara Holdings LCC, intends to repurpose the existing facilities for the new MOC-1 High Performance Compute Center. To accommodate the proposed transition from the Manufacturing/Industrial facility to data center services, interior demolition and remodeling of the current infrastructure is required, as well as the addition of associated exterior equipment.

The County-approved Lot Combination was submitted for recording on 7/11/2025 (Official Receipt No. 353419).

APPENDIX H

EXHIBIT 2



SC DEPARTMENT *of* **ENVIRONMENTAL SERVICES**

Bureau of Air Quality Synthetic Minor Construction Permit

**Valara Holdings High Performance Compute Center
4000 South Pine Street
Spartanburg, South Carolina 29302
Spartanburg County**

In accordance with the provisions of the Pollution Control Act, Sections 48-1-50(5), 48-1-100(A), and 48-1-110(a), the 1976 Code of Laws of South Carolina, as amended, and South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, the Bureau of Air Quality authorizes the construction of this facility and the equipment specified herein in accordance with the plans, specifications, and other information submitted in the construction permit application received on May 22, 2025, as amended. All official correspondence, plans, permit applications, and written statements are an integral part of the permit. Any false information or misrepresentation in the application for a construction permit may be grounds for permit revocation.

The construction and subsequent operation of this facility is subject to and conditioned upon the terms, limitations, standards, and schedules contained herein or as specified by this permit and its accompanying attachments.

Permit Number: CP-50000316 v1.1
Agency Air Number: 2060-0674

Issue Date: September 17, 2025



**Steve McCaslin, P. E., Director
Air Permitting Division
Bureau of Air Quality**

Valara Holdings High Performance Compute Center
CP-50000316 v1.1
Page 2 of 24

RECORD OF REVISIONS	
Date	Description of Changes
04-21-2026	Added temporary engines to equipment table. Added temporary engine conditions B.17-B.21. Temporary engines added to list of applicable equipment in condition B.4. Added header to NSPS JJJJ conditions. Updated project description.

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Valara Holdings High Performance Compute Center

CP-50000316 v1.1

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ELECTRONICALLY FILED - 2026 Aug 20 12:08 PM - SPARTANBURG - COMMON PLEAS - CASE#2026CP4203416

A. PROJECT DESCRIPTION, EQUIPMENT, AND CONTROL DEVICE(S)

Permission is hereby granted to construct twenty-four permanent natural gas fired generators with selective catalytic reduction and oxidation catalyst control devices and twenty-one temporary natural gas fired generators. This permit will establish federally enforceable limits on NO_x, CO, VOC, and hazardous air pollutant (HAP) emissions to avoid classification as a major source under Prevention of Significant Deterioration (PSD), Title V, and National Emission Standards for Hazardous Air Pollutants regulations.

A.1 EQUIPMENT

Equipment ID	Equipment Description	Control Device ID	Emission Point ID
GEN	Twenty-Four 2103 kW Natural Gas Fired Generators	SCR, OX	Various
TEMPGEN	Twenty-One 1500 kW Natural Gas Fired Generators	None	Various

A.2 CONTROL DEVICES

Control Device ID	Control Device Description	Pollutant(s) Controlled	Emission Point ID
SCR	Selective Catalytic Reduction	NO _x	Various
OX	Oxidation Catalyst	CO, VOC, HAP	Various

B. LIMITATIONS, MONITORING, AND REPORTING

Condition Number	Conditions
B.1	<p>Facility Wide</p> <p>(S.C. Regulation 61-62.1, Section II(E)) This facility is a potential Title V major source for NO_x, CO, VOC and hazardous air pollutants (HAP) emissions. The facility has requested federally enforceable emissions limitations to limit its potential to emit to less than 100.0 tons per year for NO_x, CO, and VOC emissions, each, and 10.0 tons per year for any single HAP emission and 25.0 tons per year for any combination of HAP emissions to avoid Title V.</p> <p>(S.C. Regulation 61-62.1, Section II(E)) This facility is a potential PSD major source for NO_x, CO, and VOC emissions. This facility is a potential MACT major source for HAP emissions. The facility has requested federally enforceable emissions limitations to limit its potential to emit to less than 250.0 tons per year for NO_x, CO, and VOC emissions, each to avoid PSD and 10.0 tons per year for any single HAP emission and 25.0 tons per year for any combination of HAP emissions to avoid MACT.</p>
B.2	<p>Equipment ID: GEN</p> <p>Control Device ID: SCR, OX</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) The owner or operator shall maintain records of control device specifications, engine specifications, hour meter records, manufacturer's emission factors, and any other records necessary to determine VOC and HAP emissions such as fuel usage or source testing data. VOC, individual HAP and total HAP emissions shall be calculated monthly, and a twelve-month rolling sum shall be calculated monthly. Facility-wide emission totals must include emissions from exempt activities. Emissions from malfunctions are required to be quantified and included in the calculations. The twelve-month rolling sum shall be less than 100.0 tons for VOC, 10.0 tons for each individual HAP, and 25.0 tons for total HAPs. Reports of the input values, calculated values, and the twelve-month rolling sum, calculated for each month in the reporting period, shall be submitted semiannually.</p> <p>The facility shall calculate monthly emissions for each source using the following formulas prior to initial source testing:</p> $\text{Monthly Formaldehyde Emissions (ton)} = \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ $\text{Total Monthly VOC Emissions (ton)} = \frac{EF_{voc} * R * H * (1 - D_{voc})}{C_1 * C_2} + \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ $\text{Monthly Other Single HAP Emissions (ton)} = \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2}$ $\text{Total Monthly HAP Emissions (ton)} = \sum_{\text{All HAPs}} \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2} + \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ <p>Where:</p> <p>EF_{voc} = Uncontrolled manufacturer's emission factor for VOC (g/(bhp-hr)) EF_f = Uncontrolled manufacturer's emission factor for formaldehyde (g/(bhp-hr)) EF_{HAP} = AP-42 Emission factor for a specific HAP (lb/10⁶ Btu) R = brake horsepower rating of engine (bhp) F = fuel consumption of engine (10⁶ Btu/hr) H = hours of operation that month (hr) D_{voc} = control device efficiency for VOC (%) D_f = control device efficiency for formaldehyde (%) D_{HAP} = control device efficiency for other HAPs (%) C₁ = conversion factor between g and lb (453.592 g/lb) C₂ = conversion factor between lb and ton (2000 lb/ton)</p> <p>The facility shall calculate monthly emissions for each source using the following formulas after source testing:</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	$\text{Monthly Formaldehyde Emissions (ton)} = \frac{EF_f * R * H}{C_1 * C_2}$ $\text{Total Monthly VOC Emissions (ton)} = \frac{EF_{voc} * R * H}{C_1 * C_2} + \frac{EF_f * R * H}{C_1 * C_2}$ $\text{Monthly Other Single HAP Emissions (ton)} = \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2}$ $\text{Total Monthly HAP Emissions (ton)} = \sum_{\text{All HAPs}} \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2} + \frac{EF_f * R * H}{C_1 * C_2}$ <p>Where: EF_{voc} = Controlled emission factor derived from most recent source test for VOC(g/(bhp-hr)) EF_f = Controlled emission factor derived from most recent source test for formaldehyde (g/(bhp-hr)) EF_{HAP} = AP-42 Emission factor for a specific HAP (lb/10⁶ Btu) R = brake horsepower rating of engine (bhp) F = fuel consumption of engine (10⁶ Btu/hr) H = hours of operation that month (hr) D_{HAP} = control device efficiency for other HAPs (%) C_1 = conversion factor between g and lb (453.592 g/lb) C_2 = conversion factor between lb and ton (2000 lb/ton)</p>
B.3	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) The owner or operator shall maintain records of control device specifications, engine specifications, hour meter records, manufacturer's emission factors, and any other records necessary to determine facility wide NO_x and CO emissions such as fuel usage or source testing data. NO_x and CO emissions shall be calculated on a monthly basis, and a twelve month rolling sum shall be calculated for total NO_x and CO emissions. Facility-wide emission totals must include emissions from exempt activities. Emissions from malfunctions are required to be quantified and included in the calculations. The twelve month rolling sum shall be less than 100.0 tons each for NO_x and CO. Reports of the input values, calculated values, and the twelve-month rolling sum, calculated for each month in the reporting period, shall be submitted semiannually.</p> <p>The facility shall calculate monthly emissions for each source using the following formulas prior to initial source testing:</p> $\text{Monthly NO}_x \text{ Emissions (ton)} = \frac{EF_{nox} * R * H * (1 - D_{nox})}{C_1 * C_2}$ $\text{Monthly CO Emissions (ton)} = \frac{EF_{co} * R * H * (1 - D_{co})}{C_1 * C_2}$

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	<p>Where: EF_{nox} = Uncontrolled manufacturer's emission factor for NO_x (g/(bhp-hr)) EF_{co} = Uncontrolled manufacturer's emission factor for CO (g/(bhp-hr)) R = brake horsepower rating of engine (bhp) H = hours of operation that month (hr) D_{nox} = control device efficiency for NO_x (%) D_{co} = control device efficiency for CO (%) C_1 = conversion factor between g and lb (453.592 g/lb) C_2 = conversion factor between lb and ton (2000 lb/ton)</p> <p>The facility shall calculate monthly emissions for each source using the following formulas after source testing:</p> $Monthly\ NO_x\ Emissions\ (ton) = \frac{EF_{nox} * R * H}{C_1 * C_2}$ $Monthly\ CO\ Emissions\ (ton) = \frac{EF_{co} * R * H}{C_1 * C_2}$ <p>Where: EF_{nox} = Controlled emission factor derived from most recent source test for NO_x (g/(bhp-hr)) EF_{co} = Controlled emission factor derived from most recent source test for CO (g/(bhp-hr)) R = brake horsepower rating of engine (bhp) H = hours of operation that month (hr) C_1 = conversion factor between g and lb (453.592 g/lb) C_2 = conversion factor between lb and ton (2000 lb/ton)</p>
B.4	<p>Equipment ID: GEN, TEMPGEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.5, Standard No. 4, Section IX) Where construction or modification began after December 31, 1985, emissions from this source (including fugitive emissions) shall not exhibit an opacity greater than 20%.</p>
B.5	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.60; 40 CFR 60) This source is subject to New Source Performance Standards (NSPS), Subpart A, General Provisions and Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, as applicable. This source shall comply with all applicable requirements of Subparts A (applicable as shown in Table 3 of Subpart JJJJ) and JJJJ.</p>
B.6	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion</p>

B. LIMITATIONS, MONITORING, AND REPORTING											
Condition Number	Conditions										
	<p>Engines</p> <p>§ 60.4230 Am I subject to this subpart?</p> <p>(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary spark ignition (SI) internal combustion engines (ICE) as specified in paragraphs (a)(1) through (6) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.</p> <p>(4) Owners and operators of stationary SI ICE that commence construction after June 12, 2006, where the stationary SI ICE are manufactured:</p> <p>(i) On or after July 1, 2007, for engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP);</p> <p>(6) The provisions of § 60.4236 of this subpart are applicable to all owners and operators of stationary SI ICE that commence construction after June 12, 2006.</p>										
B.7	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines</p> <p>§ 60.4233 What emission standards must I meet if I am an owner or operator of a stationary SI internal combustion engine?</p> <p>(e) Owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) (except gasoline and rich burn engines that use LPG) must comply with the emission standards in Table 1 to this subpart for their stationary SI ICE. For owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 100 HP (except gasoline and rich burn engines that use LPG) manufactured prior to January 1, 2011 that were certified to the certification emission standards in 40 CFR part 1048 applicable to engines that are not severe duty engines, if such stationary SI ICE was certified to a carbon monoxide (CO) standard above the standard in Table 1 to this subpart, then the owners and operators may meet the CO certification (not field testing) standard for which the engine was certified.</p> <p>Table 1 to Subpart JJJJ of Part 60—NO_x, CO, and VOC Emission Standards for Stationary Non-Emergency SI Engines ≥100 HP (Except Gasoline and Rich Burn LPG), Stationary SI Landfill/Digester Gas Engines, and Stationary Emergency Engines >25 HP</p> <table> <tr> <th rowspan="2">Engine type and fuel</th><th rowspan="2">Maximum engine power</th><th rowspan="2">Manufacture date</th><th colspan="2">Emission standards</th></tr> <tr> <th>g/HP-hr</th><th>ppmvd at 15% O₂</th></tr> </table>				Engine type and fuel	Maximum engine power	Manufacture date	Emission standards		g/HP-hr	ppmvd at 15% O ₂
Engine type and fuel	Maximum engine power	Manufacture date	Emission standards								
			g/HP-hr	ppmvd at 15% O ₂							

B. LIMITATIONS, MONITORING, AND REPORTING

Condition Number	Conditions								
				NO _x	CO	VOC	NO _x	CO	VOC
	Non-Emergency SI Natural Gas and Non-Emergency SI Lean Burn LPG (except lean burn 500≤HP<1,350)	HP≥500	7/1/2007	2.0	4.0	1.0	160	540	86
		HP≥500	7/1/2010	1.0	2.0	0.7	82	270	60
B.8	Equipment ID: GEN Control Device ID: SCR, OX NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines § 60.4234 How long must I meet the emission standards if I am an owner or operator of a stationary SI internal combustion engine? Owners and operators of stationary SI ICE must operate and maintain stationary SI ICE that achieve the emission standards as required in § 60.4233 over the entire life of the engine.								
	Equipment ID: GEN Control Device ID: SCR, OX NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines § 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine? (a) If you are an owner or operator of a stationary SI internal combustion engine that is manufactured after July 1, 2008, and must comply with the emission standards specified in § 60.4233(a) through (c), you must comply by purchasing an engine certified to the emission standards in § 60.4231(a) through (c), as applicable, for the same engine class and maximum engine power. In addition, you must meet one of the requirements specified in (a)(1) and (2) of this section. (1) If you operate and maintain the certified stationary SI internal combustion engine and control device according to the manufacturer's emission-related written instructions, you must keep records of conducted maintenance to demonstrate compliance, but no performance testing is required if you are an owner or operator. You must also meet the requirements as specified in 40 CFR part 1068, subparts A through D, as they apply to you. If you adjust engine settings according to and consistent with the manufacturer's instructions, your stationary SI internal combustion engine will not be considered out of compliance. (2) If you do not operate and maintain the certified stationary SI internal combustion engine and								
B.9									

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Condition Number	Conditions
	<p>control device according to the manufacturer's emission-related written instructions, your engine will be considered a non-certified engine, and you must demonstrate compliance according to (a)(2)(i) through (iii) of this section, as appropriate.</p> <p>(iii) If you are an owner or operator of a stationary SI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test within 1 year of engine startup and conduct subsequent performance testing every 8,760 hours or 3 years, whichever comes first, thereafter to demonstrate compliance.</p> <p>(b) If you are an owner or operator of a stationary SI internal combustion engine and must comply with the emission standards specified in § 60.4233(d) or (e), you must demonstrate compliance according to one of the methods specified in paragraphs (b)(1) and (2) of this section.</p> <p>(1) Purchasing an engine certified according to procedures specified in this subpart, for the same model year and demonstrating compliance according to one of the methods specified in paragraph (a) of this section.</p> <p>(2) Purchasing a non-certified engine and demonstrating compliance with the emission standards specified in § 60.4233(d) or (e) and according to the requirements specified in § 60.4244, as applicable, and according to paragraphs (b)(2)(i) and (ii) of this section.</p> <p>(ii) If you are an owner or operator of a stationary SI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test and conduct subsequent performance testing every 8,760 hours or 3 years, whichever comes first, thereafter to demonstrate compliance.</p> <p>(e) Owners and operators of stationary SI natural gas fired engines may operate their engines using propane for a maximum of 100 hours per year as an alternative fuel solely during emergency operations, but must keep records of such use. If propane is used for more than 100 hours per year in an engine that is not certified to the emission standards when using propane, the owners and operators are required to conduct a performance test to demonstrate compliance with the emission standards of § 60.4233.</p> <p>(g) It is expected that air-to-fuel ratio controllers will be used with the operation of three-way catalysts/nonselective catalytic reduction. The AFR controller must be maintained and operated appropriately in order to ensure proper operation of the engine and control device to minimize emissions at all times.</p>

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Condition Number	Conditions
B.10	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines</p> <p>§ 60.4244 What test methods and other procedures must I use if I am an owner or operator of a stationary SI internal combustion engine?</p> <p>Owners and operators of stationary SI ICE who conduct performance tests must follow the procedures in § 60.4244.</p>
B.11	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>NSPS Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines</p> <p>§ 60.4245 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary SI internal combustion engine?</p> <p>Owners or operators of stationary SI ICE must meet the following notification, reporting and recordkeeping requirements.</p> <p>(a) Owners and operators of all stationary SI ICE must keep records of the information in paragraphs (a)(1) through (4) of this section.</p> <p>(1) All notifications submitted to comply with this subpart and all documentation supporting any notification.</p> <p>(2) Maintenance conducted on the engine.</p> <p>(3) If the stationary SI internal combustion engine is a certified engine, documentation from the manufacturer that the engine is certified to meet the emission standards and information as required in 40 CFR parts 1048, 1054, and 1060, as applicable.</p> <p>(4) If the stationary SI internal combustion engine is not a certified engine or is a certified engine operating in a non-certified manner and subject to § 60.4243(a)(2), documentation that the engine meets the emission standards.</p> <p>(c) Owners and operators of stationary SI ICE greater than or equal to 500 HP that have not been certified by an engine manufacturer to meet the emission standards in § 60.4231 must submit an initial notification as required in § 60.7(a)(1). The notification must include the information in</p>

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	<p>paragraphs (c)(1) through (5) of this section. Beginning on February 26, 2025 submit the notification electronically according to paragraph (g) of this section.</p> <p>(1) Name and address of the owner or operator; (2) The address of the affected source; (3) Engine information including make, model, engine family, serial number, model year, maximum engine power, and engine displacement; (4) Emission control equipment; and (5) Fuel used.</p> <p>(d) Owners and operators of stationary SI ICE that are subject to performance testing must submit a copy of each performance test as conducted in § 60.4244 within 60 days after the test has been completed. Performance test reports using EPA Method 18, EPA Method 320, or ASTM D6348-03 (incorporated by reference—see 40 CFR 60.17) to measure VOC require reporting of all QA/QC data. For Method 18, report results from sections 8.4 and 11.1.1.4; for Method 320, report results from sections 8.6.2, 9.0, and 13.0; and for ASTM D6348-03 report results of all QA/QC procedures in Annexes 1-7. Beginning on February 26, 2025, performance tests must be reported electronically according to paragraph (f) of this section.</p> <p>(f) Beginning on February 26, 2025, within 60 days after the date of completing each performance test, you must submit the results following the procedures specified in paragraph (g) of this section. Data collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert) at the time of the test must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website. Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test must be included as an attachment in the ERT or an alternate electronic file.</p> <p>(g) If you are required to submit notifications or reports following the procedure specified in this paragraph (g), you must submit notifications or reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (https://cdx.epa.gov/). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (g)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (g).</p> <p>(1) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address <i>oaqpscbi@epa.gov</i>, and as described in paragraph (g) of this section, should include clear CBI markings. ERT files should be flagged to the attention of the Group Leader, Measurement Policy Group; all other files should be flagged to the attention of the Stationary Spark Ignition Internal Combustion Engine Sector Lead. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email <i>oaqpscbi@epa.gov</i> to request a file transfer link.</p> <p>(2) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711. ERT files should be sent to the attention of the Group Leader, Measurement Policy Group, and all other files should be sent to the attention of the Stationary Spark Ignition Internal Combustion Engine Sector Lead. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.</p> <p>(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.</p> <p>(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.</p> <p>(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.</p> <p>(3) The outage may be planned or unplanned.</p> <p>(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.</p> <p>(5) You must provide to the Administrator a written description identifying:</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;</p> <p>(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;</p> <p>(iii) A description of measures taken or to be taken to minimize the delay in reporting; and</p> <p>(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.</p> <p>(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.</p> <p>(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.</p> <p>(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.</p> <p>(1) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).</p> <p>(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.</p> <p>(3) You must provide to the Administrator:</p> <p>(i) A written description of the force majeure event;</p> <p>(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;</p> <p>(iii) A description of measures taken or to be taken to minimize the delay in reporting; and</p> <p>(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.</p> <p>(4) The decision to accept the claim of force majeure and allow an extension to the reporting</p>

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Condition Number	Conditions
	<p>deadline is solely within the discretion of the Administrator.</p> <p>(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.</p> <p>(j) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.</p>
B.12	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.1, Section II(J)(2)) The owner or operator shall inspect, calibrate, adjust, and maintain continuous monitoring systems, monitoring devices, and gauges in accordance with manufacturer's specifications or good engineering practices. The owner or operator shall maintain on file all measurements including continuous monitoring system or monitoring device performance measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required in a permanent form suitable for inspection by Department personnel.</p> <p>(S.C. Regulation 61-62.1, Section II(J)(1)(d)) Sources required to have continuous emission monitors shall submit reports as specified in applicable parts of the permit, law, regulations, or standards.</p>
B.13	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.1, Section II(J)(2)) All gauges shall be readily accessible and easily read by operating personnel and Department personnel (i.e. on ground level or easily accessible roof level). Monitoring parameter readings (e.g., pressure drop readings, flow rates, etc.) and inspection checks shall be maintained in logs (written or electronic), along with any corrective action taken when deviations occur. Each occurrence of operation outside the operational ranges, including date and time, cause, and corrective action taken, shall be recorded and kept on site. Exceedance of operational range shall not be considered a violation of an emission limit of this permit, unless the exceedance is also accompanied by other information demonstrating that a violation of an emission limit has taken place.</p> <p>Reports of these occurrences shall be submitted semiannually. If there were no occurrences during the reporting period, then documentation shall be submitted to indicate such. Any alternative method for monitoring control device performance must be preapproved by the Department and shall be incorporated into the permit as set forth in S.C. Regulation 61-62.1 Section II.</p>
B.14	<p>Equipment ID: GEN Control Device ID: SCR, OX</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) The owner or operator shall install, operate, and maintain temperature indicators across each catalyst bed during source operation. Temperature readings shall be recorded at least every 15 minutes, and a daily average calculated. The averaging period shall include all readings from 12:00 am one day to 12:00 am the following day. Readings collected when the source is shutdown or not operating may not be used in the calculation. This information shall be maintained on-site. Facilities with automated data collection may submit an alternative monitoring plan, for adjusting the averaging period, to the Department for approval. The owner or operator shall record temperature readings and calculate daily averages as specified in this condition until approval of the alternative monitoring plan is obtained from the Department.</p> <p>Maintenance checks for proper temperature indicator operation shall be made on at least a monthly basis. The checks and any corrective actions shall be documented and kept on-site.</p> <p>The facility shall implement a catalyst management plan to assure that the catalyst activity remains within performance specifications. Catalyst maintenance and replacement shall be implemented in accordance with the plan. The catalyst management plan shall be made available to the Department upon request. The catalysts shall be in place and operational whenever processes controlled by it are running, except during periods of malfunction or mechanical failure.</p> <p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) Operational ranges for the monitored parameters shall be established to ensure proper operation of the pollution control equipment. The owner or operator shall operate each catalyst bed within the established operational range during source operation. These operational ranges for the monitored parameters shall be derived from source test data, vendor certification, and/or operational history and visual inspections, which demonstrate the proper operation of the equipment. Prior to the first source test, the facility shall use manufacturer's recommendations for operational ranges. The manufacturer's recommendations must be maintained on site. These ranges and supporting documentation (certification from manufacturer, source test results, 30 days of normal readings, opacity readings, etc.) shall be submitted to the Department within 180 days of startup. Operating ranges may be updated following submittal to the Department.</p>
B.15	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.1, Section IV) All emissions points, duct work and other locations that are required to be tested, shall be designed and constructed in a manner to facilitate testing in accordance with applicable EPA approved source testing methods; including, but not be limited to, methods specifying test port location and sizing criteria.</p> <p>For any source test required under an applicable standard or permit condition, the owner, operator, or representative shall comply with S.C. Regulation 61-62.1, Section IV - Source Tests.</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>Unless approved otherwise by the Department, the owner, operator, or representative shall ensure that source tests are conducted while the source is operating at the maximum expected production rate or other production rate or operating parameter which would result in the highest emissions for the pollutants being tested. Some sources may have to spike fuels or raw materials to avoid being subjected to a more restrictive feed or process rate. Any source test performed at a production rate less than the rated capacity may result in permit limits on emission rates, including limits on production if necessary.</p> <p>When conducting source tests subject to this section, the owner, operator, or representative shall provide the following:</p> <ul style="list-style-type: none"> • Department access to the facility to observe source tests; • Sampling ports adequate for test methods; • Safe sampling site(s); • Safe access to sampling site(s); • Utilities for sampling and testing equipment; and • Equipment and supplies necessary for safe testing of a source. <p>The owner or operator shall comply with any limits that result from conducting a source test at less than rated capacity. A copy of the most recent Department issued source test summary letter, whether it imposes a limit or not, shall be maintained with the operating permit, for each source that is required to conduct a source test.</p> <p>Site-specific test plans and amendments, notifications, and source test reports shall be submitted to the Department.</p>
B.16	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) An initial source test on each source, or representative source(s) as approved by the Department, to establish the controlled emission factor for formaldehyde shall be conducted within 180 days after startup. The source test will be used to establish the controlled emission factor for formaldehyde in the monthly rolling sums calculations.</p> <p>Subsequent testing shall be conducted every 8760 hours of operation or every 3 years, whichever comes first. Subsequent testing shall reestablish the controlled emission factor for formaldehyde in the monthly rolling sums calculations.</p> <p>The owner or operator shall operate each source within the operating parameters established during the most recent satisfactory source test. A copy of the most recent Department issued source test summary letter(s) that established the operating parameters shall be maintained with this permit.</p>
B.17	<p>Equipment ID: TEMPGEN</p> <p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) The owner or operator shall maintain records of</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>engine specifications, hour meter records (including associated load), manufacturer's emission factors, and any other records necessary to determine VOC and HAP emissions such as fuel usage. VOC, individual HAP and total HAP emissions shall be calculated monthly, and a twelve-month rolling sum shall be calculated monthly. Facility-wide emission totals must include emissions from exempt activities. Emissions from malfunctions are required to be quantified and included in the calculations. The twelve-month rolling sum shall be less than 100.0 tons for VOC, 10.0 tons for each individual HAP, and 25.0 tons for total HAPs. Reports of the input values, calculated values, and the twelve-month rolling sum, calculated for each month in the reporting period, shall be submitted semiannually.</p> <p>The facility shall calculate monthly emissions for each source using the following formulas:</p> $\text{Monthly Formaldehyde Emissions (ton)} = \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ $\text{Total Monthly VOC Emissions (ton)} = \frac{EF_{voc} * R * H * (1 - D_{voc})}{C_1 * C_2} + \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ $\text{Monthly Other Single HAP Emissions (ton)} = \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2}$ $\text{Total Monthly HAP Emissions (ton)} = \sum_{\text{All HAPs}} \frac{EF_{HAP} * F * H * (1 - D_{HAP})}{C_2} + \frac{EF_f * R * H * (1 - D_f)}{C_1 * C_2}$ <p>Where:</p> <p>EF_{voc} = Manufacturer's emission factor for VOC at associated load (g/(bhp-hr)) EF_f = Manufacturer's emission factor for formaldehyde at associated load (g/(bhp-hr)) EF_{HAP} = AP-42 Emission factor for a specific HAP (lb/10⁶ Btu) R = brake horsepower rating of engine (bhp) F = fuel consumption of engine (10⁶ Btu/hr) H = hours of operation that month (hr) D_{voc} = control device efficiency for VOC (%) D_f = control device efficiency for formaldehyde (%) D_{HAP} = control device efficiency for other HAPs (%) C_1 = conversion factor between g and lb (453.592 g/lb) C_2 = conversion factor between lb and ton (2000 lb/ton)</p>
B.18	<p>Equipment ID: TEMPGEN</p> <p>(S.C. Regulation 61-62.1, Section II(E) and II(J)(2)) The owner or operator shall maintain records of engine specifications, hour meter records (including associated load), manufacturer's emission factors, and any other records necessary to determine facility wide NO_x and CO emissions. NO_x and CO emissions shall be calculated on a monthly basis, and a twelve month rolling sum shall be calculated for total NO_x and CO emissions. Facility-wide emission totals must include emissions from</p>

B. LIMITATIONS, MONITORING, AND REPORTING	
Condition Number	Conditions
	<p>exempt activities. Emissions from malfunctions are required to be quantified and included in the calculations. The twelve month rolling sum shall be less than 100.0 tons each for NO_x and CO. Reports of the input values, calculated values, and the twelve-month rolling sum, calculated for each month in the reporting period, shall be submitted semiannually.</p> <p>The facility shall calculate monthly emissions for each source using the following formulas:</p> $\text{Monthly NO}_x \text{ Emissions (ton)} = \frac{EF_{nox} * R * H * (1 - D_{nox})}{C_1 * C_2}$ $\text{Monthly CO Emissions (ton)} = \frac{EF_{co} * R * H * (1 - D_{co})}{C_1 * C_2}$ <p>Where: EF_{nox} = Manufacturer's emission factor for NO_x at associated load (g/(bhp-hr)) EF_{co} = Manufacturer's emission factor for CO at associated load (g/(bhp-hr)) R = brake horsepower rating of engine (bhp) H = hours of operation that month (hr) D_{nox} = control device efficiency for NO_x (%) D_{co} = control device efficiency for CO (%) C₁ = conversion factor between g and lb (453.592 g/lb) C₂ = conversion factor between lb and ton (2000 lb/ton)</p>
B.19	<p>Equipment ID: TEMPGEN</p> <p>(S.C. Regulation 61-62.1, Section II(J)(2)) This equipment shall not remain on-site for more than 6 months. The owner or operator shall maintain records of when this equipment comes on-site and when it leaves the facility. This information shall be maintained on-site and made available upon the Department's request.</p>
B.20	<p>Equipment ID: GEN, TEMPGEN</p> <p>(S.C. Regulation 61-62.1, Section II(J)(2)) The temporary generators (TEMPGEN) shall not be operated when the permanent generators (GEN) are in operation in order to comply with S.C. Regulation 61-62.5, Standard No. 2. The owner or operator must record the operating times of each source daily. Any alternative operating scenario must be approved by the Department and may require a new demonstration of compliance with the above listed standard. A report on the operating times of each source shall be submitted 6 months after the effective date of this permit revision. This is a State Only requirement.</p>
B.21	<p>Facility Wide</p> <p>(S.C. Regulation 61-62.1, Section II(J)(2)) All applicable requirements from construction permit CP-50000316 v1.0 have been included in this revised construction permit.</p>

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C. NESHAP (40 CFR 61 AND 40 CFR 63)	
Condition Number	Conditions
C.1	(40 CFR §63.9(a)(4)(ii) and §63.10(a)(4)(ii)) All NESHAP notifications and reports shall be sent to the Department. Electronic submission of notifications or reports to the United States Environmental Protection Agency (US EPA) via CEDRI (Compliance and Emissions Data Reporting Interface) shall serve as the submission to the Department. CEDRI can be accessed through the EPA's Central Data Exchange (CDX).
C.2	(40 CFR §63.9(a)(4)(ii) and §63.10(a)(4)(ii)) All NESHAP notifications and reports requiring electronic submission to US EPA shall be submitted to EPA via CEDRI. Notifications and reports for specific NESHAP subparts not yet requiring electronic submission may also be submitted via CEDRI. Notifications and the accompanying cover letter for periodic reports not submitted via CEDRI shall be sent to the US EPA Region 4 Air and Radiation Division as required by the applicable subpart.
C.3	<p>Equipment ID: GEN Control Device ID: SCR, OX</p> <p>(S.C. Regulation 61-62.63; 40 CFR 63) Affected sources: All Stationary IC Engines: This facility is subject to the provisions of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants, Subparts A and NESHAP for Stationary Reciprocating Internal Combustion Engines. Existing affected sources shall comply with the applicable provisions by the compliance date specified in Subpart ZZZZ. Any new affected sources shall comply with the requirements of 40 CFR 63 Subpart ZZZZ by meeting the requirements of 40 CFR 60, Subpart IIII for compression ignition engines or 40 CFR 60, Subpart JJJJ for spark ignition engines upon initial start-up unless otherwise noted.</p>

D. GENERAL FACILITY WIDE	
Condition Number	Conditions
D.1	The owner or operator shall comply with S.C. Regulation 61-62.6, Control of Fugitive Particulate Matter, Section III Control of Fugitive Particulate Matter Statewide.
D.2	The permittee shall pay permit fees to the Department in accordance with the requirements of S.C. Regulation 61-30, Environmental Protection Fees.
D.3	<p>In the event of an emergency, as defined in S.C. Regulation 61-62.1, Section II(L), the owner or operator may document an emergency situation through properly signed, contemporaneous operating logs, and other relevant evidence that verify:</p> <ol style="list-style-type: none"> 1. An emergency occurred, and the owner or operator can identify the cause(s) of the emergency; 2. The permitted source was at the time the emergency occurred being properly operated; 3. During the period of the emergency, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and 4. The owner or operator gave a verbal notification of the emergency to the Department within

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D. GENERAL FACILITY WIDE	
Condition Number	Conditions
	<p>twenty-four (24) hours of the time when emission limitations were exceeded, followed by a written report within thirty (30) days. The written report shall include, at a minimum, the information required by S.C. Regulation 61-62.1, Section II(J)(1)(c)(i) through (J)(1)(c)(viii). The written report shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.</p> <p>This provision is in addition to any emergency or upset provision contained in any applicable requirement.</p>
D.4	<p>(S.C. Regulation 61-62.1, Section II(O)) Upon presentation of credentials and other documents as may be required by law, the owner or operator shall allow the Department or an authorized representative to perform the following:</p> <ol style="list-style-type: none"> 1. Enter the facility where emissions-related activity is conducted, or where records must be kept under the conditions of the permit. 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit. 3. Inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under this permit. 4. As authorized by the Federal Clean Air Act and/or the S.C. Pollution Control Act, sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
D.5	(S.C. Regulation 61-62.1, Section II(J)(1)(a)) No applicable law, regulation, or standard will be contravened.
D.6	(S.C. Regulation 61-62.1, Section II(J)(1)(e)) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this regulation or with the terms of any approval to construct, or who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to enforcement action.

E. EMISSIONS INVENTORY REPORTS - RESERVED
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F. GENERAL RECORD KEEPING AND REPORTING	
Condition Number	Conditions
F.1	(S.C. Regulation 61-62.1, Section II(J)(1)(g)) A copy of the Department issued construction and/or operating permit must be kept readily available at the facility at all times. The owner or operator shall maintain such operational records; make reports; install, use, and maintain monitoring equipment

F. GENERAL RECORD KEEPING AND REPORTING	
Condition Number	Conditions
	or methods; sample and analyze emissions or discharges in accordance with prescribed methods at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require. All records required to demonstrate compliance with the limits established under this permit shall be maintained on site for a period of at least five (5) years from the date the record was generated and shall be made available to a Department representative upon request.
F.2	The owner or operator shall submit reports required in this permit in a timely manner and according to the reporting schedule established through the Department's approved electronic permitting system.
F.3	All reports and notifications required under this permit shall be submitted to the Department.
F.4	(S.C. Regulation 61-62.1, Section II(A)(3)) The owner or operator shall submit written notification to the Department of the date construction is commenced, postmarked within thirty (30) days after such date.
F.5	<p>(S.C. Regulation 61-62.1, Section II(J)(1)(c)) For sources not required to have continuous emission monitors, any malfunction of air pollution control equipment or system, process upset, or other equipment failure which results in discharges of air contaminants lasting for one (1) hour or more and which are greater than those discharges described for normal operation in the permit application, shall be reported to the Department within twenty-four (24) hours after the beginning of the occurrence and a written report shall be submitted to the Department within thirty (30) days. The written report shall include, at a minimum, the following:</p> <ol style="list-style-type: none"> 1. The identity of the stack and/or emission point where the excess emissions occurred; 2. The magnitude of excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the excess emissions; 3. The time and duration of excess emissions; 4. The identity of the equipment causing the excess emissions; 5. The nature and cause of such excess emissions; 6. The steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; 7. The steps taken to limit the excess emissions; and, 8. Documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions. <p>The initial twenty-four (24) hour notification should be made to the Department's local Regional Office.</p> <p>The written report should be sent to the Department.</p>

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F. GENERAL RECORD KEEPING AND REPORTING	
Condition Number	Conditions
F.6	(S.C. Regulation 61-62.1, Section II(J)(2)) Where submittals, requests, or documents are required by this permit or regulation, they shall be submitted through the Department's ePermitting system. Where the term postmarked is used in this permit or regulation, the ePermitting submittal date shall be applied.

G. PERMIT EXPIRATION AND EXTENSION	
Condition Number	Conditions
G.1	<p>(S.C. Regulation 61-62.1, Section II(A)(4) and (5) and S.C. Regulation 61-62.1, Section II(J)(1)(f)) Approval to construct shall become invalid if construction:</p> <ul style="list-style-type: none">a. Is not commenced within eighteen (18) months after receipt of such approval;b. Is discontinued for a period of eighteen (18) months or more; orc. Is not completed within a reasonable time as deemed by the Department. <p>The Department may extend the construction permit for an additional eighteen (18) month period upon a satisfactory showing that an extension is justified. This request must be made prior to the permit expiration.</p> <p>This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen (18) months of the projected and approved commencement date.</p>

H. PERMIT TO OPERATE	
Condition Number	Conditions
H.1	(S.C. Regulation 61-62.1, Section II(F)(3)) When a Department issued construction permit includes engineering and/or construction specifications, the owner or operator or professional engineer in charge of the project shall certify that, to the best of his/her knowledge and belief and as a result of periodic observation during construction, the construction under application has been completed in accordance with the specifications agreed upon in the construction permit issued by the Department. If construction is certified as provided above, the owner or operator may operate the source in compliance with the terms and conditions of the construction permit until the operating permit is issued by the Department. If construction is not built as specified in the permit application and associated construction permit(s), the owner or operator must submit to the Department a complete description of modifications that are at variance with the documentation of the construction permitting determination prior to commencing operation. Construction variances that would trigger

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H. PERMIT TO OPERATE	
Condition Number	Conditions
	additional requirements that have not been addressed prior to start of operation shall be considered construction without a permit.
H.2	(S.C. Regulation 61-62.1, Section II(F)(1)) The owner or operator shall submit written notification to the Department of the actual date of initial startup of each new or altered source, postmarked within fifteen (15) days after such date. Any source that is required to obtain an air quality construction permit issued by the Department must obtain an operating permit when the new or altered source is placed into operation and shall comply with the requirements of this section.
H.3	<p>(S.C. Regulation 61-62.1, Section II(F)(4)(b)) For sources not subject to S.C. Regulation 61-62.70, or not yet covered by an effective Title V operating permit, the owner or operator shall submit a written request to the Department for a new or revised operating permit to cover any new or altered source postmarked within fifteen (15) days after the actual date of initial startup of each new or altered source.</p> <p>(S.C. Regulation 61-62.1, Section II(F)(4)(c)) The written request for a new or revised operating permit must include, at a minimum, the following information:</p> <ul style="list-style-type: none"> i. A list of sources that were placed into operation; and ii. The actual date of initial startup of each new or altered source.

I. AMBIENT AIR STANDARDS	
Condition Number	Conditions
I.1	<p>Air dispersion modeling (or other method) has previously demonstrated that this facility's operation will not interfere with the attainment and maintenance of any state or federal ambient air standard. Any changes in the parameters used in this demonstration may require a review by the facility to determine continuing compliance with these standards. These potential changes include any decrease in stack height, decrease in stack velocity, increase in stack diameter, decrease in stack exit temperature, increase in building height or building additions, increase in emission rates, decrease in distance between stack and property line, changes in vertical stack orientation, and installation of a rain cap that impedes vertical flow. Parameters that are not required in the determination will not invalidate the demonstration if they are modified. Variations from the input parameters in the demonstration shall not constitute a violation unless the maximum allowable ambient concentrations identified in the standard are exceeded.</p> <p>The owner or operator shall maintain this facility at or below the emission rates used in the most recent air dispersion modeling (or other method) demonstration submitted to and approved by the Department, not to exceed the pollutant limitations of this permit. Should the facility wish to increase the emission rates used in the demonstration, not to exceed the pollutant limitations in the body of this permit, it may do so by submitting a new demonstration for approval. This condition along with the referenced modeling demonstration will also serve to meet the intent of S.C. Regulation 61-62.5,</p>

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I. AMBIENT AIR STANDARDS	
Condition Number	Conditions
	Standard No. 8, Section II(D). This is a State Only enforceable requirement.

APPENDIX I

EXHIBIT 3

Figure 1. DES's estimates for Valara's air emissions (taken from the draft air permit modification). Plaintiff contests the accuracy of these estimates but provides them to illustrate the relative size of Valara as an air pollution source based on the company's own estimates.

 SC DEPARTMENT of ENVIRONMENTAL SERVICES		STATEMENT OF BASIS Page 6 of 15 BAQ Air Permitting Division	
Company Name: Valara Holdings High Performance Compute Center Agency Air Number: 2060-0674 Permit Number: CP-50000422 v1.0		Permit Writer: Tyler D. Dunlop Date: DRAFT	

Cooling Tower Emissions						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	0.39	1.72	--	--	0.39	1.72
PM ₁₀	0.27	1.20	--	--	0.27	1.20
PM _{2.5}	0.27	1.20	--	--	0.27	1.20

TOTAL PROJECT EMISSIONS						
Pollutant	Uncontrolled		Controlled		PTE	
	lb/hr	TPY	lb/hr	TPY	lb/hr	TPY
PM	32.56	142.37	--	--	32.56	142.37
PM ₁₀	32.44	141.85	--	--	32.44	141.85
PM _{2.5}	32.44	141.85	--	--	32.44	141.85
SO ₂	2.14	8.54	--	--	2.14	8.54
NO _x [†]	342.72	1496.85	36.57	161.74	342.72	<250.0
CO [‡]	209.74	920.38	29.55	134.57	209.74	<250.0
VOC [‡]	13.91	61.17	9.05	40.00	13.91	61.17
Formaldehyde (HAP) [‡]	0.07	0.31	0.05	0.21	0.07	0.31
Acetaldehyde (HAP) [‡]	0.14	0.62	0.09	0.41	0.14	0.62
Hexane (HAP) [‡]	1.31	5.75	0.89	3.88	1.31	5.75
Total HAPs [‡]	2.46	10.77	1.66	7.25	2.46	10.77

[†]The facility has established facility wide PSD avoidance limits for NO_x, CO, and VOC.

[‡]The facility has established facility wide limits on single HAP and total HAP emissions to avoid major source MACT applicability.

FACILITY WIDE EMISSIONS						
Pollutant	Permit CP-50000316 v1.1			New Total		
	Uncontrolled	Controlled	PTE	Uncontrolled	Controlled	PTE
	TPY	TPY	TPY	TPY	TPY	TPY
PM	16.63	--	16.63	159.00	--	159.00
PM ₁₀	16.63	--	16.63	158.48	--	158.48
PM _{2.5}	16.63	--	16.63	158.48	--	158.48
SO ₂	0.98	--	0.98	9.51	--	9.51
NO _x	614.32	61.43	<100.0	2111.17	223.17	<250.0
CO	1084.87	67.26	<100.0	2005.25	201.83	<250.0
VOC	352.91	20.94	<100.0	414.08	60.94	<250.0
Formaldehyde (HAP)	117.64	9.18	<10.0	117.95	9.39	<10.0

Figure 2. List of Spartanburg County’s air emitters of nitrogen oxides (“NOx”), with emissions listed in tons per year for the year 2020.¹

Overview		County Level Data		Facility Data	
2020 Facility-Level Data for Point Emissions					
State	Q	State-County	Q	Pollutant	Q
Emissions Tons					Site Name
					Q
South Carolina		SC-Spartanburg		Nitrogen Oxides	110.28782
South Carolina		SC-Spartanburg		Nitrogen Oxides	4.89897
South Carolina		SC-Spartanburg		Nitrogen Oxides	187.53421
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.10403
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.03733
South Carolina		SC-Spartanburg		Nitrogen Oxides	37.26093
South Carolina		SC-Spartanburg		Nitrogen Oxides	11.89544
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.01600
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.00541
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.88115
South Carolina		SC-Spartanburg		Nitrogen Oxides	67.32954
South Carolina		SC-Spartanburg		Nitrogen Oxides	101.62350
South Carolina		SC-Spartanburg		Nitrogen Oxides	7.56875
South Carolina		SC-Spartanburg		Nitrogen Oxides	2.71400
South Carolina		SC-Spartanburg		Nitrogen Oxides	1.18531
South Carolina		SC-Spartanburg		Nitrogen Oxides	13.24129
South Carolina		SC-Spartanburg		Nitrogen Oxides	12.64465
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.26000
South Carolina		SC-Spartanburg		Nitrogen Oxides	17.53607
South Carolina		SC-Spartanburg		Nitrogen Oxides	5.61639
South Carolina		SC-Spartanburg		Nitrogen Oxides	4.80772
South Carolina		SC-Spartanburg		Nitrogen Oxides	4.40115
South Carolina		SC-Spartanburg		Nitrogen Oxides	80.63164
South Carolina		SC-Spartanburg		Nitrogen Oxides	2.68048
South Carolina		SC-Spartanburg		Nitrogen Oxides	0.42800
Totals					675.58976

¹ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 3. List of Spartanburg County’s air emitters of carbon monoxide (“CO”) emitters, with emissions listed in tons per year for the year 2020.²

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Spartanburg		Carbon Monoxide		0.00400	COOPER STANDARD	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.03044	BMW TRAINING CENTER	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.08738	BMW PERFORMANCE CENTER	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.34676	FAIRVIEW	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.66000	MAGELLAN TERMINALS: SPARTANBURG II	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.74017	Fehrer Automotive North America LLC	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.99566	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		1.95100	WELLFORD LANDFILL	
South Carolina		SC-Spartanburg		Carbon Monoxide		2.24744	JOHNS MANVILLE SPARTANBURG PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		2.25160	TRANSCONTINENTAL SPARTANBURG	
South Carolina		SC-Spartanburg		Carbon Monoxide		2.31965	MILLIKEN CHEMICAL DEWEY PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		4.44132	BASF CHEMICAL CORP WHITESTONE FACILITY	
South Carolina		SC-Spartanburg		Carbon Monoxide		6.35775	HENKEL US OPERATIONS CORPORATION	
South Carolina		SC-Spartanburg		Carbon Monoxide		10.41868	LSC COMMUNICATIONS SPARTANBURG	
South Carolina		SC-Spartanburg		Carbon Monoxide		12.64523	CAROLINA GAS TRANSMISSION LLC MOORE	
South Carolina		SC-Spartanburg		Carbon Monoxide		14.14543	HAYNE	
South Carolina		SC-Spartanburg		Carbon Monoxide		14.65753	MICHELIN NA US3 SPARTANBURG	
South Carolina		SC-Spartanburg		Carbon Monoxide		16.83419	CELANESE LTD ENOREE PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		19.78507	PALMETTO LANDFILL & RECYCLING CTR	
South Carolina		SC-Spartanburg		Carbon Monoxide		19.88611	TRANSCONTINENTAL GAS PIPELINE CO LLC	
South Carolina		SC-Spartanburg		Carbon Monoxide		23.80364	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		54.40518	AURIGA POLYMERS INC	
South Carolina		SC-Spartanburg		Carbon Monoxide		90.90458	Spartanburg Downtown Me	
South Carolina		SC-Spartanburg		Carbon Monoxide		154.50883	Greenville-Spartanburg	
South Carolina		SC-Spartanburg		Carbon Monoxide		169.20308	BMW MANUFACTURING CO LLC	
Totals						623.63069		

² Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 4. List of Spartanburg County’s air emitters of particulate matter (“PM2.5”), with emissions listed in tons per year for the year 2020.³

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.00110	COOPER STANDARD	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.00279	BMW TRAINING CENTER	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.00602	FAIRVIEW	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.00920	FLINT CPS INKS NORTH AMERICA LLC	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.10627	WELLFORD LANDFILL	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.20372	TRANSCONTINENTAL SPARTANBURG	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.25791	BMW PERFORMANCE CENTER	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.26184	Fehrer Automotive North America LLC	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		0.81387	CELANESE LTD ENOREE PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.01754	CAROLINA GAS TRANSMISSION LLC MOORE	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.05427	BASF CHEMICAL CORP WHITESTONE FACILITY	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.07039	MILLIKEN CHEMICAL DEWEY PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.10085	PALMETTO LANDFILL & RECYCLING CTR	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.47086	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.69852	MICHELIN NA U33 SPARTANBURG	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.08261	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.14608	HENKEL US OPERATIONS CORPORATION	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.31219	Spartanburg Downtown Me	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.58693	HAYNE	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.66262	Greenville-Spartanburg	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		3.77590	LSC COMMUNICATIONS SPARTANBURG	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		4.92026	TRANSCONTINENTAL GAS PIPELINE CO LLC	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		12.18700	JOHNS MANVILLE SPARTANBURG PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		16.31294	AURIA	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		42.22442	AURIGA POLYMERS INC	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		42.47515	BMW MANUFACTURING CO LLC	
Totals						142.76126		

³ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 5. List of Spartanburg County’s air emitters of sulfur dioxide (“SO₂”), with emissions listed in tons per year for the year 2020.⁴

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00020	BMW TRAINING CENTER	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00062	BMW PERFORMANCE CENTER	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00100	COOPER STANDARD	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00114	FAIRVIEW	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00529	Fehrer Automotive North America LLC	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00711	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.01604	JOHNS MANVILLE SPARTANBURG PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.01608	TRANSCONTINENTAL SPARTANBURG	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.04541	HENKEL US OPERATIONS CORPORATION	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.04775	HAYNE	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.07149	BASF CHEMICAL CORP WHITESTONE FACILITY	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.07214	TRANSCONTINENTAL GAS PIPELINE CO LLC	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.09300	WELLFORD LANDFILL	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.09528	LSC COMMUNICATIONS SPARTANBURG	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.10428	MICHELIN NA US3 SPARTANBURG	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.11517	CELANESE LTD ENOREE PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.24968	CAROLINA GAS TRANSMISSION LLC MOORE	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.40681	AURIGA POLYMERS INC	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.66979	Spartanburg Downtown Me	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.70207	PALMETTO LANDFILL & RECYCLING CTR	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.93256	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		1.55606	MILLIKEN CHEMICAL DEWEY PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		8.42007	Greenville-Spartanburg	
South Carolina		SC-Spartanburg		Sulfur Dioxide		9.03335	BMW MANUFACTURING CO LLC	
Totals						22.66239		

⁴ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 6. List of Spartanburg County’s air emitters of formaldehyde, with emissions listed in tons per year for the year 2020.⁵

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Spartanburg		Formaldehyde		0.00008	BMW PERFORMANCE CENTER	
South Carolina		SC-Spartanburg		Formaldehyde		0.00013	PALMETTO LANDFILL & RECYCLING CTR	
South Carolina		SC-Spartanburg		Formaldehyde		0.00034	BMW TRAINING CENTER	
South Carolina		SC-Spartanburg		Formaldehyde		0.00066	Fehrer Automotive North America LLC	
South Carolina		SC-Spartanburg		Formaldehyde		0.00089	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00121	FAIRVIEW	
South Carolina		SC-Spartanburg		Formaldehyde		0.00134	MILLIKEN CHEMICAL DEWEY PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00201	TRANSCONTINENTAL SPARTANBURG	
South Carolina		SC-Spartanburg		Formaldehyde		0.00631	HENKEL US OPERATIONS CORPORATION	
South Carolina		SC-Spartanburg		Formaldehyde		0.00653	BASF CHEMICAL CORP WHITESTONE FACILITY	
South Carolina		SC-Spartanburg		Formaldehyde		0.00801	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00808	CELANESE LTD ENOREE PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00933	LSC COMMUNICATIONS SPARTANBURG	
South Carolina		SC-Spartanburg		Formaldehyde		0.01100	COOPER STANDARD	
South Carolina		SC-Spartanburg		Formaldehyde		0.01307	MICHELIN NA US3 SPARTANBURG	
South Carolina		SC-Spartanburg		Formaldehyde		0.06649	AURIGA POLYMERS INC	
South Carolina		SC-Spartanburg		Formaldehyde		0.11037	CAROLINA GAS TRANSMISSION LLC MOORE	
South Carolina		SC-Spartanburg		Formaldehyde		0.22171	BMW MANUFACTURING CO LLC	
South Carolina		SC-Spartanburg		Formaldehyde		0.56108	Spartanburg Downtown Me	
South Carolina		SC-Spartanburg		Formaldehyde		1.47159	HAYNE	
South Carolina		SC-Spartanburg		Formaldehyde		2.24470	Greenville-Spartanburg	
South Carolina		SC-Spartanburg		Formaldehyde		4.87447	TRANSCONTINENTAL GAS PIPELINE CO LLC	
South Carolina		SC-Spartanburg		Formaldehyde		7.95200	JOHNS MANVILLE SPARTANBURG PLANT	
Totals						17.57140		

⁵ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 7. List of the top 20 Particulate Matter (“PM 2.5”) air emitters in South Carolina, with emissions listed in tons per year for the year 2020.⁶

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Berkeley		PM2.5 Primary (Filt + Cond)		395.73272	SANTEE COOPER CROSS GENERATING STATION	
South Carolina		SC-Georgetown		PM2.5 Primary (Filt + Cond)		390.71147	INTERNATIONAL PAPER GEORGETOWN MILL	
South Carolina		SC-Richland		PM2.5 Primary (Filt + Cond)		260.88897	SYLVAMO - EASTOVER MILL	
South Carolina		SC-York		PM2.5 Primary (Filt + Cond)		255.26142	NEW-INDY CATAWBA LLC	
South Carolina		SC-Charleston		PM2.5 Primary (Filt + Cond)		240.97442	WESTROCK CHARLESTON KRAFT LLC	
South Carolina		SC-Berkeley		PM2.5 Primary (Filt + Cond)		230.63906	NUCOR STEEL BERKELEY	
South Carolina		SC-Orangeburg		PM2.5 Primary (Filt + Cond)		229.91944	HOLCIM (US) HOLLY HILL	
South Carolina		SC-Dorchester		PM2.5 Primary (Filt + Cond)		228.53192	GIANT CEMENT CO	
South Carolina		SC-Florence		PM2.5 Primary (Filt + Cond)		210.58609	WESTROCK CP LLC	
South Carolina		SC-Anderson		PM2.5 Primary (Filt + Cond)		142.55049	DUKE ENERGY CAROLINAS LLC LEE STEAM STAT	
South Carolina		SC-Anderson		PM2.5 Primary (Filt + Cond)		139.29037	SANTEE COOPER RAINEY	
South Carolina		SC-Dorchester		PM2.5 Primary (Filt + Cond)		138.07584	ARGOS CEMENT LLC HARLEYVILLE CEMENT PLANT	
South Carolina		SC-Georgetown		PM2.5 Primary (Filt + Cond)		123.34062	SANTEE COOPER WINYAH GENERATING STATION	
South Carolina		SC-Jasper		PM2.5 Primary (Filt + Cond)		116.33521	JASPER GENERATING STATION	
South Carolina		SC-Williamsburg		PM2.5 Primary (Filt + Cond)		115.10501	NAN YA PLASTICS	
South Carolina		SC-Laurens		PM2.5 Primary (Filt + Cond)		114.26539	WEST FRASER JOANNA	
South Carolina		SC-Marlboro		PM2.5 Primary (Filt + Cond)		111.26049	DOMTAR PAPER CO LLC MARLBORO MILL	
South Carolina		SC-Cherokee		PM2.5 Primary (Filt + Cond)		107.55873	MILLIKEN & COMPANY - MAGNOLIA FINISHING PLANT	
South Carolina		SC-Calhoun		PM2.5 Primary (Filt + Cond)		102.59801	COLUMBIA ENERGY CENTER	
South Carolina		SC-Newberry		PM2.5 Primary (Filt + Cond)		88.37011	GEORGIA PACIFIC WOOD PRODUCTS LLC-PROSPERITY	

⁶ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

Figure 8. Air emissions from the former Kohler plant, with emissions listed in tons per year for the year 2020.⁷

Overview		County Level Data		Facility Data				
2020 Facility-Level Data for Point Emissions								
State	Q	State-County	Q	Pollutant	Q	Emissions Tons	Site Name	Q
South Carolina		SC-Spartanburg		Volatile Organic Compounds		29.17620	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		23.80364	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Nitrogen Oxides		13.24129	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Volatile Organic Compounds		2.63559	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		2.08261	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		PM2.5 Primary (Filt + Cond)		1.47086	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Nitrogen Oxides		1.18531	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Carbon Monoxide		0.99566	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.93256	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00801	KOHLER CO:VITREOUS PLANT	
South Carolina		SC-Spartanburg		Sulfur Dioxide		0.00711	KOHLER CO:PLASTICS PLANT	
South Carolina		SC-Spartanburg		Formaldehyde		0.00089	KOHLER CO:PLASTICS PLANT	
Totals						75.53973		

⁷ Taken from the U.S. Environmental Protection Agency, *2020 National Emissions Inventory Data Retrieval Tool*, <https://perma.cc/57XN-T97F>.

APPENDIX J

EXHIBIT 4

^ (.multi-collapse)

Type:

Minor Land Development

Status:

In Review

Project Name:

MOC-1 High Performance Compute Center

Applied Date:

04/06/2026

Issue Date:

District:

UNINCORPORATED

Expire Date:

Finalized Date:

Description:

7-18-00-061.00 - Phase II improvements for the MOC-1 High Performance Compute Center consist of four (4) proposed buildings with floor areas of approximately 423,000 square feet, 33,750 square feet, 19,450 square feet, and 18,000 square feet, as shown on the Site Improvement Plan. Associated site improvements include a power yard, internal roadways and site access road, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling system, stormwater management ponds, and ancillary improvements.

The maximum number of employees during the largest shift is anticipated to be 167. A total of 307 parking spaces is provided on-site, including 18 ADA dedicated parking spaces.

Summary	Locations	Fees	Reviews	Inspections	Attachments	Contacts
Sub-Records	Holds	Meetings	More Info	Conditions		

Spartanburg Sanitary Sewer District

Number of Stories

1

Number of Units

4

Max Building Height

42

If "Group Assembly" activity (church, theaters, bowling alleys, etc.) or restaurant is planned, please indicate number of seats and/or participants.

of Seats

Pursuant to the South Carolina Local Government Comprehensive Planning Enabling Act (Section 6-29-1145 of the South Carolina Code of Laws), is this tract or parcel restricted by any recorded covenant, restriction, easement, etc., that is contrary to, conflicts with or prohibits the (proposed) permitted activity?

No

Hours of operation

24

Square Footage

494192

Fees are calculated based on the square footage of buildings. Mining, Landfill, Race Track and other such uses for which the primary function is located outdoors shall be charged by the square footage of land utilized for the primary use.

Property Attributes

[Previous Section \(\)](#) | [Top \(\)](#)

Acres

293.637

APPENDIX K

EXHIBIT 5

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Concerned Citizens of Spartanburg
County,

Plaintiff,

v.

Valara Holdings, LLC, Spartanburg
County, and Spartanburg County
Administrator.

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 7TH JUDICIAL CIRCUIT

AFFIDAVIT OF DR. ALVA PACK

Case No. 2026CP4203416

I, Alva Pack, hereby declare and state as follows:

1. I am over the age of 18 and am competent to attest to the information in this affidavit.
2. I live with my wife and own property at 111 Spring Lake Drive in Spartanburg, where I have lived since 1982. Our property is just over 4 forested acres and is one house up from South Pine Street.
3. During my professional career, I was an eye doctor. My wife and I are retired now with limited income, and most of my life's savings are tied up in the value of my property. We chose to live in this part of town because (at least until recently) it was forested, peaceful, and quiet.
4. I was born in Greenville but have lived in Spartanburg for the last 57 years. I've greatly enjoyed living in Spartanburg—that is, until Valara showed up and started building a massive data center and power plant virtually right next to my home (Valara's property is around 300 feet from mine).
5. I first learned about Valara's project sometime in 2025. My old hunting buddy, David Britt, who was on Spartanburg County Council at the time, gave a TV interview about the project.

David said in no uncertain terms that Valara was not building a data center, and that Valara's project would not use any more energy than the old Kohler plant that had sat on the site for years and did not bother me. This reassured me, as I had no reason to distrust my old friend.

6. I now know that David was either lying to the public or was misinformed by Valara.
7. I first realized something was off in March 2026, when the massive scale of construction started to become apparent to neighbors like me. I did some digging, and realized that this data center is not exactly the 48-megawatt facility Valara said it was building, it would come with a 460-megawatt power—which I understand is enough to power a city. This project is nothing like the old Kohler plant, which we peacefully coexisted with.
8. Construction of the Valara data center and power plant has turned my peaceful retirement into a nightmare. It has greatly harmed my enjoyment of my property and neighborhood, caused serious air-quality issues that I believe have made me sick, almost certainly diminished the value of my home, and forced me to seriously consider uprooting and moving at my old age.
9. Construction of the data center has filled the air with dust, coating my home, car, and property in filth and making the air so dirty that I can't sit on my porch or enjoy time outside on my own land. I'm 83 years old, and I am concerned that the construction dust has caused or contributed to my worsening sinus, dry eyes and respiratory issues. No one should have to deal with this, especially not someone my age. The pictures below show the construction dust on my porch and in my car. I wrote "NMS" into the dust for "NorthMark Strategies," which owns the data center and is responsible for this.



10. The construction noise is another problem. The cranes and other heavy machinery building the data center make loud noises from early morning until late at night. I can hear these noises from my property and inside my home. These loud noises have greatly diminished my use and enjoyment of my property and the neighborhood, which used to be peaceful and tranquil.
11. The light pollution is another major nuisance. Bright lights from the Valara site are visible from my porch in the evenings and at night. Because of my cataract surgery and dry eyes these bright lights make it unpleasant for me to sit on my porch and enjoy the evenings, as I had done for years before.
12. Valara has also clear-cut dozens of acres of beautiful trees to make way for the data center. In addition to making the neighborhood much uglier and lessening my enjoyment of the environment I live in, it has also driven out large numbers of animals who once lived on the site, including deer, wild turkey, and many species of birds. I have seen more dead deer, turkey, and other animals on HW 176/Pine St and around the neighborhood than ever before in my four-plus decades of living here. This is no coincidence. Not only is the construction harming

the animals, it is harming the people like me who enjoy having and observing wildlife in the neighborhood.

13. Because of the dust, loud noise, and bright lights, I am largely forced to stay indoors now.

This pains me as I am an outdoorsman at heart. I used to enjoy sitting on my front and back porches looking at the four seasons change. This construction significantly harms my enjoyment of my life in this once-tranquil neighborhood, and also poses risks to my health.

14. I fear that things will only get worse. Once the data center and power plant start operating, the dust and noise we are dealing with now may almost seem tame by comparison. I understand that Valara's power plant will spew hundreds of tons of toxic and carcinogenic chemicals into the air each year. I live a few hundred feet from the plant and am terrified how these chemicals will impact me and my family. I have also read that loud noise around-the-clock is a near universal feature of data centers. Unless someone stops this project, I cannot see an end to this nightmare.

15. I have children, grandchildren, and am lucky enough to even have great grandchildren—with several more on the way. They all live outside Spartanburg, and I cannot overstate how much I enjoy having them visit at my home.

16. Perhaps most painful out of all of this, my four children and spouses (who are highly educated) told me that when the power plant starts running, they will not feel comfortable bringing children and grand children to my home mere feet away. This breaks my heart—but it is totally rational and understandable. My kids want to protect their children from the toxic chemicals that Valara is going to emit into the air around the data center. At my age, traveling can be difficult, so fewer visits means less time with my family. Because of Valara, I will not get to see my family as often.

17. My concerns are so severe that I have begun to contemplate moving away from my long-time home. This was supposed to be my retirement home until the end. Uprooting at my age will be extremely inconvenient and will take a financial and emotional toll and will likely tax my health. But with all of the destruction caused by Valara, I am not sure whether staying or leaving is worse at this point.
18. I am also concerned about how this project will impact property values. This home is our nest-egg for retirement, and I want to leave a valuable asset to my children when we're gone. Given the proximity of the data center and all of its nuisances, I am concerned that it will hurt the value of my land and home.
19. I do not understand how the County could be treating this unprecedented project as a "minor" development, issuing approvals behind closed-doors as if this multi-billion dollar data center and power plant were akin to building a single-family home. I feel betrayed that County officials lied to us about what this project was, and did not come clean until after it had already issued approvals and massive tax breaks. The process seems designed to have excluded the public and neighbors.
20. The County has never given any kind of public notice explaining what the full scale of this project will be, or involved citizens in any way in the permitting or approval process. I feel disempowered as a citizen of this County because there has been no public process and the officials making these decisions are nameless staffers who I cannot hold accountable at the ballot box. If there is ever any public hearing or opportunity to comment on whether or how the Valara project should go forward, I will be the first one in line to make my voice heard.
21. Because of my profound concerns about what Valara has in store for me and my community, I joined the Concerned Citizens of Spartanburg County as a member. I fully support the

organization's mission to protect public health and the environment from Valara's destructive data center and power plant, and I fully support the organization's efforts in this lawsuit.

22. If the Court were to order Valara to obtain the proper "major" development permits before the County Planning Commission, it would substantially redress my injuries. Having a democratically-appointed and accountable body make a decision on the full project (not cherry-picked segments of it one-by-one) would give me and other impacted citizens the opportunity to obtain information and have our voices heard. Any Court order that partly or fully stops construction while a lawful and democratic process plays out would go a long way towards redressing my injuries

I swear/affirm that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 17 day of August, 2026.

Dr. Alva Pack

Dr. Alva Pack

Witness my hand and seal this

17 day of August, 2026
Charmain D. Holman

Notary Public for April 25, 2034



APPENDIX L

EXHIBIT 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 7TH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Concerned Citizens of Spartanburg	)	Case No. 2026CP4203416
County,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF MARK FELK
v.	)	
	)	
Valara Holdings, LLC, Spartanburg	)	
County, and Spartanburg County	)	
Administrator.	)	
	)	
Defendants.	)	

I, Mark Felk, hereby declare and state as follows:

1. My name is Mark Felk. I am over the age of 18 and am competent to attest to the information in this affidavit.
2. I reside with my wife and own property at 1005 Oak Creek Drive, Spartanburg, SC 29302.
3. I have lived in Spartanburg since 1980, when I moved here following graduation from college. I am a member of the Concerned Citizens of Spartanburg County and the organization represents my interests in this matter.
4. Living in Spartanburg for all of my adult life has really been a dream come true, until recently, when that dream has become the biggest nightmare of our lives due to Valara's proposed data center at 4000 S. Pine Street.
5. We bought our property in The Oaks in 1995 and designed and built our dream home on 2-acres in the neighborhood. The neighborhood has always provided peace and solace, which we have enjoyed every day we've lived here. Now, unfortunately, our home is just

1500 feet from the newly proposed Valara data center and this peace and solace have been taken away.

6. My career of forty years has been in commercial risk management and has required evaluating the risk platforms that industrial businesses have and designing safety measures to minimize risk.
7. I first learned about the purchase of the former-Kohler site from a local news story where County Councilmember David Britt announced that the site was being purchased by an unnamed business that would be a “high-performance computing center” supporting engineering, technology, and the aerospace sectors. This was followed up a statement by Councilmember Britt that the project was “not a data center.” The implication of this statement, in my opinion, was that nothing about the facility was remotely similar to or at all like a data center and thus would not have the same types of harms associated with a data center.
8. I was also under the impression that the project would not be a massive development because the County had apparently approved a minor land use permit and suggested the data center wouldn’t have any impacts greater than the Kohler facility.
9. Earlier this year, a local news outlet reported that the company had filed for a permit requesting to add 400 more megawatts of power to power the proposed facility by adding 11 gas-fired turbines to the site. That’s when I realized that everything I originally understood about the project was a bold-faced lie. I felt betrayed.
10. When I found out that the company also applied for another land development permit from the County, I realized that whatever the County originally told us about the project only scratched the surface about its actual scale.

11. The public, and especially those of us in the neighborhoods surrounding 4000 S. Pine Street, were never informed of the full scope of the project while Spartanburg and the state were issuing initial approvals for the proposed data center and power plant, including the initial land development permit, which had no transparency or opportunity for the public to engage. Had we known what was coming, I am confident that our entire neighborhood, along with the adjoining neighborhoods, would have attended and spoke out at any public hearing on the project and submitted comments to the Department of Environmental Services when it was considering an initial air permit for the data center.
12. Now that we have a better understanding of the full scope of the project, my neighbors and I began meeting with and communicating with individuals in the surrounding neighborhoods in an effort to gather more information about the project, slow down construction, and eventually stop the proposed power plant.
13. This group that has formed is called Concerned Citizens of Spartanburg County. Our mission is to protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center.
14. The group's goals include preventing harm to the environment, health, safety, and surrounding communities from the proposed data center; requiring Valara to thoroughly disclose the environmental impact, negative health consequences and energy requirements of their proposal; and ultimately require Valara to halt operation of the data center and power plant.
15. I am already being harmed by Valara's proposed data center and power plant.

16. The present construction is a nightmare. I have always appreciated driving by and seeing the beautiful tress that once adorned the property, but now they are being clearcut and this clearcutting is causing a terrible eyesore right by my house.
17. The dust from construction is also terrible, as is the traffic going to the site, which makes it very challenging for me to exit our neighborhood.
18. The noise from the site is also very disruptive and now that the trees are gone, which I assume were acting as a noise barrier, we can hear trains that we had never heard before.
19. Every day I have to live with noise and dust from the site and also with the fear that pollutants on the site that have been stationary are now being disturbed.
20. I and a few other neighbors recently met with representatives from Valara. This meeting left me even more concerned. It became clear to me during this meeting that the company has no experience with a project of this size and scope, they could not point to other examples of what we could expect once construction was complete and the data center and power plant were operational. They also seemed to have no idea how loud the facility would be, only promising that it would not be more than 60 decibels at the property line, with no evidence to support this promise.
21. In addition to ongoing harm from construction at the site, I will be harmed by operation of the data center.
22. One of my primary concerns is air pollution resulting from the previously permitted generators and the currently proposed turbines, totaling 450 megawatts of onsite power, which will result in major health issues to all citizens. This air pollution will pose a threat to my health and will significantly decrease my use and enjoyment of my property.

23. In addition to air pollution, I am concerned about noise once the facility is operational. I understand that data centers and turbines can be very noisy. This data center and power plant will operate 24/7 just 1500 feet from my home. The noise from this facility will significantly harm my use and enjoyment of my property and neighborhood.
24. I am also very concerned about the potential disasters that could come from the project's proximity to a railroad and gas line. We had Hurricane Helene hit in 2025, which could have had a drastic impact had this data center and power plant been operational at the time. What will happen if the gas lines are ruptured at the site? All of these concerns I am experiencing are detracting from my use and enjoyment of my home and neighborhood.
25. In addition to these concerns, I am also concerned that my home and property values will be diminished due to my proximity to a heavily polluting power plant and data center now.
26. I also appreciate all of the wildlife and livestock in our area and am deeply concerned by the impact the air pollution and noise pollution will have on wildlife in the area. If this leads to fewer animals in our area, that will take away something I greatly enjoy about living here.
27. Last, I am concerned that heat from the facility would force us to remain indoors more often, using more air conditioning, and that the air pollution will require me to run air purifiers in my house constantly.
28. I am angry at the County for allowing this project to go forward at all, and even more angry that they are calling this "minor" development. The impacts to me, my family, my neighbors, and our community are in no way minor.

29. My immediate desire is to see construction paused and then more transparency about the project from both the County and Valara. This means requiring Valara to get the proper permit for the actual scale of the development, which is so obviously major. I would also like there to be a public process where I can express my concerns about this proposal and hold County officials responsible. If the County requires Valara to seek a major land development permit, I would certainly attend all Planning Commission meetings and make public comment at every opportunity I am given. These initial steps would resolve the ongoing harm I am experiencing from construction and the harm I am experiencing from the lack of information about the project, as well as future harms I am concerned about from additional construction and eventual operation of the data center and power plant.
30. Ultimately, I would want to see the County require Valara apply for a major development permit and actually go through the public process that major land developments require. This would resolve many of my harms and concerns about the lack of transparency surrounding the project.
31. The ongoing construction at the Valara site is already harming my use and enjoyment of my property – there is increased traffic, displaced wildlife, and noise and light pollution which make me want to spend less time enjoying the outdoors at or near my home.
32. An order from the Court invalidating the first Minor Development Permit and preventing the second Minor Development Permit from issuing, and stopping construction at the site, would redress my injuries.

I swear/affirm that the foregoing is true and correct to the best of my knowledge,
information, and belief.

Executed this 17 day of Aug, 2026.

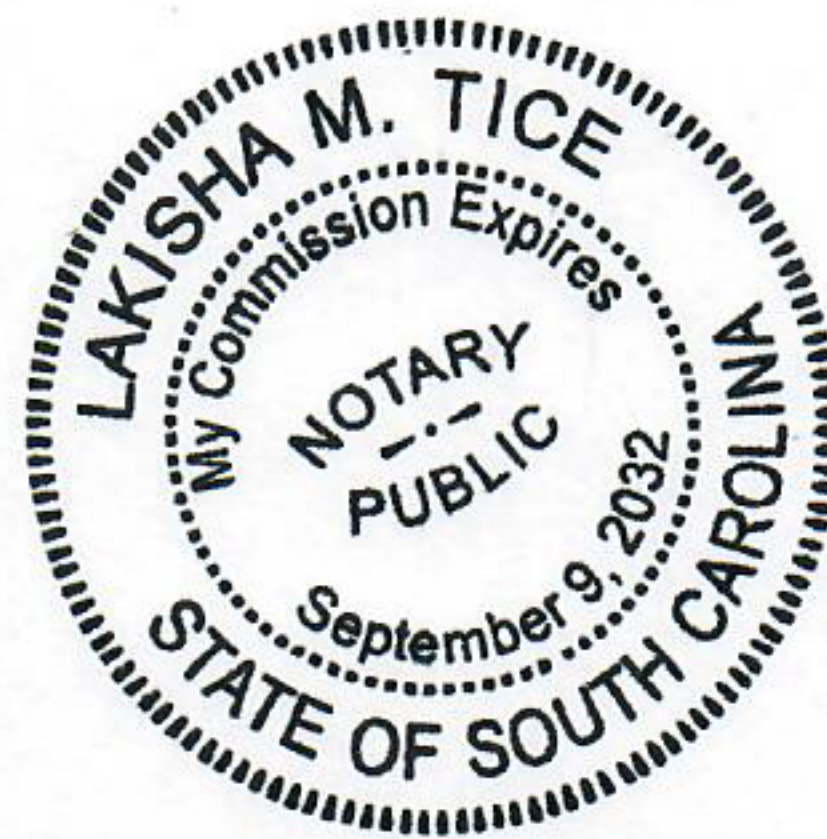
Mark Felk
Mark Felk

Witness my hand and seal this

17th day of August, 2026

Lakisha M. Tice

Notary Public for Spaulding County



APPENDIX M

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 7TH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	AFFIDAVIT OF RICKY HEATH
Concerned Citizens of Spartanburg	)	
County,	)	Case No. 2026-CP-42-03416
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Valara Holdings, LLC, Spartanburg	)	
County, and Spartanburg County	)	
Administrator.	)	
	)	
Defendants.	)	

I, Ricky Heath, hereby declare and state as follows:

1. My name is Ricky Heath. I am over the age of 18 and am competent to attest to the information in this affidavit.
2. I reside with my wife and own property at 1009 Oak Creek Drive, Spartanburg, SC 29302. I have lived in this home for over twenty years and have lived in Spartanburg for over twenty years. I am originally from Texas.
3. I am the administrative director at Morningside Baptist Church.
4. I first learned about Valara Holdings LLC's data center when I drove by 4000 South Pine Street and noticed some activity at the site. This led me to start searching about what was going on at the site and I learned that a data center was being built. That was last year, in 2025. At the time, there was hardly any information available.
5. More recently, in 2026, I started seeing more information about the project on Facebook that made me want to gather more information. Then I started researching data centers and I started getting more concerned.

6. Then in March or April of this year, we got an inkling that there was more to what they started out saying they were doing and it escalated from there when we discovered that Valara was proposing to build a 450-megawatt gas plant to power the data center. The more I learned, the more outrageous it became, and the more I realized I had to do something to help stop it.
7. After learning about the proposed data center and power plant, I began regularly meeting with and communicating with individuals in the surrounding neighborhoods in an effort to gather more information about the project, slow down construction, and eventually stop it.
8. This group that has formed is called Concerned Citizens of Spartanburg County. Our mission is to protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center.
9. The group's goals include preventing harm to the environment, health, safety, and surrounding communities from the proposed data center; requiring Valara to thoroughly disclose the environmental impact, negative health consequences and energy requirements of their proposal; holding the County accountable for failing its duty to the public; and ultimately require Valara to halt operation of the data center and power plant.
10. I am already being harmed by the proposal; specifically, the ongoing construction at the site. They have already started clearcutting the area and it has turned into a big problem. Removing these trees has removed an important sound barrier, and has also removed wildlife habitat and in turn displaced wildlife in the area. I have never seen so many dead deer when driving down Pine Street as I have since Valara began clearcutting the

property. I value the trees and wildlife habitat that were previously on this property and the continued loss of this is harming me.

11. The property has also become a terrible eyesore to drive by every day and the lights around the facility are incredibly bright at night.
12. I can also hear construction noise from the property at my house when it is particularly peaceful and quiet. At times when I would have been able to appreciate the peace and quiet around me, I now sometimes hear construction noise instead and this is harming my use and enjoyment of my home.
13. In addition to the harm I am currently experiencing from the construction at the site, I am very concerned about how operation of the data center and power plant will harm me.
14. My mamma taught me a long time ago to create a pro and con list when thinking about an issue. Well, I haven't been able to think of a single pro for this proposal, but the con list is very long.
15. It starts with the environmental issues—I am very concerned about the impact the data center and power plant will have on local water sources, on air quality, on noise levels, and am also concerned about the amount of fossil fuels the power plant will use.
16. I understand that this data center will use a significant amount of water and I am concerned about the impact that it will have on local water sources and, in turn, on Spartanburg residents like myself who rely on these local water sources.
17. I understand that Valara will be required to monitor its wastewater discharges for PFAS. I am thus also concerned about the pollution that will come out in the facility's wastewater and how this will impact local waterways and my drinking water.

18. Noise is another serious concern. I understand that data centers and gas turbines can be incredibly noisy and this noise will significantly harm my use and enjoyment of my home and my quality of life. I am deeply concerned by the stress that continued noise pollution will cause to me, including disruption to my sleep and general peace during the day.
19. I am also concerned by the amount of fossil fuels that this data center is going to use. Fossil fuels are limited in supply and powering this data center with the limited fuel coming from the pipeline in this area, rather than supporting another, better project on the property, is harming me.
20. Last, I am very, very concerned about the air pollution from the power plant proposal. I understand that the air pollution that will come from the power plant is horrible for respiratory health. I am concerned of the impact this will have on, not only myself, but also my children, grandchildren, and great grandchildren who come to visit me.
21. All of my fears with this project have been made worse when I learned that the County considers all of the ongoing construction to be a “minor” land development. To make matters worse, Valara has only so far received a permit for the first phase of construction. All of these impacts will just get worse, and it is my understanding that the second phase is even bigger than the first. The fact that the County is allowing the data center to proceed with a “minor” land development permit is deeply upsetting when this is the biggest and most destructive project I have seen in Spartanburg.
22. In addition to being harmed by ongoing construction at the property and the eventual operation of the data center and power plant, I have been and continue to be harmed by the lack of transparency and lack of available information related to this project. There

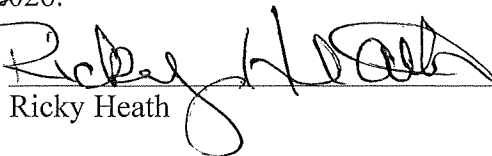
are still many unanswered questions about the full scope and impact this facility will have, but I have not been able to access complete information about the proposal.

23. Had I known what I know now and there had been a public hearing last year when this was first proposed, I absolutely would have attended and spoken out in opposition. Unfortunately, I was denied that opportunity because of lack of transparency and lack of proper permitting procedures.
24. If the County required the data center to get a major land development permit, it would have to go through the Planning Commission, which would provide more transparency to the community and require public disclosure of environmental and community impacts. It would also allow me to express my concerns in a public forum. That would address the harm I am experiencing from lack of transparency around the project. During a major land development permit process for the data center, I would make public comment, attend meetings, and review any materials provided to the public.
25. In addition, if the County required a major land development approval process for the Valara project then we would have greater access to all the application materials they are filing, which would provide me with even more information to inform my comments to the Planning Commission about this project.
26. If the County were to deny any major land development permit for the data center, than that would resolve the remaining harms I am experiencing and will experience in the future.
27. Concerned Citizens of Spartanburg County represents my interests in this litigation. For the reasons described above, if they are successful, the harm I am experiencing now from

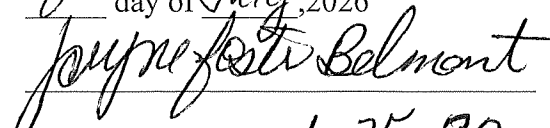
the lack of transparency surrounding this facility and ongoing construction will be addressed.

I swear/affirm that the foregoing is true and correct to the best of my knowledge,
information, and belief.

Executed this 8th day of July 2026.


Ricky Heath

Witness my hand and seal this

8th day of July, 2026

Notary Public for 1-25-32

APPENDIX N

EXHIBIT 8

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE 7TH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG)

Concerned Citizens of Spartanburg
County,)

Case No. 2026CP4203416

Plaintiff,)

AFFIDAVIT OF WILLIAM DARWIN

v.)

Valara Holdings, LLC, Spartanburg
County, and Spartanburg County
Administrator.)

Defendants.)

I, William "Kip" Darwin, hereby declare and state as follows:

1. My name is William Darwin. I go by the name Kip. I am over the age of 18 and am competent to attest to the information in this affidavit.
2. I reside with my family and own property at 3 Matchlock Commons, Spartanburg, SC 29302 and have lived here since 2004.
3. I have lived in Spartanburg my entire life, with the exception of the three years I spent in Columbia, South Carolina attending law school.
4. I am an attorney. I founded the non-profit group Concerned Citizens of Spartanburg County and am a member of this group; Concerned Citizens of Spartanburg County represents my interests in this litigation.
5. I first learned about Valara Holdings LLC's data center and its proposal earlier this year.
6. When I learned about this proposal, I was very concerned for a number of reasons. First, I was concerned by the lack of transparency. It wasn't clear, and still is not clear, how big it will be, the full energy usage requirements, what the noise levels will be during

construction and during operation, and, of course, we have no idea how this might impact property values in my neighborhood less than half a mile from the data center and power plant.

7. After learning about the proposed data center and power plant, I began meeting with and communicating with individuals in the surrounding neighborhoods in an effort to gather more information about the project, slow down construction, and eventually stop the proposed data center.
8. This group that has formed is called Concerned Citizens of Spartanburg County. Our mission is to protect the health, safety, property, environment, and quality of life of the citizens of Spartanburg County from the proposed Valara Data Center.
9. The group's goals include preventing harm to the environment, health, safety, and surrounding communities from the proposed data center; requiring Valara to thoroughly disclose the environmental impact, negative health consequences and energy requirements of their proposal; requiring Valara to actually get all required land approvals; and ultimately require Valara to halt operation of the data center and power plant.
10. I am very concerned about the impact construction of the data center is having. It is clear just from driving by the property that this is a huge project. They are clearcutting the entire property and are having to include traffic control due to the increase in traffic from construction activities at the site. This ongoing construction is harming me for a number of reasons. First, it is causing traffic congestion on a road I travel on frequently and it is also removing trees that previously helped contain rainwater and slow the stormwater from flowing off the property onto a road that I use frequently. More, clearing these trees is removing an important sound barrier at a time when there is now significant noise pollution

associated with the operation of heavy machinery at the property, which I travel by regularly. Removing these trees is also releasing carbon into the atmosphere and increasing the harm caused by greenhouse gases, which I am very concerned by, and it is creating an unsightly large barren tract of land that is an eyesore I have to look at as I regularly drive by the site. These issues are harming my personal use and enjoyment of the area around my neighborhood.

11. I am also very concerned about the noise pollution and air pollution from operation of the 450-megawatt gas plant that will power the facility. I understand that the gas plant on the property could be one of the largest industrial sources of air pollution in Spartanburg County. If this gas plant becomes operational, I am concerned about the impact this air pollution will have on my health and my family's health. Operation of this power plant operation will harm my quality of life and use and enjoyment of my property because of the air pollution it will emit—it could impact my health and will cause my to worry when I am spending time outside at my home.
12. I am also concerned by the fact that there is still information—like the noise levels of operating the data center and gas plant—that the public does not have. I have heard that data centers and gas-fired turbines can be very loud. If that is the case with this facility, the power plant and data center will harm my use and enjoyment of my property and my quality of life because I appreciate the peace and quiet I experience at my home now.
13. Had I known about the scale of the data center and had there been a public hearing or public meeting when local and state officials were first issuing approvals of this facility, I would have attended and expressed my concerns over the data center and opposition to the power plant.

14. I don't appreciate and have been harmed by the fact that the public was led to believe that this would be a smaller project and then it turned out to be a massive, 450-megawatt power plant. Had I known the full scope of the project earlier on, I would have spoken out against it. Unfortunately, I was denied that opportunity because of the lack of transparency around this project.
15. The fact that Spartanburg County is allowing this data center to proceed as a minor development is deeply upsetting to me. Just driving by the site makes it clear that this is not a minor land development. It feels like the County, and Valara, are severely downplaying the impacts and community concerns to get the project built faster.
16. I am also opposed to the concept of someone getting approval to develop a tract of land and then later changing the plan and proposing something much larger than anyone thought it would be. By applying for two separate land development permits, this is how I feel Valara has proceeded.
17. If the County were to require Valara to apply for a Major Land Development permit, it would require a much more public process that I and many other community members would participate in. For example, Major Land Developments require a public meeting, the opportunity to submit comments, the publication of materials related to the data center, a public meeting, a public vote, and an explanation for any Planning Commission decision.
18. I would engage in any opportunity I could during the permitting process for Major Land Development.

19. If the Court were to require Valara to reapply as a major development, this would redress the ongoing harm I am experiencing from the lack of public engagement and transparency regarding this data center.
20. If the Planning Commission were to ultimately deny approval of the data center, that would likely resolve even more of my concerns as it would likely result in a much smaller project.
21. The ongoing construction at the Valara site is already harming my use and enjoyment of the property – there is increased traffic, displaced wildlife, and noise and light pollution which make me want to spend less time enjoying the outdoors at or near my home.
22. An order from the Court invalidating the first Minor Development Permit and preventing the second Minor Development Permit from issuing, and stopping construction at the site, would redress my injuries.

I swear/affirm that the foregoing is true and correct to the best of my knowledge,
information, and belief.

Executed this 17th day of August, 2026.



William "Kip" Darwin

Witness my hand and seal this

17th day of August, 2026

Valerie C. Grohs

Notary Public for State of South Carolina



APPENDIX O

EXHIBIT 9

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Concerned Citizens of Spartanburg
County,

Plaintiff,

v.

Valara Holdings, LLC, Spartanburg
County, and Spartanburg County
Administrator.

Defendants.

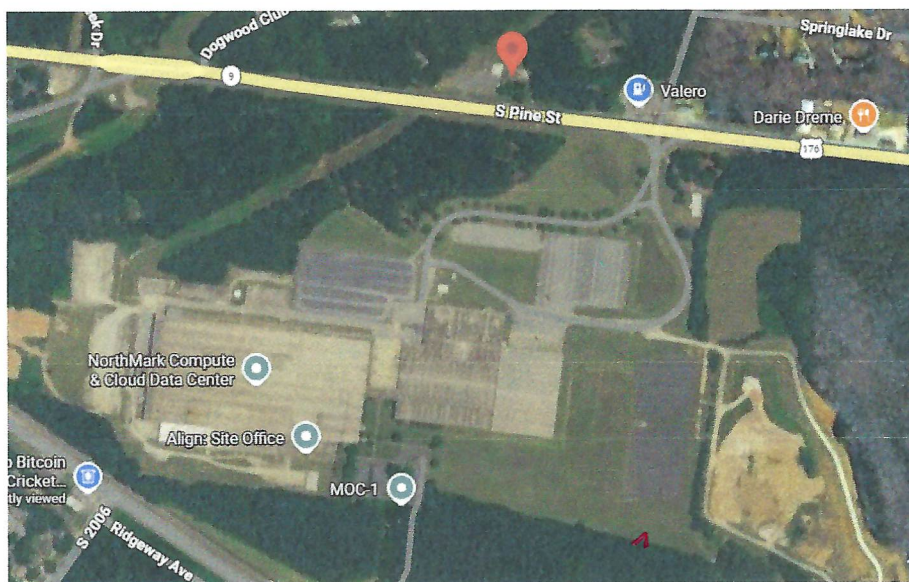
IN THE COURT OF COMMON PLEAS
FOR THE 7TH JUDICIAL CIRCUIT

AFFIDAVIT OF KAREN EILDERS

Case No. 2026CP4203416

I, Karen Eilders, being duly sworn, declare and state as follows:

1. My name is Karen Eilders. I am over the age of eighteen and am competent to attest to the matters stated in this affidavit.
2. My husband and I live on and own roughly 3 acres of property at 4181 South Pine Street in Spartanburg, where we have lived for the past 21 years.
3. My home is directly across the street from Valara's proposed data center. The image below shows my home (the red pin) adjacent to and immediately north of the Valara site.



4. The google maps imagery above is now outdated. It shows a large, forested area directly across from my house on the south side of S. Pine Street, which used to provide a scenic natural buffer separating our property from the former Kohler plant, which we hardly noticed in all our years here.
5. Valara has since clear-cut that forest, feeding the trees into a large woodchipper. Where we once looked onto a scenic forested area from our home, we now see an ugly, excavated and massive construction site. The felling of these beautiful trees broke my heart and ruined the view from my home. The image below is consistent with what the



site now looks like.

6. This terrible view from my home is just one of the many ways that Valara's ongoing construction of its data center harms my use and enjoyment of my property.
7. The construction of the data center has kicked up a terrible amount of dust, which lingers in the air and has coated my property and our vehicles. I am concerned about the health impacts of breathing this dust, and am angered that it has dirtied my porch and our cars.

As a result, I now spend less time outside because I don't want to breathe in too much dust.

8. When we look or step outside now, we see a large amount of heavy machinery, including many large cranes. Having to watch and hear heavy machines move from my home, which was previously quiet and free from this disruption, makes me anxious and less relaxed. I enjoyed my land much more when there were trees buffering the lot.
9. The bright lights at night are another major nuisance. The lights at Valara's construction site are so bright that they illuminate the inside of our home at night, to the point that I don't even need a night light if I get up in the middle of the night. These bright lights also greatly reduce my enjoyment of sitting on my porch in the evenings. Having bright construction lights illuminate my home and property is a great nuisance to me.
10. We use groundwater for drinking and everything else at my home. Since Valara came in, I have noticed strange fluctuations in our well water pressure that I never noticed before. This makes me concerned about how the data center's construction or water usage will impact water levels. I am also concerned that the data center will pollute the water that my husband and I drink.
11. I understand that Valara is building a massive gas-fired power plant at the site. When this plant begins operating, I have read that it will emit carcinogenic chemicals into the air right next to my home. As a breast cancer survivor, I am particularly concerned about this toxic air pollution and how it will impact my health and that of my husband.
12. The traffic from the construction site is another major inconvenience. There are large semi-trucks and other large vehicles everywhere now, which has increased the noise and

disruption that I experience at my home and has also worsened the traffic that I drive in every day.

13. Lastly, I am concerned about how Valara's data center and power plant will impact my property values. I cannot see how having such a massive industrial site right next door would not have a negative impact on the property values of neighboring homes.
14. It is troubling, to say the least, that the County has never held a public process to review Valara's land development application and permit. I understand that they are treating this as a "minor" development and processing everything behind closed doors. I am no lawyer, but I don't think it takes a law degree to understand that this is a major land development that should be publicly reviewed and voted on by the Planning Commission, to give citizens like me a voice.
15. From the beginning, I feel that the County and Valara have misled citizens and neighbors like me about the size, scope, and impact of this project. At first the County told us that Valara wasn't even building a data center, and that it wouldn't use more energy than the old Kohler facility. None of that was true.
16. I never received any public notice from the County of the full scope of this project or an opportunity to speak or attend meetings where the County reviewed or approved this project and I could obtain clarity about what is being built right next door. It isn't asking much to say that there should be a transparent public process to determine whether this huge project goes forward.
17. If the County ever offered such a process to publicly review this project, I would eagerly attend and submit comments and request information at every available opportunity.

18. Because of my significant concerns about the Valara data center and power plant, I joined the Concerned Citizens of Spartanburg County. I whole-heartedly support the organization's mission to protect the public and neighbors like me from the data center.
19. A court order stopping this project and requiring a public review process would go a long way towards redressing my injuries. We should call a spade a spade—this is a major land development, and it should be publicly reviewed as such, and all disruptive construction should be stopped until that occurs.

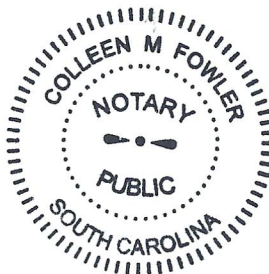
I swear or affirm that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 18 day of August, 2026.

Karen E Eilders
Karen Eilders

SWORN TO AND SUBSCRIBED before me
this 18th day of August, 2026.

Colleen M Fowler
Notary Public for South Carolina
My Commission Expires:
September 6, 2026



APPENDIX P

EXHIBIT 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 7TH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Concerned Citizens of Spartanburg	)	Case No. 2026CP4203416
County,	)	
	)	
Plaintiff,	)	
	)	AFFIDAVIT OF KEITH WOOD
v.	)	
	)	
Valara Holdings, LLC, Spartanburg	)	
County, and Spartanburg County	)	
Administrator.	)	
	)	
Defendants.	)	

I, Keith Wood, hereby declare and state as follows:

1. My name is Keith Wood. I am over the age of 18 and am competent to attest to the information in this affidavit.
2. I am a resident of Spartanburg County, South Carolina and a member of Concerned Citizens of Spartanburg County.
3. I reside approximately one-half mile from the Valara Holdings High Performance Computer Center project. I built my home 36 years ago and have lived there continuously since 1990. My home is located among over 200 homes in five neighboring subdivisions all stretching along Pine Street and Dogwood Club Road opposite the Valara project and all within about a half a mile from the Valara site.
4. I have long enjoyed the peaceful and quiet character of this community.
5. I was first made aware of this project because Valara applied for a permit from South Carolina Department of Environmental Services (SCDES) to use gas turbines producing 400 MW. SCDES determined that Valara would become a major source of controlled

emissions and as such SCDES required a period of public comment before permitting the power plant. I believe that permit application was dated in December 2025, however most residents were not made aware of the massive nature of the project until the spring of 2026 when SCDES announced the public comment period.

6. When the project was first publicly announced, it was presented as a large, advanced computer center, an investment of about \$2.8 billion. As additional information became available, I learned that the project was about nine times the size of its initial description. However, the investment remained unchanged at \$2.8 billion. In addition, the appearance created by the public record is that the overall magnitude of the project did not suddenly become larger; rather, the financial investment and overall development were substantial from the beginning. That circumstance has contributed to my concern that the public review process did not reflect the true scale of the project. The incremental permit applications by Valara were the major source of information for the public and helped support early statements by county councilman Britt that the project would use no more power than the previous Kohler plant.
7. I have personally observed land clearing, construction activity, and ongoing development associated with the Valara project. Given the project's close proximity to my home, I expect its operation to directly affect my daily life and my family's use and enjoyment of our property.
8. My concerns are not based on speculations alone. They are informed by publicly available news reports, government reports, and accounts from residents living near other large data center developments powered by gas turbines. I have read reports concerning the Vantage II Data Center in Sterling, Virginia, reports concerning residents near data

centers in the Memphis area, and large data center developments in Wisconsin. Those projects are all powered by gas turbines, projects that are similar enough to the Valara project to pique my concerns. Those projects describe complaints of continuous industrial noise, low-frequency humming, emissions associated with onsite power generation, sleep disruption, diminished enjoyment of residential property, concerns about the long-term effects on surrounding neighborhoods and even one study estimating millions of dollars of increased healthcare cost related to operating one of those centers (Empower Analytics study at the Vantage II plant in Stirling, Virginia). Those reports have caused me to reasonably fear that, because I live approximately one-half mile from the Valara project, I will likely experience similar impacts if this facility is allowed to operate as it is proposed.

9. Based on publicly available information regarding similar large data center developments in other parts of the United States-including reports of continuous industrial noise, emissions from onsite power generation and massive cooling systems, and changes to neighborhood character-I have the reasonable concern that similar impacts will likely occur in my community.

My specific concerns include the following:

- a. Continuous industrial noise, including low-frequency noise, from massive turbine powered generation equipment and massive mechanical cooling systems operating 24 hours per day
- b. Potential pernicious health harm to my family from air emissions associated with large natural gas-fired generating equipment, including nitrogen oxides, fine

particulate matter PM2\5, ozone-forming pollutants, formaldehyde, and other combustion by-products in every breath they take

c. An enormous loss of my ability to enjoy my home and outdoor spaces, the quiet environment that exists now and the probability that our peace and quiet will be replaced by a permanent, intolerable soundscape.

d. I reasonably fear a significant loss in my homes value if this project goes forward.

10. Based on the publicly available information I have reviewed, I believe the impacts reported by residents living near the Vantage II facility in Virginia, the gas-powered AI data center in the Memphis area and the large AI data center in Milwaukee, Wisconsin are the most relevant comparisons to the Valar project because each involves a large artificial intelligence data center requiring massive cooling systems, all supported by substantial onsite natural gas powered turbines. The complaints reported in those communities are remarkably similar, including continuous industrial noise, low-frequency humming, sleep disturbance, diminished enjoyment of public property, and hazardous air emissions that will impact public health.

11. My daughter and grandchildren are very concerned about air emissions from the plant, and have already declared that they will visit far less when the plant is operational. This is a significant harm to my wife and me, as we built our house with the expectation that our family would gather here forever.

12. Because these are the closest comparable projects to Valara of which I am aware, I believe they provide the best available indication of the impacts likely to occur near the Valara project, where adequate separation does not exist between a project of this scale

and established residential communities. For that reason, I am deeply concerned that similar impacts are likely to affect my family, home and neighborhood.

13. Despite the massive scope of this project (the second largest in South Carolina state history), Valara requested and received a minor land development permit to begin construction, avoiding the public awareness and public input required had they applied for a major land development permit.
14. I feel harmed by the fact that the project did not have the level of public review appropriate for a controversial development of its size and potential impact. If Valara had applied for a major land development permit, I would have been allowed to attend public meetings of the planning commission, submit comments, learn more about the Valara project, and basically to have become more informed.
15. I also believe County staff have been ill-informed about the true impacts of this project. Had there been a public process, I believe this would have helped contribute to the education of county staff and might have thus resulted in a better permitting decision.
16. If the project is required to proceed through the County's major land development review process, many of my concerns regarding the lack of public participation will be substantially alleviated because I, along with other affected residents, will finally have a meaningful opportunity to present information, evidence, and public concerns regarding the project's likely impacts before the County reaches its decision.
17. I believe that public participation is especially important where a project has the potential to affect the health, quiet and peaceful enjoyment of property, and quality of life of nearby residents for decades.

18. The ongoing construction at the Valara site is already harming my use and enjoyment of the property – there is increased traffic, displaced wildlife, and noise and light pollution which make me want to spend less time enjoying the outdoors at or near my home.
19. An order from the Court invalidating the first Minor Development Permit and preventing the second Minor Development Permit from issuing, and stopping construction at the site, would redress my injuries.

I swear/affirm that the foregoing is true and correct to the best of my knowledge,
information, and belief.

Executed this 17 day of August, 2026.



Keith Wood

Witness my hand and seal this

17 day of August, 2026



Notary Public for South Carolina



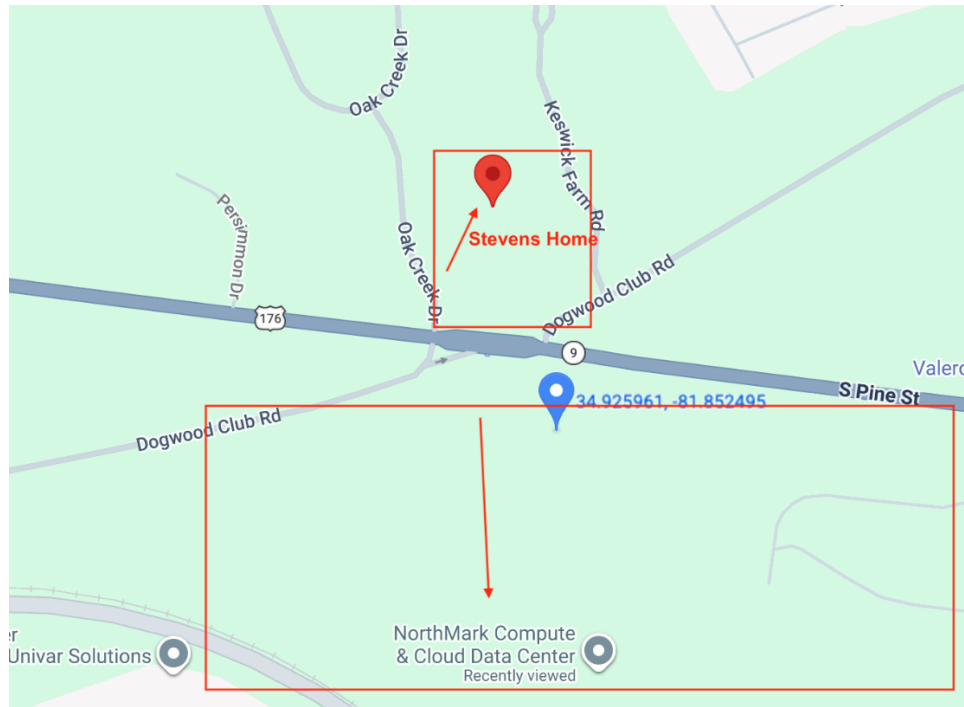
APPENDIX Q

EXHIBIT 11

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE 7TH JUDICIAL CIRCUIT
	)	
Concerned Citizens of Spartanburg	)	AFFIDAVIT OF JENNY STEVENS
County,	)	
	)	Case No. 2026CP4203416
Plaintiff,	)	
	)	
v.	)	
	)	
Valara Holdings, LLC, Spartanburg	)	
County, and Spartanburg County	)	
Administrator.	)	
	)	
Defendants.	)	
	)	

I, Jenny R. Stevens, being duly sworn, declare and state as follows:

1. My name is Jenny R. Stevens. I am over the age of eighteen and am competent to attest to the matters stated in this affidavit, all of which are based on my personal knowledge unless otherwise indicated.
2. I reside at and own residential property located at 225 Keswick Farm Road, Spartanburg, South Carolina 29302.
3. I have lived there for approximately nine years since my husband and I purchased this property in 2017 with the intention that it would be our “forever home.”
4. The property consists of approximately ten acres which encompasses the corner of South Pine Street and Dogwood Club Road. My home and property now sit diagonally across South Pine Street from the Valara data center project at the former Kohler site. My property is roughly 100 feet from Valara’s—literally right across the road.



5. When we purchased our home, Kohler occupied that site. The facility was surrounded by acres of mature trees and substantial natural screening.
6. During the years Kohler operated there, I did not experience noise, dust, visual intrusion, or other recurring impacts that interfered with my daily use and enjoyment of my property. Although I knew an industrial facility was nearby, the trees and the manner in which the site operated allowed our home to remain peaceful and rural in character.
7. That changed dramatically after Valara acquired and began developing the site. The clear-cutting of acres of trees and the intensity of construction have transformed both the view from my property and my daily experience of living there.
8. I now experience reminders of the Valara project throughout each day and, at times, on an hourly basis. The project is no longer a screened industrial neighbor in the background; it has become a constant and intrusive presence.

9. Construction dust regularly settles on my porch swings and on other outdoor surfaces throughout my property. Surfaces that were previously clean enough for ordinary outdoor use now require repeated cleaning because of the dust generated by nearby construction activity.
10. I have asthma. Because of the amount of airborne dust associated with the construction, I cannot safely or comfortably spend significant periods outdoors enjoying my porch, yard, and acreage as I did before the Valara construction began.
11. The dust has therefore caused a present and substantial loss of my use and enjoyment of the property. This is especially distressing because the outdoor setting, open land, and natural character of the property were central reasons we chose this home as our permanent home.
12. The construction noise is also frequent and disruptive. Some sounds are so sudden, loud, or forceful that I cannot readily distinguish whether I am hearing ordinary heavy-construction activity, blasting, or an explosion occurring close to the surrounding homes.
13. The frequency and intensity of these noises cause repeated alarm and make it difficult to feel peaceful or secure in my own home. Even when a particular sound proves to be part of ordinary construction, the inability to immediately know what has happened is itself disruptive.
14. The change in conditions is particularly stark because Kohler's prior operation did not create these recurring impacts for my neighbors or me. The existing industrial use and the Valara construction project are not comparable in their effect on my daily life or on my property.

15. When we first learned of the Valara project, at no time were we, the residents living closest to this site, informed of the “data center” aspect of this project. In fact, it now seems we were intentionally misled by the County's deliberate choice to treat and publicly characterize this project as a "minor" development. That characterization led me to expect a project whose scale and effects would be limited and generally comparable to the prior use of the Kohler site.
16. What has occurred is anything but “minor” from the perspective of the residents who live around the site. Extensive clearing, constant construction activity, airborne dust, intrusive noise, and the loss of the wooded buffer have materially changed the surrounding area.
17. The classification of this project as a "minor" development is inconsistent with what I can see, hear, and experience from my home. The development's actual scale and present effects are major in every ordinary sense of that word.
18. I am deeply upset that Spartanburg residents, and particularly the residents of the neighborhoods immediately surrounding the site, were not given a transparent public process proportionate to the project's actual scope before these dramatic changes occurred.
19. Based on the information made available to residents and the County's "minor" classification, I feel that local leaders materially misled the public about the nature, intensity, and neighborhood impact of the project. At a minimum, the information available to nearby residents did not fairly communicate what we would actually experience.
20. Had I understood the true scale and likely effects of the project before approvals were issued and construction began, I would have most certainly participated in any available public hearing or comment process and would have raised the concerns described in this affidavit.

21. The construction phase alone has already caused concrete harm to my health-related use of the outdoors, my enjoyment of my home and acreage, and the peace and rural character that led us to purchase the property back in 2017.
22. The ongoing construction also causes me serious concern about what nearby residents will experience if the completed data center begins to operate. The present intensity makes it difficult for me to accept assurances that the project's long-term effects will be minor.
23. In particular, I am concerned about the impacts of having a large power plant (over 450 megawatts) right across the street from where I live. I understand that a power plant of this size could power a small city. I have read that there will be hazardous air emissions associated with the power plant, which worries me both because of our proximity to the plant and because of my asthma. After being repeatedly misled by the County and Valara about the nature and impacts of this project, I have little faith in their claims that the power plant will not harm neighbors.
24. I want construction paused so that the County and Valara can provide complete, accurate, and transparent information about the full scope of the project and its effects on the surrounding community.
25. I also want the County to require a land-development review and public process that are commensurate with the project's actual scale, including meaningful notice and an opportunity for affected residents to be heard. I just want the County to follow its own ordinance and treat this project as the "major" land development that it so clearly is.
26. Because of my grave concerns about the construction and operation of the Valara data center and power plant, I joined Concerned Citizens of Spartanburg County. I support the

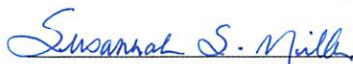
mission of the Concerned Citizens to protect public health, property, and the environment from the Valara data center.

27. The relief sought by Concerned Citizens of Spartanburg County is consistent with my interests in protecting my health, property, and quality of life and in obtaining a transparent public process concerning the Valara project.
28. The requested relief would address the ongoing harms I am presently experiencing from construction and the lack of adequate information and public participation, as well as my concerns about additional construction and the eventual operation of the facility.
29. I swear or affirm that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 19th day of August, 2026.


JENNY R. STEVENS

SWORN TO AND SUBSCRIBED before me
this 19th day of August, 2026.


Notary Public for South Carolina
My Commission Expires: 8-15-32.



APPENDIX R

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Concerned Citizens of Spartanburg County,	)	C.A. No. 2026-CP-42-03416
	)	
Plaintiff,	)	MEMORANDUM IN OPPOSITION TO
	)	PLAINTIFF’S MOTION FOR
v.	)	PRELIMINARY INJUNCTION AND IN
	)	SUPPORT OF MOTION TO DISMISS
Valara Holdings, LLC, Spartanburg County,	)	
and Spartanburg County Administrator,	)	
	)	
Defendants.	)	
_____	)	

NATURE OF THE CASE

Plaintiff Concerned Citizens of Spartanburg County initiated this Action on July 6, 2026 relating to the redevelopment of the former Kohler industrial facility located at 4000 South Pine Street by Valara Holdings, LLC (the “Project”). Plaintiff asserts claims for declaratory and injunctive relief challenging the County’s classification of the project as a Minor Land Development and certain grading and land-disturbing activities associated with the project.

FACTUAL BACKGROUND

Spartanburg County’s Land Development Permitting Process

Spartanburg County regulates the development and use of land within the unincorporated areas of the County, in the vicinity of this site, through its Unified Land Management Ordinance (“ULMO”). The ULMO was enacted in 1999 and establishes the County’s land development permitting process. See generally Spartanburg County, S.C., Ordinance No. O-99-015 (Dec. 31, 1999).

Article 1 of the ULMO governs applications and required permits. Id. The ULMO provides for the administrative classification of land development applications as either Minor or

Major land developments. Id. at § 1.02. Under Section 1.02 of the ULMO, a Major Land Development “includes but is not limited to commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.” Id. A Minor Land Development “is any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development.” Id. The ULMO’s development classifications are not based upon specific acreage, square footage, construction cost, or investment threshold. (Oakman Aff. ¶¶ 6-8.)

A Minor Land Development application is reviewed and decided administratively by County Planning Department staff. See Ordinance No. O-99-015, art. 1, Application Procedural Chart. A Major Land Development application proceeds through similar review by County staff and the Spartanburg County Planning Commission, with the Planning Commission responsible for review and decision on the preliminary plat or site plan. Id.

The ULMO also establishes an administrative process for challenging decisions made in the County’s administration of the Ordinance. Id. at §§ 1.02–1.05. An “appeal” is a petition to reverse or modify a decision of an administrative officer, board, commission, or council. Id. at § 1.02. The ULMO expressly identifies an “aggrieved person or party” as eligible to file an appeal. Id. at § 1.03, table 1. Appeals must be made within ten days of the challenged action by filing notice of appeal with the County. Id. at § 1.04. An appeal from an administrative decision concerning a Minor Land Development is heard by the Spartanburg County Board of Zoning Appeals, with further review available in the Circuit Court. Id. at art. 1, Application Procedural Chart; § 5.02.

The Valara Project and Development Applications

The property at issue is located at 4000 South Pine Street in Spartanburg County and involves the redevelopment of the former Kohler Industrial facility. The existing facility was developed beginning in 1957 and includes approximately 905,000 square feet of existing manufacturing and industrial space. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0725-0918.

On July 11, 2025, Valara submitted an application to the Spartanburg County Planning and Development Department for a Minor Land Development Permit for Phase I of the Project. The materials submitted with the application identified the project as the “MOC-1 High Performance Compute Center.” The Minor Land Development Checklist submitted with the application identified the property as approximately 293.637 acres and reflected that a separate Land Disturbance Permit was under review by the County.

Notably, on July 18, 2025, the South Carolina Department of Environmental Services (“DES”) issued a **public notice** announcing a public comment period for Valara’s application for a Clean Air Act permit. (See Am. Compl. ¶¶ 58–59, Ex. 3.) The **public notice identified the facility as a data center** located at 4000 South Pine Street and stated that the data center would be powered by twenty-four natural-gas generators. The public comment period remained open through August 16, 2025. DES subsequently issued the air permit on September 17, 2025. (See id.)

Following its review of Valara’s application for Phase I of the Project, the County issued Minor Land Development Permit No. DEVELOPPER-0725-0918 on August 27, 2025. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0725-0918. The permit authorized the redevelopment of the former Kohler industrial plant for the

MOC-1 High Performance Compute Center, including interior demolition and remodeling of the existing infrastructure and the addition of associated exterior equipment. Id. The permit expires on August 27, 2027. Id.

On April 6, 2026, Valara submitted a second Minor Land Development application for Phase II of the project. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0426-1062. The Phase II plans contemplate construction of four proposed buildings of approximately 423,000, 33,750, 19,450, and 18,000 square feet, respectively, together with associated improvements including power yards, internal roadways, electrical equipment houses, transformers, modular yard areas, equipment trestles, a metering station, mechanical cooling systems, and stormwater management ponds. (Id.)

The Phase II application remains pending before the County. (Id.) On May 13, 2026, Planning Department staff issued a preliminary conditional approval letter advising that site-plan approval would be provided upon receipt of the remaining required items and approvals. Those outstanding items included approval from County Engineering and Stormwater, architectural design, and a landscape plan, including parking lot landscaping.

Grading and Land-Disturbance Permitting

Land-disturbing activities are regulated through a separate stormwater and land disturbance permitting process. See Spartanburg County, S.C., Ordinance No. O-14-29 § 3.1(b) (Nov. 17, 2014); Ordinance No. O-99-015 §§ 1.08, 1.11, 1.13. South Carolina's Stormwater Management and Sediment Reduction Regulations, S.C. Code Ann. Regs. 72-300 *et seq.*, provide that, unless otherwise exempted, a person may not undertake a land-disturbing activity without an approved stormwater management and sediment control plan from the appropriate plan approval agency. S.C. Code Ann. Regs. 72-305(A) (1992). South Carolina law authorizes the State to delegate any

or all components of its stormwater management and sediment control program to local governments, including plan review and approval, inspections, and enforcement. S.C. Code Ann. § 48-14-60(A); S.C. Code Ann. Regs. 72-304(A). Spartanburg County has been delegated authority to perform these functions.

Spartanburg County administers its local stormwater management program pursuant to the County's Storm Water Management Ordinance, Ordinance No. O-14-29. (Brown Aff. ¶ 4.) Under that Ordinance, the Engineering Division of the Spartanburg County Public Works Department is responsible for the day-to-day coordination, implementation, and enforcement of the County's stormwater program, which includes the review of applications for land-disturbance, or grading, permits. Ordinance No. O-14-29 § 3.1(b). (See Brown Aff. ¶¶ 1-2.)

Consistent with that regulatory framework, Section 1.08 of the ULMO separately identifies a "Grading Permit" and a "Development Permit" as distinct permits. See Ordinance No. O-99-015 § 1.08. Section 1.11 of the ULMO provides that a grading permit approved by the Engineering Division is required before any land-disturbing activity covered by the County's stormwater regulations may begin and further provides that no grading permit may issue in the absence of an approved Storm Water Management Plan. Id. at § 1.11. By contrast, Section 1.13 provides that a Development Permit is issued by Planning Department staff and governs the use or conversion of buildings, structures, and land. Id. at § 1.13. The applicant is not required to obtain approval from the Planning Department before performing grading authorized by an approved Land Disturbance Permit; approval of a Land Development Permit by the Planning Department is a separate process. (Brown Aff. ¶ 13.)

The County's stormwater regulations also provide for inspection and enforcement of land-disturbing activity after a permit is issued. The ULMO authorizes the County enforcement officer

to inspect land-disturbing activities to determine compliance with the Ordinance and with approved permit applications, plats, plans, and certificates. Ordinance No. O-99-015 § 1.15. State regulations likewise provide for regular inspections of active sites, written inspection reports identifying deficiencies, and written notice of violations and required corrective action. R. 72-312(D).

Spartanburg County has also adopted an Enforcement Response Plan governing violations of approved land disturbance and grading permits. *See generally* Spartanburg County, S.C., Enforcement Response Plan (Oct. 2014). Under that process, failure to comply with the conditions or scope of an approved permit may result in a Notice of Violation, corrective action, follow-up inspection, and additional enforcement measures if noncompliance continues. Id.

South Carolina's Stormwater Management and Sediment Reduction Regulations also establish procedures for citizen complaints concerning both the administration of the stormwater program and individual sites. R. 72-314. Regulation 72-314 provides that persons aggrieved by land-disturbing activities or program implementation may register a written complaint with the local implementing agency, which must first attempt to resolve the matter. Id. If the matter cannot be resolved, the citizen may forward the complaint to the State Commission for review. Id. Regulation 72-314 separately provides that complaints concerning individual site problems or damages are to be submitted to the appropriate implementing agency, here, Spartanburg County, and, if not resolved locally, may thereafter be filed with the Commission. Id.

In accordance with that regulation, the County's Storm Water Management Ordinance includes an administrative hearing process concerning the County's administration of its stormwater program. Ordinance No. O-14-29 § 8.1. Section 8.1 permits a citizen to request an administrative hearing to address their complaint concerning the operation of the County's storm

water management and sediment control programs. Id.

Valara's Grading and Land Disturbance Permits

Under the County's Storm Water Management Ordinance, Valara separately sought and obtained authorization for land-disturbing activities at the site. On May 23, 2025, Valara submitted an application for a Land Disturbance Permit for the MOC-1 High Performance Compute Center. (Brown Aff. ¶ 14.) The Engineering Division issued Land Disturbance Permit No. LANDISTPER-0525-0743 on August 25, 2025. (Brown Aff. ¶ 15.) See Spartanburg County, Citizen Self Service, Permit No. LANDISTPER-0525-0743. The permit authorized land-disturbing activities within 84 acres. (Brown Aff. ¶ 16.)

Valara thereafter obtained approved modifications to the Grading/Storm Water Permit, which ultimately increased the approved limits of disturbance to a total of 169.6 acres. (Brown Aff. ¶ 18.)

The land-disturbing activities at issue in this action occurred within the area authorized by Valara's approved Grading/Storm Water Permit and subsequent approved modifications, with the exception of approximately two acres. (Brown Aff. ¶ 19.) County personnel observed that area during a site visit on July 22, 2026. (Id.) Representatives of Jacobs were notified on site and requested to include the area within an existing permit-modification application that was submitted to the County on July 8, 2026. (Id.) That modification remains under review. (Id.)

To date, Spartanburg County has not received a citizen complaint pursuant to Section 8.1 of the Storm Water Management Ordinance or Regulations 72-313 and 72-314 concerning the grading or land-disturbing activities conducted on Valara's property. (Brown Aff. ¶ 21.)

ARGUMENT

In Plaintiff's Amended Complaint, Plaintiff asserts three causes of action: (1) a claim under the Declaratory Judgment Act alleging that the Valara Project constitutes a Major Land Development under the ULMO; (2) a claim under the South Carolina Local Government Comprehensive Planning Enabling Act alleging violations of the ULMO based on the County's review and approval of the Project as a Minor Land Development; and (3) a claim under both Acts alleging that Valara has exceeded the scope of its existing land development permit and is conducting development activities without the required land development permit.

Plaintiff now seeks extraordinary injunctive relief based upon these claims. As an initial matter, however, Plaintiff failed to pursue the administrative remedies available to challenge the County actions at issue before filing this action. As discussed below, Plaintiff's failure to exhaust its administrative remedies requires dismissal of the Amended Complaint. For the same reason, the Court cannot grant the preliminary injunctive relief requested. Even if the Court reaches the requirements for preliminary injunctive relief, Plaintiff cannot satisfy them.

Plaintiff Has Failed to Exhaust Its Administrative Remedies

Under South Carolina law, "the doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act." De Pass v. Spartanburg, 234 S.C. 198, 203, 107 S.E.2d 350, 351-352 (1959). "Exhaustion is generally required as a matter of preventing premature interference with agency processes, so that the agency may function efficiently and so that it may have an opportunity to correct its own errors, to afford the parties and the courts the benefit of its experience and expertise, and to compile a record which is adequate for judicial review." Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000).

South Carolina courts therefore require parties challenging local land-use decisions to pursue the administrative remedies provided by statute and ordinance before seeking judicial relief. See, e.g., Moore v. Sumter Cnty. Council, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990) (affirming summary judgment where property owners challenged a land-use ordinance without first exhausting available administrative remedies); Charleston Dev. Co., LLC v. Alami, 433 S.C. 533, 544–46, 860 S.E.2d 687, 693–94 (Ct. App. 2021) (holding that plaintiffs could not circumvent the exhaustion requirement by seeking judicial enforcement of a zoning ordinance without first pursuing the ordinance’s administrative remedies).

It is clear that Plaintiff has failed to exhaust its administrative remedies here. First, with respect to allegations relating to the clearing and grading of the site, such claims relate to the Land Disturbance Permit issued by the County. The County’s Storm Water Management Ordinance provides a specific remedy to Plaintiff if it believes that the permit should not have been issued or, as Plaintiff alleged in the Amended Complaint, Valara exceeded the scope of the permit or violated its conditions. Plaintiff must pursue the administrative procedure set forth in Section 8.1 of the County’s Storm Water Management Ordinance, yet it has made no effort to do so. Indeed, Spartanburg County has received no citizen complaint pursuant to Section 8.1 or Regulations 72-313 and 72-314 concerning the grading or land-disturbing activities conducted on Valara’s property. (Brown Aff. ¶ 21.)

Second, Plaintiff likewise failed to exhaust its administrative remedies with respect to its challenge to the County’s classification of the project as a Minor Land Development. The ULMO provides an administrative process through which an aggrieved person or party may appeal a decision of the County. The County issued the Phase I Minor Land Development Permit on August 27, 2025. Plaintiff did not appeal that decision within the time provided by the ULMO and made

no effort to pursue the administrative remedy available to it before filing this action. Plaintiff cannot now bypass that process and challenge the County's classification decision for the first time in this Court. See Botany Bay Marina, Inc. v. Townsend, 296 S.C. 330, 334, 372 S.E.2d 584, 585–86 (1988) (holding that failure to appeal a zoning decision within the prescribed period deprived the board of jurisdiction to hear the untimely appeal), overruled on other grounds by Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995); Lominick v. Aiken, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964) (holding that a party who failed to timely appeal the issuance of a building permit through the available administrative process could not later attack the validity of that decision in court).

With respect to Phase II, Plaintiff has likewise failed to exhaust its administrative remedies. The Phase II application remains pending before the County, and no final permit has been issued. Thus, there is not yet a final County decision from which Plaintiff could pursue the administrative appeal provided by the ULMO. Rather than allow the County to complete its review and, if necessary, pursue an administrative appeal from the County's final decision, Plaintiff seeks judicial intervention while the administrative process remains ongoing.

Plaintiff's declaratory judgment challenge to the Phase II application is also unripe. A declaratory judgment action must present an actual, justiciable controversy rather than a dispute that is contingent, hypothetical, or abstract. Orr v. Clyburn, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982). Here, the County may approve the Phase II application, deny it, approve it subject to conditions, or otherwise resolve the issues raised by Plaintiff through the administrative process. Until the County completes that process and renders a final decision, Plaintiff seeks judicial determination of a dispute that may be eliminated or materially altered by the County's final administrative action.

Plaintiff's invocation of the Declaratory Judgment Act does not permit it to bypass an otherwise applicable administrative review process. See Tourism Expenditure Rev. Comm. v. City of Myrtle Beach, 403 S.C. 76, 82, 742 S.E.2d 371, 375 (2013) (holding that the Declaratory Judgments Act could not be invoked to circumvent the exclusive statutory procedure established by the legislature for resolving the dispute). Accordingly, Plaintiff cannot avoid the administrative remedies applicable to its claims merely by seeking declaratory relief.

Because Plaintiff failed to pursue the administrative remedies available to it, its claims are not properly before this Court. Plaintiff therefore cannot establish a likelihood of success on the merits, as required to obtain the extraordinary remedy of a preliminary injunction.

Plaintiff Cannot Satisfy the Requirements for Preliminary Injunctive Relief

“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” Scratch Golf Co. v. Dunes W. Residential Golf Props., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). “A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” Poynter Invs. v. Century Builders of Piedmont, 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010). Plaintiff must establish that: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 907.

A party seeking a preliminary injunction must act swiftly and not sleep on its rights. Rabon v. Mali, 289 S.C. 37, 40, 344 S.E.2d 608, 610 (1986) (no equitable relief when a party, knowing its rights, causes its adversary to incur expenses, enter into obligations, or otherwise change position before asserting a claim for enforcement, “especially if an injunction is [requested]”);

Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344–45, 415 S.E.2d 384, 387–88 (1992) (no equitable relief where there was a failure to bring a claim for enforcement until after adversary spent significant sums on improvements).

Plaintiff Cannot Establish that Its Members Will Suffer Irreparable Harm

To obtain a preliminary injunction, Plaintiff must establish that it will suffer irreparable harm in the absence of injunctive relief. Scratch Golf, 361 S.C. at 121, 603 S.E.2d at 908. Speculative or prospective concerns of future injury are insufficient; the alleged harm must be immediate. See Compton v. S.C. Dep’t of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). Moreover, a plaintiff’s delay in seeking injunctive relief weighs against a claim that immediate relief is necessary. See Collins v. Sigmon, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989) (“Equity aids the vigilant and diligent.”).

Plaintiff’s Delay Undermines Its Claim of Immediate and Irreparable Harm

Plaintiff’s own delay undermines its claim that it will suffer immediate and irreparable harm without an injunction. Valara applied for its initial Land Disturbance Permit on May 23, 2025, and submitted its Phase I Minor Land Development application on July 11, 2025. The County issued the Land Disturbance Permit on August 25, 2025, and the Phase I Minor Land Development Permit on August 27, 2025. Thereafter, Valara obtained approved modifications to its Land Disturbance Permit and submitted its Phase II Minor Land Development application on April 6, 2026. These applications and permits were matters of public record and available through the County’s Citizen Self-Service Portal.

Notably, the information concerning the nature and scope of the Project was not limited to the County’s permitting records. On July 18, 2025, DES issued a public notice **identifying the facility as a data center** located at 4000 South Pine Street and stating that it would be powered

by twenty-four natural-gas generators. The public comment period remained open through August 16, 2025. Thus, well before Plaintiff claims its members appreciated the scope of the Project, publicly available records identified the proposed use of the property, the nature of the facility, and its proposed on-site power generation. Information concerning both the County's permitting of the Project and the nature of the proposed development was therefore publicly available more than a year before Plaintiff sought preliminary injunctive relief.

More importantly, even accepting Plaintiff's assertion that its members did not appreciate the scope of the Project until early 2026, Plaintiff still did not act promptly. Mr. Pack states that by March 2026, the "massive scale of construction" had become apparent to neighboring residents. (Pack Aff. ¶ 7.) Mr. Heath similarly states that he began to suspect that the Project was different from what he had understood in March or April 2026 (Heath Aff. ¶ 6), and Mr. Felk states that he developed concerns about the Project earlier in 2026. (Felk Aff. ¶ 9.) Yet Plaintiff did not commence this action until July 6, 2026. Plaintiff then filed an Amended Complaint on August 12, 2026, but did not move for preliminary injunctive relief until August 20, 2026. Thus, even under Plaintiff's own timeline, its members were aware of the circumstances they now contend require immediate equitable intervention for months before Plaintiff filed suit and for several additional weeks before Plaintiff sought preliminary injunctive relief.

That delay is particularly significant given the nature of Plaintiff's claimed injuries. Plaintiff alleges that its members live close to the property and have suffered from ongoing construction-related dust, noise, lighting, traffic, and other disturbances. Construction and land-disturbing activities, however, did not begin immediately before Plaintiff filed its Motion. Those activities had been occurring pursuant to County permits issued many months earlier. If those ongoing activities were causing the immediate and irreparable injuries Plaintiff now alleges, those

injuries would have been apparent well before Plaintiff waited until August 2026 to seek an injunction. Plaintiff cannot allow the permitting and construction process to proceed for months after its members admittedly became concerned and then characterize the same circumstances as an emergency requiring immediate equitable intervention.

Plaintiff Has Not Established That Its Alleged Injuries Were Caused by the County Actions It Challenges

Plaintiff also fails to connect its alleged injuries to the County actions challenged in this case. Plaintiff alleges that its members have experienced dust, noise, lighting, traffic, and other disturbances associated with construction of the Project. However, the existence of those conditions does not establish that they were caused by the County's classification of the Project as a Minor Land Development. Plaintiff has not shown that classifying the Project as a Major Land Development would have prevented the construction-related conditions of which its members complain, or that those conditions would not have occurred had the Project proceeded through the Major Land Development process.

The same problem exists with Plaintiff's allegations concerning grading. Plaintiff contends that grading occurred outside the area covered by the Phase I Land Development Permit and therefore characterizes that activity as unauthorized. As set forth above, however, land development permitting and land disturbance permitting are separate County processes, and Valara obtained Land Disturbance Permits authorizing grading and other land-disturbing activities within the areas covered by those permits. The fact that grading occurred outside the boundaries of the Phase I Land Development Permit does not establish that the grading was unauthorized or that it caused Plaintiff's alleged injuries. The record establishes that the land-disturbing activities at issue occurred within the area authorized by Valara's Grading/Storm Water Permit and approved modifications, with the exception of approximately two acres identified during a County site visit.

(Brown Aff. ¶ 19.) County personnel identified the approximately two-acre area during a July 22, 2026 site visit, notified representatives of Jacobs of the issue, and requested that they add the area to a permit-modification application already pending before the County. (Id.) That modification remains under review. (Id.) More importantly, Plaintiff has not established that any of the dust, noise, or other conditions alleged by its members were caused by grading within those approximately two acres, rather than by the substantially larger area in which grading and construction activities were authorized by the County. Accordingly, Plaintiff has not established that the alleged permit exceedance caused any of its claimed injuries or that injunctive relief addressing that exceedance would prevent those injuries.

Plaintiff asks the Court to prohibit the County from processing and approving the Project as a Minor Land Development and to halt development associated with that classification. However, Plaintiff has not demonstrated that requiring Major Land Development review would eliminate the dust, noise, lighting, traffic, or other construction-related conditions its members allege. Likewise, enjoining allegedly unauthorized grading would not remedy injuries attributable to grading and construction activities that were separately authorized. Without establishing that the challenged County actions caused the alleged injuries and that the requested injunction would prevent them, Plaintiff cannot establish the irreparable harm necessary for preliminary injunctive relief.

Plaintiff's Alleged Future Injuries Are Speculative

Finally, to the extent Plaintiff relies upon environmental effects, noise, traffic, or other conditions that it anticipates once the Project becomes operational, those alleged injuries are prospective and speculative. Concerns about conditions that may arise from the Project's future operation do not establish the immediate injury necessary to support preliminary injunctive relief.

Accordingly, Plaintiff's own delay, the public availability of information concerning the Project, the speculative nature of its alleged future injuries, and its failure to connect its present injuries to the County actions it challenges prevent Plaintiff from establishing the immediate, irreparable harm necessary for preliminary injunctive relief.

Plaintiff Cannot Establish a Likelihood of Success on the Merits

To obtain preliminary injunctive relief, Plaintiff must demonstrate a likelihood of success on the merits of its claims. Poynter Invs., 387 S.C. at 586–87, 694 S.E.2d at 17. Plaintiff cannot make that showing where its claims are not properly before the Court in the first instance. See Anders v. S.C. Parole & Cmty. Corr. Bd., 279 S.C. 206, 211, 305 S.E.2d 229, 231 (1983) (reversing an order granting injunctive relief where the plaintiffs lacked standing and the trial court therefore lacked subject matter jurisdiction). As discussed above, Plaintiff failed to exhaust the administrative remedies available to challenge the County actions at issue before seeking judicial relief. Accordingly, Plaintiff cannot establish a likelihood of success on claims that are not properly before the Court. Even if the Court reaches the merits of Plaintiff's claims, Plaintiff cannot establish that the County violated the ULMO.

Plaintiff Cannot Establish a Likelihood of Success on Its Claims That the Project Was Improperly Classified as a Minor Land Development

Even if Plaintiff had exhausted its administrative remedies, Plaintiff cannot establish that the County violated the ULMO by classifying the Valara project as a Minor Land Development. The ULMO identifies the types of development classified as Major Land Developments and expressly classifies all other uses not classified as Major as Minor Land Developments. Ordinance No. O-99-015, § 1.02. Nothing in the ULMO provides that a development becomes a Major Land Development based solely upon its acreage, square footage, cost, investment, or overall scale. (See Oakman Aff. ¶¶ 6–8.) Instead, as explained above, the County determines whether an application

constitutes a Major or Minor Land Development based upon the classifications established by the ULMO.

Plaintiff nevertheless asks the Court to disregard those classifications and conclude that the Project must be a Major Land Development because of its size and scope. The ULMO provides no basis for such a conclusion. In fact, the County has consistently processed substantial projects, including projects larger than the Valara Project, as Minor Land Developments where those projects did not fall within a Major Land Development classification. (See Oakman Aff. ¶¶ 9–10.) Plaintiff therefore cannot establish that the County violated the ULMO merely because the Project is substantial in size, scope, or financial investment. Therefore, Plaintiff cannot demonstrate a likelihood of success on Counts I and II.

**Plaintiff Cannot Establish a Likelihood of Success on Its Claims Concerning
Valara's Grading Activities**

Plaintiff likewise cannot establish a likelihood of success on Count III based merely upon evidence that clearing or grading occurred outside the boundaries of the Phase I Land Development Permit. As set forth above, land development permitting and land disturbance permitting are separate County processes. Indeed, as Plaintiff acknowledges in its Amended Complaint, Valara obtained Land Disturbance Permits from the County authorizing land-disturbing activities on the property. The County issued those permits authorizing clearing, grading, and other land-disturbing activities within the areas covered by the permits. Plaintiff's assertion that a Land Development Permit was also required to encompass those areas does not establish that such a requirement exists under the ULMO. Accordingly, the fact that grading occurred outside the boundaries of the Phase I Land Development Permit does not establish that the grading was unauthorized or violated the ULMO.

To the extent Plaintiff relies upon the approximately two acres identified outside the

approved limits of disturbance, Plaintiff has not established that the land-disturbing activities within those two acres caused the injuries alleged by its members. Moreover, upon identifying that area, County personnel requested that it be included in a permit modification already pending before the County, and that modification remains under review. (Brown Aff. ¶ 19.) Thus, even assuming that grading within those approximately two acres exceeded the scope of the existing Land Disturbance Permit, that fact does not establish Plaintiff's broader claim that Valara is conducting unauthorized development activities in violation of the ULMO, particularly where the County has identified the issue and is addressing it through the existing permitting process. Accordingly, Plaintiff has not demonstrated a likelihood of success on the merits of Count III.

Plaintiff Has an Adequate Remedy at Law

An injunction is only available where there is no adequate remedy at law. Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). "The party seeking an injunction must prove it has no adequate remedy at law." Milliken & Co. v. Morin, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009). An adequate remedy at law may be provided by statute. See Santee Cooper, 298 S.C. at 185, 379 S.E.2d at 123.

Here, Plaintiff has an adequate remedy through the administrative procedures discussed above. The ULMO provides a process for an aggrieved person or party to challenge the County's land development decisions, including decisions concerning Minor Land Developments. Likewise, the County's Storm Water Management Ordinance provides an administrative process for complaints concerning the County's stormwater and land disturbance program. Plaintiff cannot establish that these remedies are inadequate simply because it failed to pursue them.

Plaintiff acknowledges the ULMO appeal process but argues that it was inadequate because Plaintiff and its members did not receive timely notice of the Phase I Land Development Permit.

That argument does not render the administrative remedy inadequate. Land development permits issued by the County are matters of public record, and the Phase I Land Development Permit was publicly available through the County's Citizen Self-Service Portal. Nothing in the ULMO requires individualized notice of the issuance of a Minor Land Development Permit, and Plaintiff identifies no authority establishing that the absence of such notice renders the available administrative remedy inadequate. Moreover, the Phase II application remains pending, and Plaintiff retains the ability to pursue the administrative process following a final County decision on that application.

The fact that an administrative remedy requires Plaintiff to first present its challenge to the appropriate administrative body likewise does not render that remedy inadequate. See Dunbar v. City of Spartanburg, 226 S.C. 360, 365, 85 S.E.2d 281, 283 (1954) (holding that a zoning ordinance providing for administrative review afforded an adequate remedy at law that the plaintiff was required to pursue). Plaintiff has therefore failed to establish that it lacks an adequate remedy at law and cannot satisfy this requirement for preliminary injunctive relief.

CONCLUSION

Based upon the foregoing authorities and arguments, Defendants Spartanburg County and the Spartanburg County Administrator respectfully request that the Court dismiss Plaintiff's Amended Complaint and deny Plaintiff's motion for preliminary injunction.

s/ Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-342-6884

*Attorneys for Defendants Spartanburg
County and Spartanburg County
Administrator*

September 14, 2026

APPENDIX S

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
Concerned Citizens of Spartanburg County,) Civil Action No. 2026CP4203416

Plaintiff,

vs.

Valara Holdings LLC; Spartanburg County;
and Spartanburg County Administrator

Defendants.

**DEFENDANT VALARA HOLDINGS
LLC'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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Defendant Valara Holdings LLC (“Valara”) respectfully submits this memorandum of law in opposition to the Motion for Preliminary Injunction (the “Motion”) filed by Plaintiff Concerned Citizens of Spartanburg County (“Plaintiff” or “CCSC”).¹

INTRODUCTION

This case arises out of Valara’s construction of a high-performance computing center (the “HPCC” or the “Project”) in Spartanburg County, South Carolina. Construction of the HPCC began more than a year ago and has been proceeding deliberately and methodically ever since. There are currently more than 1,500 skilled craftsmen employed on the Project. To date, Valara has spent approximately a billion dollars on development and construction. Once it is complete, the HPCC will employ more than 150 full-time individuals, generate tens of millions of dollars in tax revenue for the community every year, and inject millions of dollars more into local businesses. When it was first announced more than sixteen months ago, the Governor of South Carolina called the Project a “milestone moment” for Spartanburg County; South Carolina’s Secretary of Commerce “celebrate[d] this remarkable investment . . . and all it will mean for our state and our people”; and the Vice Chairman of the Spartanburg County Council remarked that “Spartanburg will greatly benefit from this highly unique and dynamic investment for years to come.”

Not everyone sees it that way, however. Plaintiff in this case is an unincorporated organization comprised of a handful of Spartanburg County citizens, founded earlier this year with a single mission: stop construction of the HPCC at all costs. Sixteen months after development of the HPCC was publicly announced and nearly a year after construction started, Plaintiff now

¹ Unless otherwise noted herein, all emphasis is added, all internal quotations, citations, alterations, and subsequent history are omitted. Referenced herein are the Affidavits of Mark Johnson (the “Johnson Affidavit”), Lisa Amador, P.E. (the “Amador Affidavit”), Laurie Oakman (the “Oakman Affidavit”), and Travis Brown (the “Brown Affidavit”).

asks this Court to enjoin Valara from performing any further work on the Project, on the grounds that the valid permit issued to Valara by the County over a year ago was improperly issued. Plaintiff's request is as remarkable as it sounds, and just as meritless: the Court should soundly reject Plaintiff's Motion because Plaintiff has failed to meet its significant burden of establishing *any* of the requirements of a preliminary injunction.

First, Plaintiff has not established that an injunction is necessary to prevent "immediate, irreparable harm." Nor could it, given how long Plaintiff and its members waited to seek this relief. If Plaintiff truly faced irreparable harm, it should have sought an injunction sixteen months ago, when it was first announced that Valara would be constructing a \$2.8 billion computing center and power plant; a year ago, when the County issued the first development permit and construction began; or even five months ago in March of this year, when Plaintiff's members themselves claim they first became "concerned" about the "scale" of construction at the Project. Instead, they did nothing, even as Valara and its general contractor proceeded to hire over 1,000 workers and spend approximately a billion dollars to construct its facility in full view of Plaintiff's members. Under established law, Plaintiff's delay forecloses it from seeking equitable relief, which is designed to help the "vigilant and diligent," not those who sit on their alleged rights.

Of course, Plaintiff could not have established a likelihood of irreparable harm even had it sought injunctive relief back in August 2025, when the first permit was issued. Although Plaintiff asserts that its members have lost the use and enjoyment of their homes, the neighborhood, and the natural scenery, the law holds that such non-"particularized" harm does not constitute an irreparable injury; and even if it did, Plaintiff has not provided sufficient evidence to establish any harm caused *by the HPCC*. Similarly, Plaintiff's speculative concerns about *future* harm once the HPCC is operational cannot, as a matter of law, support preliminary injunctive relief. And

Plaintiff's argument that it was deprived of a public forum to challenge the Project both ignores all the County Council meetings and other public fora at which Plaintiff's members have had (and have vocally exercised) the opportunity to challenge the HPCC and misinterprets the scant legal authority that Plaintiff cites in support.

Second, Plaintiff cannot establish a likelihood of success on the merits. As set forth in the Motion to Dismiss ("MTD Mem.") that Valara filed last week, Plaintiff's claims here must be dismissed because Plaintiff brought them without exhausting its administrative remedies. The Unified Land Management Ordinance ("ULMO")² under which Plaintiff's claims arise expressly provides for an appeal procedure that a party must follow if they wish to challenge a decision of the Spartanburg County Administrator ("SCA"), such as the issuance of a permit, as well as a time limit within which to do so. The ULMO also provides a mechanism through which Plaintiff was required to submit to the County, and not to this Court, its complaint that Valara exceeded the scope of its permits. Plaintiff did not pursue *any* of these administrative remedies. Accordingly, its claims necessarily fail: its challenge to the Phase I Land Development Permit is now barred because the time to appeal has expired; its challenge to the Phase II Application is premature because no permit has been issued; and its claim that Valara exceeded the scope of its Phase I Land Development Permit is false but should be raised, if at all, with the SCA, not in a pleading filed in this Court.

Even if this Court were the appropriate forum for challenges to the County's administrative decisions, Plaintiff's challenges would also fail on the merits. The core of Plaintiff's Amended Complaint asserts that the HPCC is a "Major" Land Development, not a "Minor" Land Development, and should have been subject to a heightened review process that a Major

² A copy of the ULMO is attached to Plaintiff's Amended Complaint as Exhibit 1.

Development requires. Plaintiff is wrong. After all, it was the County that suggested that Valara apply for Minor Land Development permits for development of the Project, Amador Aff. ¶ 5, and the County is given great deference in the application of its own ordinance. In any event, the County's application of the ULMO here was entirely accurate. The ULMO sets forth a list of fourteen specific types of land uses that are "Major" developments, and expressly states that "[a]ll other [u]ses [n]ot [c]lassified as Major" are necessarily "Minor." A high-performance computing center (or "data center," to use the label Plaintiff ascribes the Project) is not "[c]lassified as Major"—the County has elected not to include it in any of the 24 amendments it made to the ULMO since it was adopted in 1999. It therefore must be "Minor." The County did not err in issuing a Minor Land Development permit to Valara for Phase I of the Project, and Plaintiff's challenge to that permit—and to the pending Phase II Land Development Permit, once granted—necessarily will fail.

Plaintiff's new claim that Valara has exceeded the scope of its Phase I permit—based solely on drone photos showing earth purportedly disturbed beyond the boundaries of that permit—fares no better. Such claim reveals Plaintiff's misunderstanding of both the breadth of the permits Valara already has received and the scope of Valara's construction to date. The County has not merely issued a Phase I land *development* permit to Valara (as well as having conditionally approved a Phase II land development permit)—the Plaintiff conveniently ignores the fact that the County has also issued multiple land *disturbance* permits covering nearly every square foot of the Property. Those permits expressly allow Valara to conduct mass grading and tree-clearing—the precise activities captured by Plaintiff's drone footage—which means that Plaintiff's claim that Valara has exceeded the scope of its permits necessarily fails as a matter of law.

Third, Plaintiff indisputably has an “adequate remedy at law”—namely, the same administrative remedies that Plaintiff failed to exhaust. The fact that Plaintiff can no longer avail itself of those remedies due to its own delay does not, under established law, allow it to nevertheless seek an injunction in this Court. Plaintiff’s assertion that it did not receive sufficient notice of the Phase I Land Development Permit to pursue those remedies is both false and legally irrelevant, as is its contention that the administrative remedies available are inadequate because they involve an appeal to an authority with the power to exercise discretion. Accordingly, Plaintiff cannot satisfy the third prong required for a preliminary injunction.

Finally, as the Court considers the three preliminary injunction factors, it must also consider the required bond if it were to grant Plaintiff’s request for injunctive relief. In South Carolina, injunction bonds are *mandatory*, and nominal bonds are not allowed. Instead, the Court must expressly condition the effectiveness of any injunction on Plaintiff’s posting of a bond sufficient to pay *all* damages that Valara would incur if it is wrongfully enjoined. Given that Plaintiff asks this Court to enjoin a multi-billion development project a year after construction began, it should come as no surprise that those damages would be immense. As detailed further below, even a short-term stop-work order would result in damages of approximately \$2.75 million *per day*; while a long-term injunction, lasting for the duration of this litigation, would irreparably harm the viability of the HPCC and result in at least \$40 million, and up to \$60 million, in costs associated with demobilizing the Project, remobilizing the Project once construction is allowed to proceed (including locating, hiring and training over 1,500 new craftsmen after the Project’s existing workforce is scattered), and securing the site. And these figures are on top of hundreds of millions of dollars in difficult-to-quantify costs and damages that Valara would incur from an injunction, such as restocking fees, expiring warranties on valuable equipment, contract

cancellation penalties, and harm to Valara’s business relationships. Conservatively, no injunction should be issued in this case unless and until Plaintiff and/or its members post a bond in the amount of at least \$200 million.

In short, although it characterizes the relief it seeks as “warranted to maintain the status quo,” Plaintiff’s request for an injunction in this case is nothing short of breathtaking. Asserting that the County erred when it issued a development permit *more than a year ago*, Plaintiff asks this Court to stop an ongoing, multi-billion-dollar Project in its tracks—without any consideration given to the incredible loss that stopping the project would cause (including the approximately billion dollars already spent by Valara to construct the Project), the consequences of releasing more than 1,500 craftsmen already working on the site, or the impact on the citizens of Spartanburg County who are counting on the tax dollars and economic benefits that the Project will generate once complete. In seeking such extraordinary relief, Plaintiff bears an equally extraordinary burden. Plaintiff comes nowhere close to meeting it. Plaintiff’s Motion should be denied.

FACTUAL BACKGROUND

A. Valara Makes a Historic Investment in Spartanburg County.

This case arises out of Valara’s construction of the HPCC, a high-performance computing center on a former Kohler manufacturing facility at a 294-acre brownfield site at 4000 South Pine Street, in an industrial area of Spartanburg, South Carolina (the “Property”). Johnson Aff. ¶¶ 3, 9-10.

The HPCC has been and will be incredibly beneficial to the Spartanburg community, both before and after it is complete. Construction of the facility has involved more than 1,500 skilled workers, many of whom were hired from Spartanburg County, and all of whom create indirect economic benefits for the County’s economy by spending a portion of the aggregate \$2.4 million in daily wages at local businesses. *Id.* ¶¶ 12-13. Upon its completion, the HPCC will result in

more than 150 permanent full-time jobs for Spartanburg County residents, while also generating revenue for regional businesses and suppliers whose services will be required for regular maintenance and operations support. *Id.* ¶ 13. Such does not even count tax revenue—pursuant to a Fee in Lieu of Taxes (“FILOT”) agreement between Valara and the County, the facility is expected to generate hundreds of millions of dollars over the life of that agreement in tax revenue—funds that will support local schools, public safety, infrastructure, and services for years to come. *See Id.* It is therefore no surprise, then, that shortly after the Project was announced, local and state officials hailed Valara’s proposed HPCC a “game changer,” Johnson Ex. 7, and a “milestone moment,” Johnson Ex. 2, for the Spartanburg Community.

Recognizing that Spartanburg’s residents care about the enjoyment of their homes and the environment just as much as they do about jobs and tax revenue, Valara has committed to being a good neighbor since before breaking any ground. At its own expense, Valara performed comprehensive analyses of the potential environmental impacts of the HPCC, covering soil, groundwater, wetlands, biology, cultural resources, geotechnical conditions, air, and noise, and proceeded with the Project only after determining any such impacts were minimal. Johnson Aff. ¶ 8. In the early stages of construction, Valara remediated pre-existing environmental hazards at the site, resulting from heavy industrial use of the property as a manufacturing facility for the previous six decades (and the Army’s use of the site as a training center before that)—including removing asbestos and lead-based paint, remediating a prior on-site landfill, and removing several tons of unexploded ordnance and related materials from the Property. *Id.* ¶¶ 9-11.

Valara has also invested significant consideration and money in plans to mitigate any disturbances resulting from both construction of the Project and the operation of the HPCC. Valara has adjusted site lighting to address complaints from one of Plaintiff’s members concerning light

pollution. *Id.* ¶ 23. Valara plans to construct berms and other sound barriers. *Id.* ¶¶ 29, 31, 33. To address community concerns about dust flowing from the construction site, Valara is in the process of rolling out a “good-neighbor” program through which it will pay for third-party vendors to clean the homes and cars of neighboring property owners opting to participate (as it did already for one of Plaintiff’s members). *Id.* ¶¶ 23, 28. To address traffic concerns, Valara has implemented a traffic management plan to ease congestion. *Id.* ¶ 30. And to address the emissions from the gas turbines it will be installing to power the facility, Valara will be implementing a Continuous Emission Monitoring System on the Property. *Id.* ¶ 36.

B. Valara Obtains the Necessary Permits to Construct the HPCC.

From the outset, Valara has been transparent with the Spartanburg County officials charged with regulating developments like the HPCC, as well as with Spartanburg residents.

In early 2025, the Spartanburg County Council held a number of public meetings where the then-proposed HPCC was discussed. *Id.* ¶ 16; *see also* Johnson Exs. 3, 4, 5. And contemporaneous news articles and press releases provided extensive information about the Project to the Spartanburg County community. As early as February 18, 2025, a local news outlet reported that the Project involved a “high performance computing facility.” Johnson Ex. 6. And the day after the April 21 County Council meeting, NorthMark issued a press release “announc[ing] its plans to transform the former Kohler manufacturing facility . . . into a state-of-the-art high-performance computing . . . center.” Johnson Ex. 8. Notwithstanding Plaintiff’s claims that it was “misled” about the scope of the Project, Valara’s press release disclosed the full size of the HPCC, the multi-phased development approach, Valara’s intention to self-generate power to protect “the community’s power supply,” and that Valara “ha[d] already begun intensive environmental remediation efforts at the site to enhance the overall health of the building and the surrounding land” to address any environmental concerns. *Id.* Local news outlets reported on

Valara's press release and provided additional color explaining the differences between a traditional data center and a high-performance computing center. Johnson Exs. 9-10.

Valara's transparent and collaborative approach continued throughout the permitting and pre-construction phases of the Project. In March 2025, Valara reached out to a Senior Planner in the Spartanburg County Planning & Development Department (the "Planning Department"), disclosing the size of the property, its intention to convert the site from a manufacturing facility to a high-performance computing center, and its need to demolish and remediate the current infrastructure during Phase I of the Project. Amador Aff. ¶ 5. Valara specifically inquired whether the Planning Department would require a Minor or Major Land Development Permit for work to the current infrastructure. *Id.* The County's Senior Planner responded that the Project, as a change of use, required a Minor Land Development Permit. Amador Aff. ¶ 6. Valara subsequently attended a Collaborative Development Review Meeting with Planning Department employees to discuss the preliminary site plan and confirm the permitting requirements. Amador Aff. ¶ 7. Consistent with historical practice—in which the Planning Department has treated large-scale developments that do not fall within the ULMO's specified "Major" uses as Minor Land Developments regardless of the projects' size, Oakman Aff. ¶¶ 9-11—the Planning Department once again confirmed that a Minor Land Development application was appropriate. Amador Aff. ¶ 7.

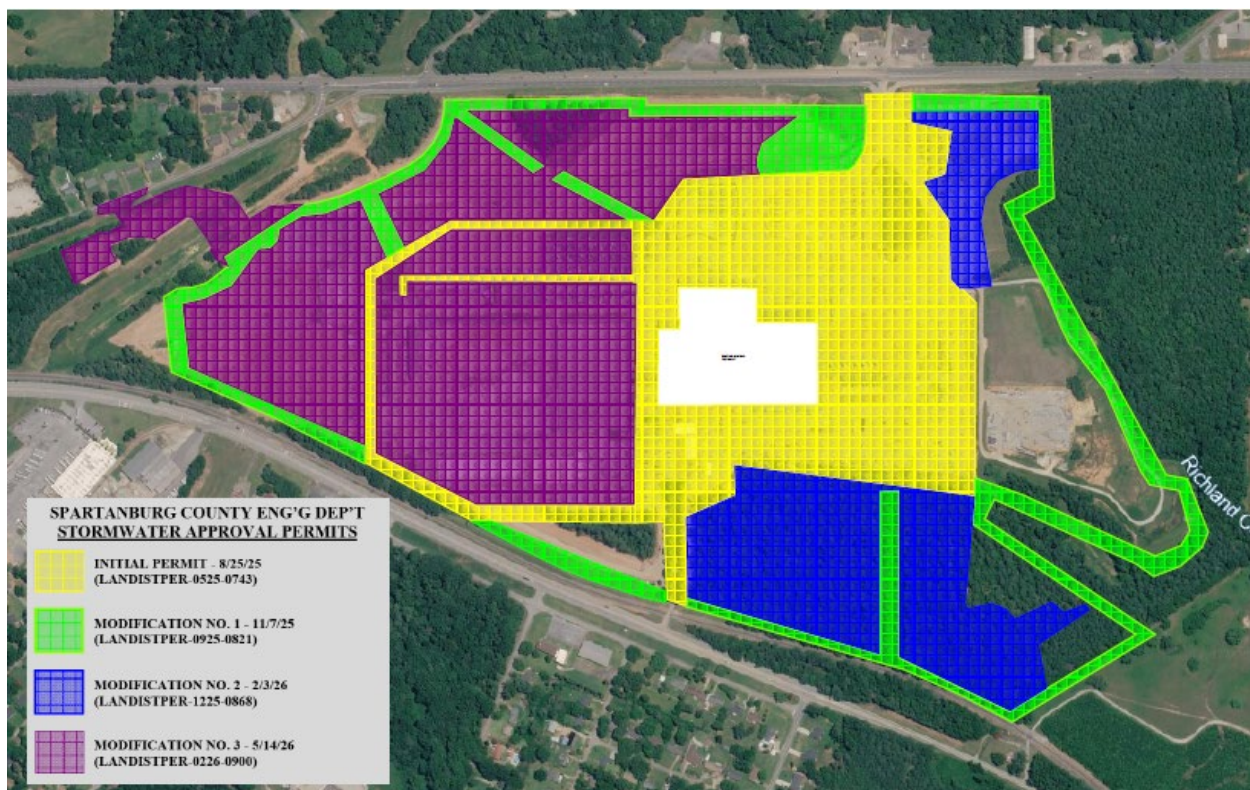
Accordingly, on July 11, 2025, Valara submitted a Minor Land Development application for Phase I construction ("Phase I Application"), including the information required by the ULMO. Amador Aff. ¶¶ 9-10. On July 30, 2025, the Planning Department provided Valara with its comments to the overall site plan and site improvement plan, which Valara promptly addressed and then submitted a revised Phase I Application on August 1, 2025. *Id.* ¶ 10. The Planning

Department conditionally approved Valara’s resubmitted Phase I Application on August 4, 2025, and after final approval, the County issued Valara a land development permit on August 27, 2025 (“Phase I Land Development Permit”). *Id.* ¶ 11. Phase I construction thus commenced.

Valara followed the same collaborative process once it finalized plan designs for Phase II of the Project. On February 27, 2026, Valara held a call with Planning Department staff, who confirmed that a Minor Land Development application would be needed for the Phase II construction of a driveway and metering station. *See id.* ¶ 13. Accordingly, on April 6, Valara submitted its second Minor Land Development application (“Phase II Application”), which once again included the information the ULMO requires. *Id.* ¶ 14. On April 16, Planning Department staff met with Valara to discuss comments to the Phase II Application, which Valara addressed through an amended application on April 27, 2026. *Id.* And on May 13, 2026, the Planning Department issued conditional approval of the Phase II Application. *Id.* ¶ 15. The County has not yet issued a “Phase II Land Development Permit” (collectively with the Phase I Land Development Permit, “Land Development Permits”). Oakman Aff. ¶ 11.

The Land Development Permits are not the only permits that authorize work on the Project site. The County also issues land disturbance permits that authorize clearing, removal of vegetation, stripping, and grading; building permits that authorize construction of new structures or alteration of existing ones; and demolition approvals that authorize tearing down existing structures, and Valara has applied for and received each of these permits as required. Amador Aff. ¶¶ 18-25; Brown Aff. ¶¶ 13-19. Most notably, the County has issued and approved several amendments to Valara’s land disturbance permits (collectively, the “Land Disturbance Permits”), with the most recent amendment approved on May 14, 2026, following the issuance of conditional approval of the Phase II Application. Amador Aff. ¶¶ 20-23. That amendment authorized tree-

clearing and mass grading activities on an additional 67.7 acres of the Property. *Id.* ¶ 23. These permits—most of which Plaintiff fails to acknowledge in its Motion—are shown in the following figure, using the near-identical drone footage included in Plaintiff’s Motion, demonstrating that all work on the HPCC is being carried out pursuant to validly issued permits:



Amador Ex. 6.

C. Plaintiff and Its Members Sit on Their Hands While Construction Proceeds.

Construction on the Project commenced soon after the Phase I Land Development Permit was issued on August 27, 2025. Since then, over 1,000 craftsmen have been engaged for the Project, materials and equipment have been ordered and transported to the site, and approximately a billion dollars has been spent. Johnson Aff. ¶¶ 12, 39, 42. None of this has been done in secret: land has been graded, trees have been cleared, and buildings have been partially constructed, all visible to the public. *Id.* ¶¶ 9, 12, 37, 40-41. And none of the construction should come as a

surprise to anyone—including Plaintiff or its members³—given the substantial public disclosures that were made even before construction began. This includes (i) three County Council meetings where the Project was discussed, including disclosure of the FILOT, which made clear that the Project was a more than \$2.8 billion high-performance computing facility at 4000 South Pine Street, Johnson Exs. 3, 4, 5; (ii) half a dozen press reports issued before construction commenced, including ones that referenced Valara’s multi-phase development approach, Johnson Exs. 2, 6, 7, 8, 9, 10; and (iii) *multiple public* permit applications filed by Valara in which it made clear it was redeveloping “the former Kohler Industrial Plant, . . . comprised of approximately 905,000 square feet of business space,” Amador Ex. 1.

Given these facts, neither Plaintiff—an organization formed early this year by several Spartanburg residents for the sole purpose of “slow[ing] down construction” and “eventually stop[ping]” the HPCC, Felk Aff. ¶ 12—nor its members—many of whom allege that they have been watching carefully as construction has proceeded, *see infra*, pp. 17-18—can credibly claim they were not on notice or did not understand the scope of the Project. Indeed, Valara has sent representatives to the homes of Plaintiff’s members (and their neighbors) to answer questions about the Project, Felk Aff. ¶ 20; answered written questions submitted by Plaintiff’s members, as well as by local community leaders, Johnson Aff. ¶ 21; and is currently holding a series of town halls where community members can receive updates about the Project, *id.* ¶ 19.

Nevertheless, Plaintiff and its members waited nearly a year after the County issued the Phase I Land Development Permit before they commenced this action on July 6, 2026, challenging

³ Plaintiff’s members are Dr. Alva Pack, Mark Felk, Ricky Heath, Kip Darwin, Karen Eilders, Keith Wood, and Jenny Stevens, each of whom allegedly reside near the HPCC. A copy of the affidavits submitted by Plaintiff’s members are attached as exhibits to Plaintiff’s Motion for Preliminary Injunction.

the County's processing of the Phase II Application. On August 12, 2026, Plaintiff filed an Amended Complaint with two new counts that challenged the Phase I Land Development Permit and Valara's construction activities. *See* Am. Compl. ¶¶ 92-107. The Amended Complaint alleges that Valara violated the ULMO by filing two Minor Land Development applications rather than a single Major Land Development application, and by exceeding the scope of the Phase I Land Development Permit. *Id.* Plaintiff seeks declarations that: (i) any proposed development on the HPCC must be submitted as a Major Land Development application under the ULMO; (ii) the County improperly issued the Phase I Land Development Permit in violation of the ULMO; (iii) the County must cease processing the Phase II Application; and (iv) Valara's ongoing construction activities violate the ULMO. *Id.*, Prayer for Relief ¶¶ 1-3, 5-6. The Amended Complaint also seeks permanent injunctions prohibiting Valara from continuing with any construction on the Project, as well as an injunction prohibiting the County from processing any future Minor Land Development applications for the HPCC. *Id.*, Prayer for Relief ¶¶ 4, 7.

Even though it sought *permanent* injunctive relief, Plaintiff did not move for *preliminary* injunctive relief when it filed its Complaint or even its Amended Complaint. Instead, it waited another six weeks, and on August 19, 2026—just shy of a year after Valara received its Phase I Land Development Permit and commenced development of the HPCC, and after Valara expended approximately a billion dollars on labor, material and equipment—Plaintiff filed the instant Motion seeking to enjoin any further construction on the Project.

LEGAL STANDARD

South Carolina courts have warned that a preliminary injunction is “a drastic [remedy] and ought to be applied with caution.” *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). “To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law.” *Richland*

Cnty. v. S.C. Dep't of Revenue, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). “The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction.” *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689.

Plaintiff’s burden is heavy under the facts of this case. “[T]he inherent purpose behind the equitable remedy of an injunction” is “to preserve the status quo.” *Cnty. of Richland v. Simpkins*, 348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002). Where, as here, the movant seeks to halt an entire project and alter “the parties’ positions pending the final hearing on the underlying merits of the actions” based on allegations that an ordinance was violated, it must “prove a violation [of the ordinance] to entitle them to an injunction.” *Id.* at 669-71 (affirming denial of a preliminary injunction under S.C. Code Ann. § 6-29-950(A) because “[c]losing [the non-movant’s business] without first adjudicating the merits of the [alleged violations] would not preserve” the status quo); *see also FOC Lawshe Ltd. P’ship v. Int’l Paper Co.*, 352 S.C. 408, 417, 574 S.E.2d 228, 233 (Ct. App. 2002) (holding that a factfinder must decide the merits “before the court can justify imposing an injunction prohibiting” the status quo). Further, because Plaintiff, in Count I and II, seeks to enjoin the County “in the performance of actions or duties provided by statute, there must be allegations or a showing that the [County] . . . has exercised its power in an arbitrary, oppressive or capricious manner.” *S.C. Dep’t of Rev.*, 422 S.C. at 310, 811 S.E.2d at 767.⁴

⁴ For the avoidance of doubt, Plaintiff’s invocation of a statute that authorizes injunctive relief does not lessen its burden. Although Section 6-29-950(A) permits neighboring property owners to seek injunctive relief to remedy ordinance violations, it does not displace the equitable prerequisites to injunctive relief, and South Carolina courts have not treated it as doing so. In *Simpkins*, for example, the Court of Appeals affirmed the denial of a preliminary injunction sought under Section 6-29-950(A) precisely because the movant had not yet proven the alleged zoning violation and because the requested relief would not preserve the status quo. 348 S.C. at 669-71. A statutory cause of action supplies the vehicle for relief; it does not relieve the movant of proving irreparable harm, likelihood of success, and the absence of an adequate remedy at law. Plaintiff must satisfy each element, and, as discussed below, it has satisfied none.

ARGUMENT

For the reasons set forth below, Plaintiff has not carried its heavy burden, failing to satisfy *any* of the elements it must prove for an injunction to halt construction of the HPCC, and its Motion should be denied.

I. PLAINTIFF WILL NOT BE IRREPARABLY HARMED WITHOUT AN INJUNCTION.

Before an injunction can issue, Plaintiff must show that “it would suffer irreparable harm if the injunction is not granted.” *Strategic Res. Co.*, 367 S.C. at 544, 627 S.E.2d at 689. Plaintiff’s purported harms must be “*likely*, not merely possible,” and it must demonstrate “that the requested injunction would meaningfully prevent the harm.” *Hamadneh v. Grand Strand Reg’l Med. Ctr., LLC*, No. 4:26-cv-0335-JD-TER, 2026 WL 395980, at *3 (D.S.C. Feb. 12, 2026) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). Speculative allegations of future harm do not suffice—Plaintiff must show an “*immediate*, irreparable harm.” *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011).

Plaintiff has failed to demonstrate irreparable harm here for at least two reasons. *First*, Plaintiff’s lack of urgency belies its claim of immediate, irreparable harm absent an injunction: it waited sixteen months after the Project was announced and nearly a year after construction commenced to seek injunctive relief. Because Plaintiff delayed seeking relief despite ample opportunity to act, an injunction would not even remedy many of its purported harms, whereas the harm Valara and the Spartanburg community would suffer from an injunction has increased substantially. Equity should not reward Plaintiff’s delay and lack of diligence. *Second*, even if Plaintiff had not improperly delayed seeking relief, its alleged harms would not be sufficient to justify an injunction because they are speculative and/or are merely fears and concerns of future injury, which do not constitute immediate irreparable harm.

A. Plaintiff Delayed Seeking Relief Despite Ample Opportunity to Act.

It is axiomatic that “equity aids the vigilant and diligent,” not those who sit on their rights. *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989). For that reason, a “period of delay” can “indicate an absence of the kind of irreparable harm required to support a preliminary injunction.” *Quince Orchard Valley Citizens Ass’n, Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989). *Hodel* is instructive. There, two local citizens’ organizations sought declaratory and injunctive relief to halt construction of a new four-lane road, alleging that county officials and federal agencies “failed to comply with environmental laws.” *Id.* at 75. The plaintiffs in *Hodel* raised similar allegations of irreparable harm that Plaintiff does here—a loss of environmental protections and procedural harms that would “make any future abandonment of” the project “prohibitively expensive.” *Compare id.* at 75, 79, with Mot. 12-14. But just as Plaintiff did here, the plaintiffs in *Hodel* also waited too long to seek injunctive relief—“a full nine months” after environmental approval was granted and six months after a wetlands construction permit was issued. *Hodel*, 872 F.2d at 79-80. Based on those facts, the Fourth Circuit affirmed the trial court’s denial of a preliminary injunction on the grounds that plaintiffs could not establish irreparable harm because “a long delay in seeking relief indicates that speedy action is not required.” *Id.* at 80; *see also NAACP v. City of Myrtle Beach*, No. 4:18-CV-00554, 2018 WL 2332018, at *7 (D.S.C. May 23, 2018) (denying preliminary injunction and noting that “[Plaintiff’s] delay cuts against the Plaintiff’s claim of irreparable harm”).

The opinion in *Hodel* could be written about this case—if anything, the delay here is *more* egregious than in *Hodel*. More than a year ago, the Spartanburg County Council held several public meetings to discuss the Project, Valara issued a press release detailing the Project; and the local press reported extensively on the HPCC. *See supra*, pp. 8-9; Johnson Aff. ¶¶ 16-17. In July 2025, the South Carolina Department of Environmental Services (“DES”) posted public

notice of the Project and held a two-month comment period, Am. Compl. ¶ 59, Am. Compl. Ex. 3, during which public comments raised the same alleged harm that Plaintiff now claims. Johnson Aff. Ex. 11. Indeed, several of Plaintiff's members concede they had *actual knowledge* about the Project either before or shortly after the Phase I Land Development Permit was issued. *See, e.g.*, Pack Aff. ¶ 5 ("I first learned about Valara's project sometime in 2025"); Felk Aff. ¶¶ 8, 10 (acknowledging awareness of permit applications and issuances); Heath Aff. ¶ 4 ("I first learned about Valara Holdings LLC's data center . . . last year, in 2025"). Plaintiff plainly had the information it needed to seek relief for its purported immediate, irreparable injuries in 2025; at a very minimum, Plaintiff and its members were on inquiry notice about the scope of the Project more than a year ago and should have investigated further. Yet their affidavits establish they did practically nothing until Plaintiff commenced this case nearly a year after construction began and finally sought injunctive relief six weeks after that. Simply put, Plaintiff waited too long to now credibly claim an injunction is necessary to stop "*immediate, irreparable harm.*" *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

Likely recognizing that its unreasonable delay poses a dispositive bar to its request for equitable relief, Plaintiff attempts to justify its inaction by claiming that "Valara and the County have misled the public about the true scope of the project." Mot. 1. This is nonsense. At every turn, Valara has been transparent about the nature of the HPCC. For example, Valara's initial press release detailed the Project's multi-billion-dollar price tag, Johnson Aff. ¶ 17; statements by South Carolina officials called the HPCC a "game changer" and a "milestone moment" for the Spartanburg Community, Johnson Exs. 2, 7; Valara's Phase I Application detailed that it was redeveloping "905,000 square feet of business space," Amador Ex. 1; and Valara's Phase II

Application, filed five months ago, detailed that Valara was constructing four new buildings comprising 500,000 square feet of space and a power yard, Amador Ex. 3.

And if all that were not enough, Plaintiff's members plainly could see for themselves the scope of construction at the Property. Dr. Pack claims that he "first realized something was off in March 2026"—*five months* before Plaintiff sought injunctive relief—"when the massive scale of construction started to become apparent to neighbors like me." Pack Aff. ¶ 7. Mr. Heath says he got an "inkling" that there was more to the Project "in March or April of this year." Heath Aff. ¶ 6. Mr. Felk claims that he "realized that everything I originally understood about the project was a bold-faced lie"—which, to be clear, it was not—"[e]arlier this year." Felk Aff. ¶ 9. And Mr. Wood notes that Valara's proposed investment was "substantial from the beginning," and even if he were correct (he is not) that "most residents were not made aware of the massive nature of the project until the spring of 2026," that was still four to five months before Plaintiff sought an injunction. Wood Aff. ¶¶ 5-6. In sum, even accepting Plaintiff's own version of events, its members understood the Project's scale months before seeking injunctive relief and still did nothing.

In addition to the fact that South Carolina courts will simply not award equitable relief to those who fail to diligently pursue their rights, *Collins*, 299 S.C. at 468, 385 S.E.2d at 837, Plaintiff's improper delay has had two serious *practical* consequences that doom Plaintiff's request for an injunction.

First, Plaintiff has waited so long to seek relief that an injunction would not remedy many of their purported harms. For example, Plaintiff claims its members have suffered an irreparable injury because "Valara has . . . begun clear-cutting large, forested areas," which has "worsened the noise pollution, and harmed local wildlife that members so enjoy." Mot. 12. But, while Plaintiff

and its members sat on their hands, the trees have already been cut down, and an injunction cannot bring them back. Johnson Aff. ¶ 37. Likewise, Plaintiff alleges harm associated with the “‘incredibly’ bright light at night.” Mot. 12. But due to Plaintiff’s delay, Valara has invested approximately a billion dollars in an open construction site and will need to continue using lights to protect its property and equipment from thieves and vandals, regardless of whether construction continues to proceed. Johnson Aff. ¶¶ 39, 44. And the alleged dust of which Plaintiff complains can only be remedied once the open construction site is completed and foliage planted on ground that is currently open. *Id.* ¶¶ 29, 31, 38. If anything, an injunction will only *prolong* Plaintiff’s alleged irreparable injuries by delaying Valara’s efforts to plant new trees, install noise and sight buffers, and cover the currently undeveloped areas. *Id.*; see *Coffy v. Graziana*, 2023 WL 4998602, at *11 (D.S.C. Apr. 25, 2023) (“[W]hen requested injunctive relief ‘will not prevent irreparable harm to the plaintiffs ... a preliminary injunction is not warranted.’”).

Second, while Plaintiff’s delay has rendered injunctive relief ineffectual at remedying their purported injury, it has vastly *increased* the irreparable harm that *Valara* would suffer if an injunction is granted. Had Plaintiff moved for relief promptly upon learning of the issuance of the Phase I Land Development Permit it now challenges, it could have sought to preserve the pre-construction status quo while pursuing its administrative remedies before work began. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) (“The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.”). Indeed, an appeal to the Board of Zoning Appeals (“BZA”) would have *automatically* stayed issuance of the Phase I Land Development Permit. See ULMO § 1.04. But now, the status quo for nearly a year has been Valara carrying out lawful construction activities under validly issued permits that no one ever challenged, with Valara having already

spent approximately \$1 billion on materials, equipment, and labor, including the two-million hours of construction labor that Valara has invested since March of 2026 when Plaintiff alleges it members first became aware of the Project's scope. Johnson Aff. ¶¶ 11, 40, 42. Granting an injunction will materially disrupt that status quo and cause grave injury to Valara. *See infra*, pp. 36-39. Plaintiff's own cases demonstrate that an injunction is not warranted in those circumstances. *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987) (reversing injunction where the company "had committed approximately \$70 million to [oil] exploration . . . which they would have lost without the chance of recovery had exploration been enjoined").

Nor will Valara be the only party harmed by a belated injunction caused by Plaintiff's inexcusable delay. An injunction will likely put more than 1,500 construction workers out of work, with a commensurate reduction in the economic benefit to the local economy that those workers' wages provided. *See* Johnson Aff. ¶¶ 12, 42, 45, 48. It will also jeopardize—and, at a minimum, seriously delay—the more than 150 full-time permanent jobs that Valara expects to deploy at the HPCC,⁵ and the hundreds of millions of dollars in tax revenue that the County is set to receive after the Project is completed, *see* Johnson Aff. ¶ 13. This Court should not reward the Plaintiff's inexcusable delay by disrupting the status quo and causing significant injury to both Valara and the citizens of Spartanburg County.

B. Plaintiff Has Not Shown an Irreparable Injury.

Even if Plaintiff's delay did not itself warrant denial of its Motion (it does), an injunction is still not appropriate here because none of Plaintiff's purported harms—loss of use and

⁵ Plaintiff puts this figure at "less than 30" (Mot. 4), but that is because Plaintiff is relying on the *minimum* number of jobs that Valara must create as a requirement of the FILOT agreement. Johnson Aff. ¶ 13 & n.1.

enjoyment of their properties, future harms associated with the HPCC's operation, and loss of a public forum—constitutes an immediate, irreparable injury that can be remedied by an injunction.

1. Plaintiff's Assertions of Loss of Use and Enjoyment Do Not Constitute an Immediate, Irreparable Harm.

Citing inapposite authority from inapplicable contexts,⁶ Plaintiff argues that it can show irreparable harm because “[t]he ongoing construction of the [HPCC] . . . has greatly disturbed members’ use and enjoyment of their properties.” Mot. 11-12. In addition to the facts that one of Plaintiff’s members recently publicly conceded that there is currently no “noise problem,” Johnson Aff. ¶ 25, and that, as noted above, an injunction would not remedy these alleged harms but would rather only prolong them, there are two problems with Plaintiff’s reliance on this purported harm.

First, in the zoning context, the South Carolina Supreme Court has held that the very alleged harms Plaintiff asserts—increased traffic, noise, airborne particulate matter, pollution, visual blight, and harm to the local environment—do not give rise to an injury-in-fact, let alone an irreparable one. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 76-

⁶ For example, Plaintiff relies on *AJG Holdings LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009), to support the proposition that increased “noise and traffic in the neighborhood” interferes with its members’ use and enjoyment and constitutes an irreparable injury. Mot. 11. But *AJG Holdings* involved a restrictive covenant, which “will be enforced regardless of the amount of damage that will result from the breach,” so “the mere breach alone is grounds for injunctive relief.” *Id.* at 51. That principle simply does not apply where, as here, a restrictive covenant is not involved. Likewise, Plaintiff selectively quotes *Amoco*, 480 U.S. at 545, to assert that environmental injuries are irreparable. Mot. 11. But in the very next sentence of its opinion, the Supreme Court clarified that the alleged environmental injury must be “sufficiently likely.” *Amoco*, 480 U.S. at 545. It also explicitly rejected the lower court’s “presumption” that plaintiff was irreparably injured by “an agency[’s] fail[ure] to evaluate thoroughly the environmental impact of [the] proposed action,” found that plaintiff’s alleged injury “was not at all probable,” and held that an injunction was not warranted since the defendants already “committed approximately \$70 million to [oil] exploration . . . which they would have lost without chance of recovery had exploration been enjoined.” *Id.* at 544-45.

78, 753 S.E.2d 846, 851-52 (2014) (increased traffic and noise pollution are not a “particularized harm”); *see also* MTD Mem. 28-29.

Second, Plaintiff cannot establish its purported harms through the evidence it has submitted. For example, it has not established that construction on the Project is the cause of the alleged increases in dust, wildlife deaths, or health effects, particularly given the other industrial activity in the surrounding areas, including several manufacturing plants, chemical facilities, and oil and gas companies all within a three mile radius. Johnson Aff. ¶ 10; *id.* Ex. 1. Instead, Plaintiff’s affiants offer only their personal lay speculation that the Project is the cause of the harms they allege—*i.e.*, both that there has actually been an appreciable increase in dust, noise, and traffic, *and* that any such increase is attributable to the Project. They offer no soil analysis, noise studies, traffic studies, air quality reports, property valuations, epidemiological reports or even doctor’s letters; nothing by which this Court could conclude that the Project has *actually* caused any harms to Plaintiff or its members at all. And given that Plaintiff’s members chose to live in an industrial neighborhood—including, in some cases, directly across the street from a then-active, 500,000-square-foot Kohler manufacturing facility with a history of asbestos, lead-based paint, and an on-site landfill, *see id.* ¶¶ 9-11—Plaintiff cannot possibly establish from the speculative lay testimony of its members that the Project caused or exacerbated any respiratory or other health issues. *Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 542-43, 860 S.E.2d 687, 692 (Ct. App. 2021) (“[B]elief that it is ‘reasonable’ to assume [defendant’s] actions have caused [plaintiff]” harm is insufficient to establish injury-in-fact).

2. *Plaintiff’s Speculative Allegations of Future Harm Once the HPCC Begins to Operate Cannot Constitute an Immediate, Irreparable Harm.*

Plaintiff also bases its claimed irreparable harm on purported harmful environmental effects and other nuisances from the HPCC once it is operating. Mot. 12-13. Plaintiff is wrong.

First, the HPCC will almost certainly not be fully operational until long after this litigation concludes. South Carolina law is clear that “[p]rospective concern” of future harm is not a cognizable injury, so the “fear[s]” and “concern[s]” of Plaintiff’s members cannot justify the issuance of a preliminary injunction.⁷ *Beaufort Realty Co. v. Beaufort Cnty.*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). *Second*, Plaintiff’s speculative allegations of future harm are simply unfounded. The HPCC will meet or exceed all applicable environmental regulations through its use of Selective Catalytic Reduction systems and Continuous Emissions Monitoring Systems. Johnson Aff. ¶ 36. Further, Valara plans to install dirt berms and plant trees to address concerns about noise and light pollution and is currently working with a third party to evaluate implementation of permanent sound barriers around the Property. Johnson Aff. ¶¶ 29, 31.

3. *Plaintiff Has Not Been Irreparably Harmed by the Alleged Loss of a Public Forum to Challenge the HPCC.*

Plaintiff’s final theory of irreparable harm—that it has been irreparably deprived of its “rights to comment on, obtain information about, and participate in the County’s review of major land developments before they are constructed,” Mot. 13—fails as a matter of both fact and law.

As a matter of *fact*, Plaintiff’s members have not been deprived of a public forum to comment on the HPCC and participate in the process—to the contrary, they have been airing their grievances for months in several public forums:

- Plaintiff filed a Petition for Declaratory Order and Petition for a Rule to Show Cause against Valara with the Public Service Commission on June 22, 2026, seeking an order

⁷ For example, one of Plaintiff’s own affiants—Dr. Alva Pack—recently conceded at a special hearing held by the Public Safety Commission of the Spartanburg County Council that there is not a noise problem currently in the neighborhood, and that he is merely concerned about noise that might occur once the HPCC becomes operational in the future. Johnson Aff. ¶ 25. That public statement directly contradicts Dr. Pack’s sworn affidavit in which he stated: “The construction noise is another problem. The cranes and other heavy machinery building the data center make loud noises for early morning until late at night. I can hear these noises from my property and inside my home.” Pack Aff. ¶ 10.

to stop construction (the “PSC Action”). Many of the Plaintiff’s affiants submitted nearly identical affidavits in the PSC Action.⁸

- Plaintiff and its members participated in a recent DES public meeting, held June 25, 2026, regarding the amendment to Valara’s air permit. Over 100 pages of the hearing transcript are dedicated to public comment. Johnson Ex. 11.
- Plaintiff and its members also participated in recent County Council meetings, held August 17, 2026, and September 9, 2026, concerning a potential data center moratorium.⁹
- Plaintiff and its members have been airing their grievances about the HPCC on Facebook for nearly a year.¹⁰

Plaintiff’s assertion that it has suffered from a lack of non-misleading information is similarly meritless. Valara, County officials, and the independent press have provided the public with extensive information about the HPCC. *See supra*, pp. 8-9. Contemporaneous news reports undermine any assertion that Plaintiff’s members were misled. For example, Plaintiff says that a comment by a local official—not Valara—that the HPCC was “not a data center” was misleading, Mot. 4, but an April 22, 2025, news article explained the difference between high-performance computing centers and traditional data centers in depth. Johnson Ex. 10. And while Plaintiff also claims that a local official falsely said that the HPCC would “not use more power than the . . . site’s existing facility,” Mot. 4, that statement referred to the HPCC’s public energy consumption and was true: the HPCC will generate its own power to minimize strain on the public grid, Johnson Aff. ¶ 17.

⁸ *Concerned Citizens of Spartanburg County v. Valara Holdings LLC*, Docket No. 2026-158-E, Dkt. ID 339099, available at <https://dms.psc.sc.gov/Web/Dockets/Detail/119739>.

⁹ Ashley Listrom, *Spartanburg County delays vote on data center moratorium*, FOX CAROLINA (Aug 17, 2026) <https://www.foxcarolina.com/2026/08/18/spartanburg-county-delays-vote-data-center-moratorium/> [<https://perma.cc/7LTE-V73Y>].

¹⁰ No Data Centers in Spartanburg, FACEBOOK <https://www.facebook.com/groups/1354334266189772/>.

If anything, Plaintiff and its members have already received extensive information through public filings, meetings, media coverage, and Valara's broad outreach, and the Major Land Development process and would not necessarily have required materially different substantive submissions, since that process would not actually have required Valara to make further disclosures or provide any more information: the submittal checklists are the same, as is the "Information Required to Support Application" in Table 2 of the ULMO. Amador Aff. ¶ 17.

As a matter of *law*, Plaintiff's theory of irreparable harm simply is not supported by its out-of-state authority. Plaintiff cites *NRDC v. Houston*, 146 F.3d 1118, 1129 (9th Cir. 1998), for the proposition that "[t]he failure to respect the process mandated by law cannot be corrected with post-hoc assessments of a done deal." Mot. 14. But *NRDC* had nothing to do with irreparable harm; it was a mootness issue. *NRDC*, 146 F.3d at 1128-29. Plaintiff's process-related claims will not be mooted absent injunctive relief: not only can Plaintiff continue to pursue this lawsuit (to the extent it is not dismissed on the merits), but Plaintiff still has an avenue to appeal any decision from the County on Valara's Phase II Application. Plaintiff also cites *Sierra Club v. Marsh*, 872 F.2d 497 (1st Cir. 1989), but that case—which dealt with a federal statutory regime, the National Environmental Policy Act, that is simply not relevant here—actually supports *Valara*, not *Plaintiff*. While Plaintiff asserts that the First Circuit found a "preliminary injunction [was] warranted," Mot. 14, in reality the court merely remanded the case for further proceedings. *Sierra Club*, 872 F.2d at 505. On remand, the trial court noted that "the risk of bureaucratic commitment," *i.e.*, that regulators will not be willing to change course in the future, "*does not necessarily result in irreparable harm.*" *Sierra Club v. Marsh*, 714 F. Supp. 539, 590 (D. Me. 1989), *aff'd*, 976 F.2d 763 (1st Cir. 1992). And while the trial court ultimately held that there *was* irreparable harm in that case, it did so specifically because the proceeding involved "an attempt to enjoin the

resumption of construction on a project in circumstances *where the largest portion of the construction costs has yet to be committed.*” *Id.* Here, due to Plaintiff’s unreasonable delay, Valara has *already* committed a significant portion of the anticipated construction costs for the Project—*approximately a billion dollars.* Johnson Aff. ¶ 39. Thus, even under Plaintiff’s own authority, Plaintiff cannot establish irreparable harm through a purported loss of “major” development review. *See also Hodel*, 872 F.2d at 80 (no irreparable injury from continued construction even though “any further commitment of resources . . . could make any future abandonment . . . prohibitively expensive”).

II. PLAINTIFF CANNOT SUCCEED ON THE MERITS.

“A trial court may consider a case’s merits to the extent necessary to determine whether a temporary injunction should issue.” *Greenville Bistro, LLC v. Greenville Cnty.*, 435 S.C. 146, 162, 866 S.E.2d 562, 570 (2021). Although Plaintiff claims that it must make only “a prima facie showing” that it is entitled to injunctive relief, Mot. 14, that is not the standard here. Because Plaintiff seeks to alter the status quo and shut down Valara’s business, Plaintiff must satisfy the higher standard of “prov[ing] a violation [of the ordinance] to entitle them to an injunction.” *Simpkins*, 348 S.C. at 670, 560 S.E.2d at 905. Regardless of the standard that applies, however, Plaintiff cannot meet it, as it has failed to make even a prima facie showing that it will succeed on any of the claims in its Amended Complaint.

A. Plaintiff Cannot Succeed on the Merits Because It Has Not Exhausted Administrative Remedies.

South Carolina law is clear that “the exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts.” *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964). Relying on that principle, South Carolina courts have refused to hear initial challenges to local zoning administrators’ decisions for over sixty years.

See, e.g., id.; Moore v. Sumter Cnty. Council, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976); *Charleston Dev. Co.*, 433 S.C. at 544-46, 860 S.E.2d at 693-94. Instead, neighboring property owners who wish to challenge a zoning administrator’s decision must first avail themselves of the “administrative mechanism[s] designed to enforce [local] zoning ordinance[s]” before seeking relief in the courts. S.C. Code Ann. §§ 6-29-780(A), 6-29-800(A)(1). Plaintiff’s failure to do so here dooms its claims.

In Counts I and II, Plaintiff challenges the Phase I Land Development Permit and the Phase II Application, claiming that the HPCC is “clearly a ‘major’ land development unlawfully being processed as a ‘minor’ land development.” Mot. 20, 25. But the ULMO is clear that the classification of permit applications rests with the SCA in the first instance. *See, e.g., ULMO* § 1.01 (“It shall be the responsibility of the [SCA] . . . to administer the requirements for processing applications and issuing permits in accord with the provisions of this Ordinance”). If neighboring property owners disagree with any “order, requirement, decision, or determination” made by the SCA, such as a permit application classification decision, the Planning Act and the ULMO provide them with the exclusive administrative remedy—appeal the challenged decision to the BZA “within 10 days of the date of the action.”¹¹ ULMO § 1.04; *see also* S.C. Code Ann. §§ 6-29-

¹¹ Plaintiff implies that its members did not need to comply with the ULMO’s purportedly “vague appeals process” because they “did not receive timely notice from the County of the issuance of the” Phase I Permit. Mot. 32. Plaintiff is wrong. The ULMO could not be clearer: Plaintiff was required to appeal “within 10 days of *the date of the action*,” not within ten days of being on notice of the permit. ULMO § 1.04 (emphasis added). Further, even assuming the ULMO’s appeal process is subject to the discovery rule, Plaintiff still failed to appeal within the requisite time. “Under the discovery rule, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or the facts giving rise thereto.” *Abba Equip., Inc. v. Thomason*, 335 S.C. 477, 485, 517 S.E.2d 235, 239 (Ct. App. 1999). Plaintiff’s own affiants concede that they could or should have known that an appeal might exist in their favor in March 2026 at the latest. *See supra*, p. 8. But they still waited months after that before bringing suit in this Court.

780(A), 6-29-800(A)(1) & (B). Only after that administrative remedy has been exhausted can neighboring property owners present their grievances to the circuit court. *Id.* § 6-29-820(A).

Here, none of Plaintiff’s members bothered to pursue—much less exhaust—their administrative remedies. With respect to the Phase I Land Development Permit, issued on August 27, 2025, Plaintiff waived any challenge because it failed to appeal the SCA’s decision to issue the permit within ten days. *See, e.g., Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 585-86 (1988) (failure to appeal zoning decision in the required time divests the appeal board of jurisdiction to hear the appeal), *overruled on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *Lominick*, 244 S.C. at 44 (neighbor who failed to appeal a building permit issuance in the required time “cannot . . . attack the validity of” the permit’s issuance); *see also Palumbo v. Waste Techs. Indus.*, 989 F.2d 156, 161 (4th Cir. 1993) (refusing to allow plaintiff to “circumvent the limitations period” by bringing a plenary action in the district court outside of the statutory appeal window). And with respect to the Phase II Application, Plaintiff’s challenge is premature: as Plaintiff concedes, the Phase II Application remains under review. *See Am. Compl.* ¶ 104. Thus, there is no final administrative decision to appeal, and Plaintiff must first exhaust its administrative remedies with respect to the Phase II Application before seeking redress in this Court. *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310.

For similar reasons, Plaintiff cannot succeed on Count III, which argues that Valara has violated the ULMO by “drastically exceeding the permitted boundary.” Mot. 27. But the ULMO expressly permits Plaintiff to file a complaint alleging an ordinance violation. ULMO § 1.17. If a complaint is submitted, the SCA “shall record and investigate such complaint, and take such action as provided by this Ordinance,” including “issu[ing] a stop work order” or “withholding permits”—the very remedies that Plaintiff asks this Court to order. *Id.* §§ 1.17-1.18. If the SCA

determines that no violation has occurred, then Plaintiff can appeal that determination to the BZA, *id.* § 5.02-2(1), and then to this Court. S.C. Code Ann. § 6-29-820(A). Alternatively, Plaintiff could submit a complaint under the Storm Water Management Ordinance and Regulations. *See Brown Aff.* ¶¶ 11-12, 21. Because Plaintiff has done none of these things, Plaintiff has no likelihood of success on the merits because South Carolina law prohibits it from “circumvent[ing] the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under” Section 6-29-950. *Charleston Dev. Co.*, 433 S.C. at 544, 860 S.E.2d at 693.

B. Plaintiff Cannot Succeed on Counts I and II Because Valara’s Minor Land Development Applications Did Not Violate the ULMO.

Even if Plaintiff had properly exhausted its administrative remedies and had ripe claims, those claims would fail on the merits. In South Carolina, “[t]he cardinal rule of statutory construction is that courts will ascertain and effectuate the intent of the lawmaking body,” and “[i]n ascertaining the intent of the lawmaking body, the ordinance must be read as a whole; sections which are part of the same general statutory law must be construed together and each given effect if it can be done by any reasonable construction.” *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 504, 443 S.E.2d 401, 404 (Ct. App. 1994). Where, as here, the ordinance’s “language is plain and unambiguous and conveys a clear and definite meaning, . . . the court has no right to look for or impose another meaning.” *Boehm v. Town of Sullivan’s Island Bd. of Zoning Appeals*, 423 S.C. 169, 185, 813 S.E.2d 874, 882 (Ct. App. 2018).

The plain language of Section 1.02(1) and Exhibit A of the ULMO, read as a whole, conveys a clear and definite meaning for the defined term “Major Land Development.” Section 1.02(1) provides that the defined term Major Land Development “includes but is not limited” to a series of property uses and “similar developments.” ULMO § 1.02(1). Exhibit A

fills the gaps left by the phrases “includes but is not limited to” and “similar developments,” by providing an exhaustive list of fourteen additional property uses that were either not included in, or are “similar” to, the uses enumerated in Section 1.02(1), and stating that “[a]ll other [u]ses [n]ot [c]lassified as Major” are included in the “Minor Land Development” category. ULMO Ex. A.

Notwithstanding that the County has had the chance to add them during any of the 24 amendments it made to the ULMO since its adoption, computing and data centers are *not* included among the property uses that fall within Section 1.02(1) and Exhibit A’s “Major Land Development” category and are therefore unambiguously a “Minor Land Development.” *Id.*¹² Nor did the County ever amend the ULMO to require the SCA to perform a totality of the circumstances or Plaintiff’s preferred size-and-cost test when determining whether a given property is properly classified as a Major or a Minor Land Development.¹³ ULMO § 1.02(1), Ex. A. Indeed, neither Section 1.02(1) nor Exhibit A of the ULMO reference, much less require any consideration be given to, a property’s acreage, square footage, megawatts, investment amount, or overall scale. *Id.* Accordingly, to imply such an analysis into ULMO would be at odds with its

¹² Plaintiff also argues that Valara’s phased development approach violates the ULMO because the “entire project” must be “considered to determine whether it is a major or minor development.” Mot. 24. This argument is based on a false premise—the County *did* consider the entire project, as it was aware of the scope of the Project from the very beginning—and is again belied by the ordinance’s plain text, which, like the South Carolina Planning Act, explicitly contemplates phased projects. ULMO § 2.02-2 Tbl. 4 (referring to “phased” projects); S.C. Code Ann. § 6-29-1520(7) (referring to a “Phased development plan”). There is nothing “unlawful” about Valara’s phased development approach.

¹³ County Council knew how to amend the ULMO to impose a totality of the circumstances test if they so intended—it recently amended its noise ordinance to impose such a test. Noise Ordinance Amendment (O-26-14), available at <https://www.spartanburgcounty.gov/DocumentCenter/View/106895/Noise-Ordinance-Amendment-O-26-14> [<https://perma.cc/2K7L-TBFP>]. The fact that it did not amend the ULMO to contain a similar test must be given weight. *S. Bell Tel. & Tel. Co. v. Hamm*, 306 S.C. 70, 74, 409 S.E.2d 775, 777 (1991).

express language—and would also render meaningless the “[a]ll other [u]ses [n]ot [c]lassified as Major” clause in Exhibit A, in favor of roaming definition of “Major” guided solely by what *feels* major to the County or neighboring residents.

The SCA has interpreted the ULMO consistent with its plain language for years—approving several very large developments as Minor, Oakman Aff. ¶¶ 9-10—and this Court must give the SCA’s long-standing interpretation “some consideration and not overrule[] [it] without cogent reasons therefor,” *Purdy v. Moise*, 223 S.C. 298, 305, 75 S.E.2d 605, 608 (1953). Plaintiff has offered no such cogent reason. Instead, it simply asks the Court to add words to the ULMO that do not exist and cast aside the lawmakers’ definition of Major Land Development in favor of the purported “ordinary usage,” of the terms “major” and “minor,” which Plaintiff asserts requires the Court “to engage in a common-sense, comparative analysis.” Mot. 23. But “[t]he court has no right to add the words [the legislature] omitted,” *Consumer Advoc. for State v. S.C. Dep’t of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012), and ordinary usage cannot supplant the definition that local lawmakers provided: “the relevant question is not whether” the HPCC is a major land development under ordinary meaning but whether it is a Major Land Development “as the [ULMO] defines that phrase.” *Van Buren v. United States*, 593 U.S. 374, 388 (2021) (emphasis in original). It is not, and Plaintiff cannot supplant the ULMO’s defined term for its own preferred interpretation.¹⁴

Alternatively, even if the Court concludes that Section 1.02(1) should not be read in conjunction with Exhibit A (it should be), the HPCC still would not fall under Section 1.02(1)’s

¹⁴ Of course, even if Plaintiff’s interpretation of the ULMO’s use of the term “Major” were correct, the County’s application of the term would be entitled to great “deference,” as it is “[t]he local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.” *Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014).

definition of a Major Land Development. Under the doctrine of *ejusdem generis*, “[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace **only** objects similar in nature to those objects enumerated by the preceding specific words.” *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001); *see also Cooper River Bridge v. S.C. Tax Comm’n*, 182 S.C. 72, 72, 188 S.E. 508, 510 (1936) (noting the adoption of and applying the *ejusdem generis* doctrine under South Carolina law). The developments specifically enumerated in Section 1.02(1) are “commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.” ULMO § 1.02(1). The relevant common attribute among these specified developments is **form** not size, impact, or cost. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (*ejusdem generis* focuses on the “common attribute[s]” shared by the specific items). Each listed development is a planned, multi-component layout—a park, a subdivision, a center, or a multi-unit complex. The “similar developments” clause therefore reaches other developments of that nature and form. It does not reach a single-operator reuse of an existing industrial plant simply because the plant is large or the repurposing is expensive. Under any textual interpretation of the ULMO, the HPCC does not fall into the definition of Major Land Developments.

C. Plaintiff Cannot Succeed on Count III Because All Clearing, Grading, and Excavating Is Authorized by Valara’s Land Disturbance Permits.

In Claim III, Plaintiff claims that “Valara’s development activities exceed the scope of the [Phase I Land Development Permit] and violate the” ULMO. Mot. 29. Plaintiff provides satellite images of the HPCC site in support, allegedly showing “tree-cutting, grading, and excavating well outside the Phase I boundary.” *Id.* The fundamental flaw in Plaintiff’s allegations is that, under the ULMO, no land development permit is needed for these activities.

First, while the ULMO prohibits land from being “used” or converted to any other “use” without a prior development permit, ULMO § 1.13, the word “use” is a term of art in the zoning context, and it refers to “[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 407, 552 S.E.2d 42, 45 (Ct. App. 2001). Here, Valara’s clearing and grading activities do not “use” or “convert” the land to another “use” as to require a land development permit under the ULMO.

Second, the activities that Plaintiff challenges, including “tree cutting . . . [and] mass grading,” are properly permitted under Valara’s validly issued Land *Disturbance* Permits, Amador Aff. ¶¶ 19-23, 25; Brown Aff. ¶¶ 13-18—none of which Plaintiff actually challenges in this case. Because the Land Disturbance Permits allow Valara to engage in activities such as tree-cutting and grading, which do not constitute land “use” under the ULMO, Plaintiff’s allegations that Valara is engaging in such activities are insufficient to state a claim, and Count III fails as a matter of law.¹⁵

III. PLAINTIFF HAS AN ADEQUATE REMEDY AT LAW.

The party seeking an injunction bears the burden of “prov[ing] it has no adequate remedy at law.” *Milliken & Co. v. Morin*, 386 S.C. 1, 8, 685 S.E.2d 828, 832 (Ct. App. 2009). A remedy

¹⁵ For the reasons set forth in Valara’s pending motion to dismiss, Plaintiff also lacks standing to pursue Counts II and III of its Amended Complaint because its members lack standing under the Planning Act. MTD Mem. at 28-32; *see, e.g., Carnival*, 407 S.C. at 75-77, 753 S.E.2d at 850-51 (analyzing harms nearly identical to those alleged by Plaintiff’s members—such as “major traffic congestion,” “noise pollution,” “particulate [matter] and other pollutants,” “the use and enjoyment of the local environment . . . including their home [and] neighborhoods” and “noncompliance with zoning and environmental laws”—and concluding that the plaintiffs lacked statutory standing because “these allegations are simply complaints about inconveniences suffered broadly by all persons residing in or passing through the City of Charleston”).

“provided by statute” is a textbook “adequate legal remedy.” *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).¹⁶ Here, Plaintiff plainly has an adequate legal remedy: the administrative remedies provided by the Planning Act and the ULMO, which, as described above, Plaintiff was required to exhaust before challenging the issuance of a permit (Count I and II) or alleging non-compliance with an issued permit (Count III) in this Court. *See supra*, pp. 26-29.

In fact, even *Plaintiff* acknowledges that the ULMO provides it with a right to appeal the County’s decision to approve a Minor Land Development application and issue a development permit. Mot. 32. But it argues that this remedy is inadequate because “Plaintiff and its members did not receive timely notice from the County of the issuance of the” Phase I Land Development Permit. *Id.* Putting aside that this does not address the remedies still available to challenge the pending Phase II Land Development Permit once issued, Plaintiff is simply wrong. As Plaintiff’s members make clear in their affidavits, they were plainly on notice of the HPCC’s development and the issuance of the Phase I Land Development Permit. *See supra*, pp. 16-18. In any event, approval of the Phase I Land Development Permit was published on Spartanburg County’s Citizen Self-Service Portal, and nothing in the Planning Act or the ULMO requires the County or Valara to provide specific notice of the issuance of a development permit to any particular Spartanburg residents. Plaintiff cites no authority suggesting that a lack of notice renders the administrative

¹⁶ Plaintiff cites *Santee Cooper Resort* in support of its assertion that a legal remedy is adequate only if it is “certain” and “complete.” Mot. 31. However, in *Santee Cooper Resort*, the South Carolina Supreme Court actually reversed the lower court’s injunction and held that a statutory remedy was “certain” and “complete” and thus provided Plaintiff with an adequate remedy at law. *Santee Cooper Resort*, 298 S.C. at 185. Indeed, “the court’s equitable powers must yield in the face of an unambiguously worded statute.” *Id.* Plaintiff cannot sidestep the Planning Act’s and the ULMO’s administrative remedies by arguing that the remedies lawmakers provided are uncertain or incomplete.

appeal process an inadequate remedy. And the fact that Plaintiff can no longer appeal the Phase I Land Development Permit (due to its own failure to do so within the time limit provided by the ULMO) “is no ground in itself for allowing [Plaintiff] to seek equitable relief.” *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 329, 721 S.E.2d 447, 450 (Ct. App. 2011) (noting that “the possibility the statute of limitations may have potentially barred the [plaintiff] from obtaining a legal remedy” does not render the legal remedy inadequate); *see also, e.g., Guzman v. Polaris Indus. Inc.*, 49 F.4th 1308, 1312 (9th Cir. 2022) (“[E]quitable relief must be withheld when an equivalent legal claim would have been available but for a time bar.”); *Haynes v. City of Durham*, No. 1:12cv1090, 2016 WL 469608, at *7 (M.D.N.C. Feb. 5, 2016) (similar).

Plaintiff next argues that “[a] remedy at law cannot be adequate and complete if . . . the interested party must appeal to the discretion of some other person or body.” Mot. 32. Not so. South Carolina courts uniformly hold that where a statute provides a right to appeal, it provides an adequate remedy at law. *See, e.g., Strategic Res.*, 367 S.C. at 545, 627 S.E.2d at 689-90 (holding statutory right to appeal arbitration decision under the Federal Arbitration Act was an adequate legal remedy); *Dunbar v. City of Spartanburg*, 226 S.C. 360, 365, 85 S.E.2d 281, 283 (1954) (ordinance that provides “for a review of the [challenged] action” is “an adequate legal remedy”); *see also Jack H. Kee, Jr., Petitioner*, No. 99-ALJ-07-0203-IJ, 1999 WL 317184, at *3 (ALJ Apr. 26, 1999) (denying TRO because administrative appeal process in S.C. Code Ann. § 48-39-150(D) was an adequate remedy).¹⁷

¹⁷ Plaintiff also claims that the ULMO’s appeal process is not a “plausible legal vehicle” because it cannot “seek complete review . . . of the entire project as a ‘minor’ land development.” Mot. 32. But there was nothing stopping Plaintiff from arguing to the BZA that the HPCC (or its phased approach, which was fully disclosed to the County) was a “major” development in August 2025, and there is nothing stopping Plaintiff from also making that argument as to any Phase II Land Development Permit that is issued.

At bottom, Plaintiff has failed to show that the remedies that the legislature and local lawmakers provided are inadequate. Thus, this Court should deny Plaintiff's Motion for Preliminary Injunction.

IV. PLAINTIFF MUST POST A SUBSTANTIAL BOND BEFORE ANY INJUNCTION ISSUES.

As explained above, Plaintiff has come nowhere close to carrying its burden of proving it is entitled to injunctive relief. However, if the Court were to disagree and conclude an injunction is warranted, it should require Plaintiff to post a bond of not less than \$200 million before any such injunction becomes effective.

In South Carolina, "no injunction shall issue" until Plaintiff posts a security bond. SCRCP 65(c). Rule 65's plain text could not be clearer: the security bond is both *mandatory* and a condition precedent to an injunction taking effect. *Id.* Nor can a court sidestep Rule 65's mandate by requiring only a nominal bond. *Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). Because the purpose of the security bond is to "cover the payment of costs and damages suffered by [the] party found to have been wrongfully enjoined," *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 382, 559 S.E.2d 348, 350 (Ct. App. 2001), in calculating the appropriate bond, a court must consider evidence of damages that "are the direct, natural, and proximate result of the injunction," *Hylar v. Wheeler*, 240 S.C. 386, 392, 126 S.E.2d 173, 175 (1962). Here, Plaintiff seeks an order stopping work on a multi-billion-dollar project that has been under construction for nearly a year. *Johnson Aff.* ¶¶ 12, 39. It should come as no surprise, then, that Valara will incur substantial damages from an injunction requiring it to stop construction on the Project.

If the Court issued an injunction, Valara could not simply terminate all 1,500 contractors at the site and send them home, *see id.* ¶ 42—stopping construction on the HPCC at this point, even temporarily, would require significant effort and expense just to demobilize. Demobilization

of the Project will take, at minimum, two months—including time to safely stop work, ensure the site is in a safe and secure position, and break down and store or return equipment (including, by way of example, the Project’s 800-ton crane).¹⁸ Every day until an injunction is no longer in place or the Project is fully demobilized, Valara would incur labor costs of approximately \$2.4 million a day and daily equipment rental costs of approximately \$350,000—for a total of approximately \$2.75 million per day, not counting substantial additional administrative and operational expenses required to manage the Project during the demobilization process. Johnson Aff. ¶ 43. Over the course of a two-month demobilization period, those daily costs would add up to approximately \$165 million in damages to Valara. *Id.*

Even when construction on the Project is successfully demobilized, Valara will continue to incur significant damages, including the costs of (i) storing and maintaining the equipment that could not be returned; (ii) securing the site from potential theft, damage or vandalism, which will require both paying security personnel to man the site during a shutdown, and constructing a secure perimeter around the site; and (iii) maintaining the sensitive equipment that remains at the site. The total costs while the Project is demobilized would equate to approximately \$35,000 per day. *Id.* ¶ 44. Assuming the injunction lasts 90 days beyond the demobilization period, this would equate to \$3.15 million in damages to Valara. *Id.*

And once construction resumes, *remobilizing* the Project would take approximately nine months and involve equally substantial costs, including (i) re-preparing the site for construction activities; (ii) recruiting and ramping up a new labor force, including locating, paying and training

¹⁸ Any “injunction should not be overbroad or provide relief more sweeping than is necessary.” 27 S.C. Jur. *Injunctions* § 12. While the Court should not issue an injunction in this case, at a very minimum, any such order should not restrain activities authorized by permits Plaintiff does not challenge, including the Land Disturbance Permits, or activities necessary to allow Valara to secure and stabilize the Property.

new skilled workers (given the demand for skilled workers, most of the Project's workers will have "moved on" and found new employment somewhere else—likely outside of Spartanburg County); and (iii) renting and transporting equipment and materials back to the site, equating to approximately \$40 million to \$60 million. *Id.* ¶ 45.

In sum, Valara will incur between \$208 million to \$228 million in direct damages if it is wrongfully enjoined.¹⁹ *Id.* ¶ 46. Further, and regardless of the length of any injunction, Valara will also incur substantial costs that have not yet been quantified:

- If previously commissioned equipment is shut down, Valara will bear the costs of re-commissioning and engaging start up services to get the equipment back up and running, *id.* ¶ 47.c;
- Valara would also be subject to equipment restocking fees and could lose millions of dollars in negotiated discounts upon terminating certain equipment contracts, *id.* ¶ 48.f;
- Valara would incur costs related to the expiration of warranties on extremely expensive equipment, even while that equipment remains idle, *id.* ¶ 47.d;
- Contract cancellation penalties would increase, making it more costly in the event Valara needed to cancel a contract (whether such cancellation was due to the delay itself, or merely for ordinary construction or project management reasons), *id.* ¶ 47.e; and
- If Valara canceled equipment orders, either to avoid delay penalties or increased cancelation costs, it would be subject to increased lead times when reordering equipment that it previously canceled, *id.* ¶ 47.e;

Ultimately, an injunction that stops work even for a few months will delay the Project by a multiple of that period, if not years, with immense direct and indirect damages to Valara, NorthMark Compute and Cloud LLC, and their related parties. Johnson Aff. ¶ 48. Accordingly, if this Court finds that an injunction is warranted in this case, it should set a bond of at least \$200

¹⁹ These costs may increase with the passage of time. For the avoidance of doubt, Plaintiff reserves the right to submit revised estimates, and seek an increase in any posted bond, to reflect such increased costs.

million; establish a firm deadline for Plaintiff (and its members) to post such bond; and order that any injunction shall not take effect until the bond is posted—all as required by the plain language of Rule 65. SCRCP 65(c).

CONCLUSION

Valara respectfully requests that the Court deny Plaintiff's Motion in its entirety.

DATED: September 14, 2026

Respectfully submitted,

/s/ Bruce W. Bannister, Esq.

Bruce W. Bannister, Esq.
Alexander R. Stalvey, Esq.
Bannister, Wyatt & Stalvey, LLC
24 Cleveland St., Suite 100
Greenville, SC 29601
(864) 298-0084
BBannister@bannisterwyatt.com
AStalvey@bannisterwyatt.com

/s/ Mitchell Willoughby, Esq.

Mitchell Willoughby, Esq.
Andrew J. D'Antoni, Esq.
Hunter R. Pope, Esq.
Willoughby Humphrey & D'Antoni, PA
930 Richland Street
Columbia, SC 29201
(803) 252-3300
mwilloughby@whdlawyers.com
adantoni@whdlawyers.com
hpope@whdlawyers.com

Aaron H. Marks, P.C., Esq.
Kirkland & Ellis LLP
601 Lexington Ave
New York, NY 10022
(212) 446-4800
aaron.marks@kirkland.com

Admitted Pro Hac Vice

Jeremy A. Fielding, P.C., Esq.
Kirkland & Ellis LLP
4550 Travis St.
Dallas, TX 75205
(214) 972-1770
jeremy.fielding@kirkland.com

Admitted Pro Hac Vice

Michael K. Sciacotta, Esq.
Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000
michael.sciaccotta@kirkland.com

Admitted Pro Hac Vice

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Opposition to Plaintiff's Motion for Preliminary Injunction through the electronic filing system on September 14, 2026, to all counsel of record for Case No. 2026CP4203416.

/s/ Mitchell Willoughby, Esq.
Mitchell Willoughby, Esq.

APPENDIX T

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

CONCERNED CITIZENS OF
SPARTANBURG COUNTY,

Plaintiff,

v.

VALARA HOLDINGS, LLC,
SPARTANBURG COUNTY, and
SPARTANBURG COUNTY
ADMINISTRATOR,

Defendants.

Case No. 2026CP4203416

**PLAINTIFF'S REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION AND SUPPORTING
MEMORANDUM**

INTRODUCTION

Valara Holdings is constructing the largest development in Spartanburg County’s history, a nearly \$3 billion data center, covering nearly 300 acres of land, powered by a 457-megawatt gas-fired power plant. Valara is building this massive project on South Pine Street in Spartanburg, in the middle of residential neighborhoods where Plaintiff’s members have lived for years. The County is reviewing and approving this project behind closed doors as a “Minor Land Development” akin to a single family home or a sign, in plain violation of the County’s Unified Land Management Ordinance—which requires a public process for this Major Development.

This Court should grant a preliminary injunction here. Plaintiff acted diligently to bring their claims within months of Valara’s disclosure of the true scope of its plans, including the construction of a power plant large enough to power a mid-sized city—which no one outside of Defendants had the slightest inkling about when the County issued the First Minor Land Development Permit last year. The affidavits of Plaintiff’s members establish significant ongoing irreparable harm from dust, noise, light, and air pollution from the project. Operation of the Data Center would only exacerbate these harms, subjecting neighbors to hundreds of tons of toxic air pollution each year *by Valara’s own estimates*. Defendants’ claims that the *neighbors* of this massive project have purely “speculative” injuries flies in the face of the facts, common sense, and established law. In addition, Plaintiff’s members have been deprived of the opportunity to participate in transparent public review of this project. These harms are actual, imminent, and clearly irreparable.

Plaintiff is also likely to succeed on the merits of their claims. Valara simply does not have the Major Land Development permit required for a project of this magnitude. The Defendants’ briefs make plain as day that they are simply writing disfavored words out of the

County's Ordinance—words like “Major,” “Minor,” “includes but is not limited to,” and “to include.” Try as they may, Defendants cannot escape the plain and simple language of the Ordinance. Under any rational reading, this project is a Major Land Development. Finally, there is no adequate remedy available at law as administrative processes here provides only slow, incomplete and piecemeal remedies, which courts have repeatedly held are inadequate to preclude injunctive relief.

Because Valara's massive construction project—conducted unlawfully, with no public oversight and inadequate permitting—is causing, and will continue to cause, irreparable harm to Plaintiffs members, this Court should grant Plaintiff's Motion for a Preliminary Injunction. The Court should also deny Valara's request for a \$200 million bond, a demand that essentially insists the company's investment is too big for it to be stopped—no matter how brazen its violations. This effort should be rejected as a bond of this size would effectively deny Plaintiff's right to judicial review. Contrary to Valara's claims, courts routinely impose a nominal bond when a hefty bond would close the courthouse doors to a public interest organization otherwise entitled to preliminary relief.

Given the overlap in issues on this Motion and Defendants' pending Motions to Dismiss, Plaintiff incorporates by reference its arguments in its Response in Opposition to Defendants' Motions to Dismiss.

ARGUMENT

I. Absent an injunction Plaintiff will suffer irreparable harm.

Defendant Valara Holdings asserts that Plaintiff will be unable to establish irreparable harm for two reasons: (1) a purported “lack of urgency” on the part of the Plaintiff—despite Defendants' efforts to conceal the true scope of a complex and fast-moving project and, their

contradictory claim that Plaintiff is *too early* to challenge the pending Second Minor Land Development Permit; and (2) claims that Plaintiff’s well-documented harms from construction of a 500,000 square foot data center—and a power plant large enough to power a mid-sized city—are merely *speculative*, despite the fact that members live right next door to the project and have provided declarations documenting their harms in detail. Valara’s Opp. to Mot. for Prelim. Inj. (“Valara’s Opp.”) at 15. Neither argument survives scrutiny.

First, Plaintiff acted diligently to pursue their rights. While Valara claims that “at every turn” it has been “transparent” about the nature of the project, the facts totally belie that claim. Even in Defendants telling, the initial communications from the company described only the dollar amount of the investment and vague assertions that the project was a “game changer.” Valara’s Opp. at 17. And Valara’s First Minor Land Development Permit from August 2025 proposed only to “redevelop” and “repurpose” the old Kohler Plant. Mot. for Prelim. Inj. (“PI Mot.”) Ex. 1. At that time, Plaintiff could not possibly have appreciated the vast scale of this project, particularly given the County’s statements that it would “not use more power than the site’s existing facility.” Amend. Compl. ¶ 40.

Notably, Valara does not dispute the fact that it did not formally propose to construct a power plant large enough to fuel a mid-sized city until March of 2026. *See* Amend. Compl. Ex. 4. And it was April 2026 before Valara filed for a Second Land Development permit to construct four new buildings and a “power yard”—which apparently means a utility-scale power plant—expanding the scope of the project well beyond a mere redevelopment of the former Kohler plant. *See* PI Mot. at 8–9 and Fig. 1 & Fig. 2. Defendants claim that Plaintiff is *too early* to challenge this pending Second Minor Permit, but also too late. They cannot have it both ways.

Further, a Plaintiff does not forfeit their ability to bring suit simply because they take several months build their case. *See, e.g., Gibbs v. Kimbrel*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (S.C. Ct. App. 1993) (plaintiffs acted with “reasonable diligence in initiating their suit within five months” of key facts). And, as the South Carolina Supreme Court has made clear, Defendants like Valara who “openly def[y] known rights” are “not in a position” to argue that Plaintiffs must “take the most instant conceivable resort to the courts.” *Archambault v. Sprouse*, 218 S.C. 500, 509, 63 S.E.2d 459, 463 (1951).

Here, Plaintiff filed this case in July 2026, a mere three months after discovering the full scope of Valara’s plans from its proposed air permit modification and Second Minor Land Development Permit, including construction far beyond the footprint of Kohler plant and a 457-megawatt gas-fired power plant. PI Mot. Ex. 4; Amend. Compl. Ex. 4. During those three months, Plaintiff—a collection of neighbors affected by the Valara Data Center and Power Plant—organized, advocated to the County, and consulted an attorney to analyze the project. *See* P.I. Mot. at 4–10, 15.¹ Given the scope of the project, and the need for careful independent research to verify and assess the company’s statements in permitting documents, Plaintiff acted diligently.

More fundamentally, Plaintiff filed this case and moved for injunctive relief before the Phase II permit formally issued. It bears repeating that Defendants are arguing for dismissal on the grounds that this challenge was *too early*. Valara’s Mot. to Dismiss at 17–18. It cannot both be that this claim is *too early and too late*. In truth, it is right on time, because the Planning

¹ *See also* Exhibit A, Kathleen Parker, *A \$2.8 billion data center was kept secret. Now residents are furious*, WASHINGTON POST, (July 3, 2026).

Enabling Act empowers injured neighbors to sue for an injunction to “*prevent*” “*proposed*” developments in violation of local ordinances. S.C. Code Ann. § 6-29-950(A) (emphasis added).

Finally, Defendants case law does not support their position. *See* Valara’s Opp. at 18 (citing *Collins v. Sigmon*, 299 S.C. 464, 468, 385 S.E.2d 835, 837 (1989)). In *Collins*, a Kentucky court dismissed a judgment-collection action after the plaintiff had failed to prosecute it for over a year. 299 S.C. at 465. When, two years later, the plaintiff attempted to revive the same claims in South Carolina, the South Carolina Supreme Court opined that the Kentucky dismissal should bar his efforts. *Id.* at 469. *Collins* is not remotely similar; it does not relate to the preliminary injunction standard, and it certainly does not support the proposition that neighbors organizing for a few months before suing to halt a multi-billion-dollar project constitutes unreasonable delay.

Second, Plaintiff has provided ample evidence of actual and imminent harms as a result of Valara’s unpermitted construction. Valara does not dispute that it is conducting activities well beyond the scope of the Phase I permit, which only provides for “interior demolition and remodeling” of the former Kohler plant.² Valara has conducted widespread development well beyond the activities contemplated in the Phase I permit. P.I. Mot. at 9 (Fig. 1 and Fig. 2).

[continued on the following page]

² Valara claims these activities beyond the scope of the First Minor Land Development Permit are authorized by other permits, but the fact remains that it is conducting broad construction activities well beyond the scope of that First Permit.



Figure 1, above, is a satellite image of the former Kohler plant from June 2025, before the First Minor Land Development Permit was issued, and depicts the “Phase 1 Area” associated with the First Permit.



Figure 2, above, is a satellite image of the site from July 2026 depicting widespread land development well beyond the permitted boundary and footprint of the old Kohler plant.

And Valara does not dispute that Plaintiff’s members are neighboring and adjacent landowners—including members who live directly across the street. *E.g.*, Eilders Aff. ¶¶ 3–5; Stevens Aff. ¶¶

4–5. Affidavits from Plaintiff’s members identify exactly the kinds of concrete harms one would expect living next to a massive construction site: the impacts of heavy machinery, loud and intrusive noises at all hours, “terrible” amounts of dust coating homes and vehicles, and “incredibly” bright lights at night. Felk Aff. ¶¶ 17–19; Heath. Aff. ¶¶ 12, 18; Darwin Aff. ¶10; Stevens Aff. ¶¶ 12–14. Incredibly, Valara asserts that that these harms are speculative, not immediate, and not irreparable. Valara’s Opp. at 20–23.³ This defies logic, common sense, and the law.

Valara attempts to raise the bar for causal proof at the preliminary injunction stage to an absurd degree. Despite complaining that Plaintiff did not get to the courthouse quickly enough (but also too early?), Valara faults Plaintiff for failing to provide complex expert analyses such as “soil analysis, noise studies, traffic studies, air quality reports, property valuations, epidemiological reports” to demonstrate causation. Valara’s Opp. at 22. And, to top it off, Valara turns the blame on the Plaintiff’s members themselves—who, as Valara puts it—“chose to live in an industrial neighborhood,” Valara’s Opp. at 22, and thus, apparently, forfeited their ability to obtain redress for harms flowing from the construction of a massive data center and power plant that they never could have imagined in their backyard.

This level of causal proof is not required to show harm at any stage of the case, much less at a preliminary stage where courts may rely upon “circumstantial evidence and facts” to issue a preliminary injunction. *Jennings-Dill, Inc. v. Israel*, 442 S.C. 98, 108–09, 897 S.E. 2d 201, 206–07 (S.C. Ct. App. 2024). Given its limited purpose and urgency, a “preliminary injunction is

³ Despite asserting that Plaintiff’s members are speculative, Valara has taken steps – on an ad hoc basis – to address the impacts of dust and noise from the site. *See, e.g.*, Johnson Aff. ¶ 27 (Valara has “cleaned the exterior of Dr. Pack’s home free of charge” and “adjusted the facility lighting to reduce its impact on Dr. Pack’s home.”).

customarily granted” based on “evidence that is less complete than in a trial.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). This includes reliance on declarations, including declarations that contain “hearsay or speculative statements.” *Jennings-Dill*, 442. S.C. 98 at 110; *see also Commodity Futures Trading Comm’n v. IBS, Inc.*, 113 F. Supp. 2d 830, 851 (W.D.N.C. 2000) (“Affidavits are competent evidence and are admissible in a preliminary injunction proceeding.”). Thus, affidavits of layperson neighbors of a project are “sufficient to prove [plaintiff] suffered an irreparable harm.” *AJG Holdings*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (S.C. Ct. App. 2009); *see also Seabrook v. Carolina Power & Light Co.*, 159 S.C. 1, 2, 156 S.E. 1, 2 (1930) (finding that where affidavits of “reputable citizens” were submitted, “the plaintiff was clearly entitled to the temporary injunction”).

As for future harms from the operation of the Data Center—Plaintiff need only show a likelihood of irreparable harm. “Damocles’s sword does not have to actually fall” before an injunction issues. *League of Women Voters v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). Indeed, the Planning Enabling Act expressly creates its cause of action to enjoin “proposed” construction by neighbors “who would be” specially damaged by the future occurrence. S.C. Code Ann. § 6-29-950(A).

Plaintiff has established such a likelihood here. By Valara’s own estimates, the proposed Data Center and Power Plant will emit hundreds of tons of harmful pollutants into the air, including known carcinogens such as formaldehyde as well as particulate matter and nitrogen oxides, which cause respiratory harms. Amend. Compl. Ex. 4 at 6. Such harms are not mere “speculative allegations of future harm,” Valara’s Opp. at 22, but rather well-founded and certain to occur.

Third, Plaintiff has been clearly and irreparably harmed by the loss of a transparent public review of this project by the Planning Commission, as required by Ordinance. The U.S. Supreme Court has repeatedly held that “[t]he person who has been accorded a procedural right to protect his concrete interests can assert that right” in court and suffers an “injury in fact” from the denial of that right. *Lujan*, 504 U.S. 555, 572 n.7 (1992). Here, Plaintiff’s interests in a public review process could not be more concrete, as they live right next door to a massive construction site and future power plant.

To state the obvious, once the Data Center and Power Plant are built, Plaintiff’s members will forever lose the opportunity to participate meaningfully in the Planning Commission’s review of whether and under what conditions the project should proceed—i.e., the public process that should have occurred at the outset for this Major Land Development. No *post hoc* legal process could rewind time and afford Plaintiff’s members these procedural rights to protect their concrete interests.

This is the definition of irreparable injury. As courts have repeatedly held, “[a] procedural violation can give rise to irreparable harm justifying injunctive relief because lack of process cannot be remedied with monetary damages or post-hoc relief by the court.” *Ass’n of Cmty. Cancer Centers v. Azar*, 509 F. Supp. 3d 482, 500 (D. Md. 2020) (collecting cases, citations omitted). The “damage done by [the agency’s] violation of the [procedure] cannot be fully cured by later remedial action,” because “[o]nce the program . . . has begun operation as scheduled,” the agency “is far less likely to be receptive to comments.” *N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 18 (D.D.C. 2009). This constitutes “injury serious enough to warrant immediate injunctive relief.” *Id.*

Bizarrely, Valara claims that because Plaintiff's members have been active in other "public forums," including "**Facebook**," they have not been injured by the lack of a public process by the Planning Commission to review the Land Development Permits challenged in this case. Valara's Opp. at 23–24 (emphasis added). This begs the question of why the County Public Safety Committee has held public meetings about a purported "Minor" Land Development. *See id.* More to the point, none of these public meetings was actually reviewing or voting on Valara's applications for Land Development Permits, or determining whether or under what conditions this project should proceed—i.e., the public process actually relevant to this case and required by the Ordinance for Major Land Development such as this. Ordinance at 3.

II. Plaintiff will succeed on the merits.

Plaintiff incorporates by reference its Response in Opposition to Defendants' Motions to Dismiss, which explains why Defendants treatment of this project as a "Minor Land Development" violates the plain text of the County Ordinance. *See* Opp. to MTD § III.A. For the reasons stated there, Plaintiff is likely to succeed on its Major/Minor claims (Counts I and II).

To summarize, the plain text of the Ordinance is consistent with common sense: the largest project in the history of Spartanburg County is indeed a Major Land Development, not a Minor one. The Ordinance provides that a Major Land Development "***includes but is not limited to*** commercial and industrial parks" and "other similar developments." Ordinance § 1.02(1) (emphasis added). Exhibit A of the Ordinance lists more examples of Major Developments; critically, Exhibit A also begins with the words: "Major, ***to include.***" "[W]hen 'include' is utilized in a statute, it is generally improper to conclude that entities not specifically enumerated are excluded." *United States v. Helton*, 944 F.3d 198, 206 (4th Cir. 2019).

The Ordinance could not be clearer: the projects listed serve as illustrative examples of Major Development, not an exhaustive list or a technocratic definition. The test for what qualifies is the plain and ordinary meaning of the term “Major Land Development,” with guidance from the illustrative examples. *See Bond v. United States*, 572 U.S. 844, 861 (2014) (“In settling on a fair reading of a statute, it is not unusual to consider the ordinary meaning of a defined term”). So, whether the data center complex constitutes a “commercial or industrial park” (which it does), or a “similar development” (which it clearly does), the decisive fact is that any rational person would consider this a Major Land Development.

Defendants’ reading would flagrantly re-write the Ordinance to make its examples *exclusive*, not illustrative. And because a “data center” is not specifically listed as Major, Defendants claim that it must be Minor. Defendants’ reading would simply delete the words “includes but is not limited to,” “similar development,” “to include,” and, indeed, “Major” and “Minor” from the Ordinance. Contrary to Valara’s claim, the Court need not—and must not—stick its head in the sand and discard common sense and plain meaning in determining which projects are “Major” or “Minor.”

Plaintiff is also likely to succeed on its unpermitted-construction claim (Count III)—indeed, the County has already conceded that Valara exceeded the scope of its permits. County’s Br. at 14–15.

Defendants’ defenses will not change this outcome. First, exhaustion does not apply. Plaintiff’s remedies under the Planning Enabling Act are expressly granted “in addition to” administrative remedies. Opp. to MTD at 4–10. And, for all claims, exhaustion may be excused because administrative remedies are inadequate and the issues presented are solely questions of law. *Id.* at 10–14.

Second, ripeness or standing does not defeat Plaintiff's claims. As discussed above, Plaintiff's members own homes neighboring or adjacent to the projects and are suffering special harm from its construction. *Supra* Part I. The facts presented in the members' affidavits establish a real, not speculative, controversy that this Court can remedy now. Indeed, the plain text of the Planning Enabling Act allows neighbors, such as Plaintiff's members, who "**would be** specially damaged" to sue to "prevent" a "**proposed**" or existing land use that will violate an Ordinance. S.C. Code. 6-29-950(A).

At bottom, next-door neighbors who are suffering significant injuries from a multi-billion dollar industrial construction site have asked the Court to declare that the project is not a "Minor" project, akin to "sign" or "a single-family dwelling." Plaintiff will succeed on the merits.

III. Plaintiff has no adequate remedy at law.

Defendants are wrong to argue that administrative review provides Plaintiff an adequate remedy at law. *See* County's Br. at 18–19; Valara's Opp. at 33–35. As Plaintiff showed in its opening brief, the proposed administrative review would not provide Plaintiff a "certain" and "complete" remedy. P.I. Mot. at 32 (quoting *Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989)). Defendants ignore that legal standard. Moreover, because Defendants impermissibly segmented the project into phased, minor permits, any administrative challenge would halt only part of the project. More, Plaintiff would have to wait an undefined amount of time for the County to issue the Phase II Permit while Valara continues massive construction under its unpublicized "conditional approval" *of that very Permit*. County's Br. at 4. And any administrative challenge would be made futile by the County's hard-and-fast position that this is a "Minor" project, ultimately bringing Plaintiff back before this Court. Opp.

to MTD at 10–12. The proposed administrative remedies, therefore, are not “as practical, efficient, and prompt as the remedy in equity”—as the case law requires. *Eldridge v. Eldridge*, 398 S.C. 113, 120, 728 S.E.2d 24, 27 (2012) (quoting *Chisolm v. Pryor*, 207 S.C. 54, 60, 35 S.E.2d 21, 24 (1945)); see also *Crawford v. Atl. Coast Lumber Corp.*, 77 S.C. 81, 57 S.E. 670, 671 (1907) (injunctive relief appropriate when legal remedy is “not so speedy, full, and complete” as to prevent permanent injury).

Defendants’ reliance on *Jack H. Kee, Jr., Petitioner*, No. 99-ALJ-07-0203-IJ, 1999 WL 317184, at *3 (ALJ Apr. 26, 1999) and *Dunbar v. City of Spartanburg*, 226 S.C. 360, 85 S.E.2d 281 (1954) is misplaced. See County’s Br. at 19; Valara’s Opp. at 35. In *Jack H.*, an administrative law judge refused to restrain construction of a dock because the dock caused the petitioner no harm and could be removed after adjudication of the merits. 1999 WL 317184, at *2. And *Dunbar* was not a preliminary injunction case at all; it stands for the unremarkable position that petitioners in a failed rezoning hearing should apply for a zoning variance instead of filing an extraordinary writ of certiorari with the court. 226 S.C. at 365-66, 85 S.E.2d at 284. Neither *Jack H.* nor *Dunbar* has any bearing on Plaintiff’s efforts to stop ongoing, unlawful construction pursuant to a statute that expressly authorizes it to do so. S.C. Code. 6-29-950(A).

Because the administrative process will provide only slow, incomplete and piecemeal remedies, Plaintiff has no adequate remedy at law.

IV. A nominal bond is appropriate.

A nominal bond is sufficient in circumstances such as “here where plaintiffs are public interest groups who might otherwise be barred from obtaining meaningful judicial review were the bond required more than nominal.” *Red Wolf Coal. v. U.S. Fish & Wildlife Serv.*, 210 F. Supp.

3d 796, 807 (E.D.N.C. 2016) (citing *Nat. Res. Def. Council v. Morton*, 337 F. Supp. 167, 169 (D.D.C. 1971)).

While the suitability of a nominal bond for public interest litigation is a matter of first impression in South Carolina, such bonds are routine in federal courts due to the potential chilling effect on public-interest litigation.⁴ *See, e.g., Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, 539 F. Supp. 3d 543, 560–61 (D.S.C. 2021) (collecting cases); *Bragg v. Robertson*, 54 F.Supp.2d 635, 652 (S.D.W. Va. 1999). To find otherwise would “effectively deny” Plaintiff’s “right to judicial review.” *Bragg*, 54 F.Supp.2d at 652; *see also Colorado Wild Inc. v. U.S. Forest Serv.*, 523 F. Supp. 2d. 1213, 1230-31 (D. Colo. 2007) (imposing no bond even where financial harm would result to a developer from an injunction).

Defendants here ask the Court to impose a bond of \$200 million based on its own estimates of the costs of demobilizing and remobilizing the project. Valara’s bond demand essentially insists the company’s investment is too big for it to be stopped—no matter how brazen its violations.

While Defendants’ investment may be the second largest in South Carolina’s history, a bond large enough to cover Valara’s self-serving assessment of its own costs would be prohibitive, essentially immunizing the company from preliminary relief. *See also Wilderness Watch v. U.S. Fish & Wildlife Serv.*, 685 F. Supp. 3d 950, 970 (D. Mont. 2023) (holding that in

⁴ South Carolina Rule of Civil Procedure 65 “is substantially the Federal Rule [65].” Rule 65, SCRCP (Note). Both the Federal and State Rules give a court broad discretion to set a bond at an amount it deems “proper.” Where, as here, the state rule is “substantially the same” as the federal rule, South Carolina courts consistently look to federal cases to interpret the South Carolina rules. *See, e.g., State v. Murdaugh*, 931 S.E. 2d 294, 307 (S.C. 2026); *Renaissance Enters. Inc. v. Ocean Resorts, Inc.*, 513 S.E. 2d 617, 619 (S.C. 1999). And under Federal Rule of Civil Procedure 65(c), the Court “retains the discretion to set the bond amount as it sees fit or waive the security requirement.” *Pashby v. Delia*, 709 F.3d 307, 331–32 (4th Cir. 2013), *abrogated on other grounds as recognized by Stinnie v. Holcomb*, 37 F.4th 977 (4th Cir. 2022).

“public interest environmental cases” the “potential chilling effect” of a bond should be considered (quoting *Central Or. Landwatch v. Connaughton*, 950 F. Supp. 2d 1192, 1198 (D. Or. 2012))). If the scope of a company’s investment excuses end runs around the permitting process, this will not be the last time community members are forced to breathe the pollution, hear the noise, or deal with the disruption caused by unlawfully permitted facilities.

CONCLUSION

Because Plaintiff has demonstrated irreparable harm, is likely to succeed on the merits, and has no adequate remedy at law, this Court should grant Plaintiff’s Motion for Preliminary Injunction and require only a nominal bond.

Respectfully submitted this 16th day of September 2026,

/s/ Catherine Wannamaker

Catherine Wannamaker (S.C. Bar No. 102895)

Susie Carlson (S.C. Bar No. 106396)

Carl Brzorad (S.C. Bar No. 105413)

Frank S. Holleman III (S.C. Bar No. 2564)

Southern Environmental Law Center

525 East Bay Street, Suite 200

Charleston, SC 29403

(843) 720-5270

cwannamaker@selc.org

scarlson@selc.org

cbrzorad@selc.org

holl2759@bellsouth.net

Counsel for Plaintiff

APPENDIX U

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
Concerned Citizens of Spartanburg County,	)	C.A. No. 2026-CP-42-03416
	)	
Plaintiff,	)	MOTION TO DISMISS OF
	)	DEFENDANTS SPARTANBURG
v.	)	COUNTY AND SPARTANBURG
	)	COUNTY ADMINISTRATOR
Valara Holdings, LLC, Spartanburg County,	)	
and Spartanburg County Administrator,	)	
	)	
Defendants.	)	
_____	)	

To: Plaintiff Concerned Citizens of Spartanburg County and its attorneys, Frank S. Holleman III, Susie Carlson, Emily Wyche, and Catherine Wannamaker:

Defendants Spartanburg County and the Spartanburg County Administrator move the Court for an order dismissing Plaintiff's claims against them pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. This motion is made upon the following grounds:

1. Plaintiff failed to exhaust its administrative remedies under S.C. Code Ann. § 6-29-800(A), S.C. Code Ann. § 6-29-1150(C), and the Spartanburg County Unified Land Management Ordinance.
2. Because Plaintiff has failed to exhaust its administrative remedies, this Court lacks subject matter jurisdiction over this Action.
3. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants Spartanburg County and Spartanburg County Administrator because the Valara Data Center is properly classified as a Minor Land Development under the express language of the Spartanburg County Unified Land Management Ordinance.
4. Count III of Plaintiff's Complaint is moot and fails to present a justiciable

controversy against Defendants Spartanburg County and Spartanburg County Administrator.

5. Defendants Spartanburg County and Spartanburg County Administrator are entitled to an order of this Court dismissing Plaintiff's claims against them as a matter of law.

s/ Stephanie H. Burton
Stephanie H. Burton (#13089)
Gibbes Burton, LLC
308 East St. John Street
Spartanburg, SC 29302
sburton@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-342-6884

*Attorneys for Defendants Spartanburg
County and Spartanburg County
Administrator*

September 4, 2026

APPENDIX V

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Concerned Citizens of Spartanburg County,	)	Civil Action No. 2026CP4203416
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS
	)	
Valara Holdings LLC, Spartanburg County,	)	
and Spartanburg County Administrator,	)	
	)	
Defendants.	)	
	)	

TO: PLAINTIFF CONCERNED CITIZENS OF SPARTANBURG COUNTY

PLEASE TAKE NOTICE that Defendant Valara Holdings, LLC (“Valara”), through its undersigned counsel, will move before Judge Derham Cole, Jr. of the Seventh Judicial Circuit at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, SC 29306, on the tenth (10) day after service hereof, or as soon thereafter as counsel may be heard, for an order dismissing this action as to Defendant Valara pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action as to Defendant Valara, and in the alternative under Rule 12(b)(1) for lack of subject matter jurisdiction.

Plaintiff’s Amended Complaint raises three causes of action relating to Valara’s construction of a high-performance computing center (the “HPCC”) in Spartanburg County, South Carolina. Plaintiff challenges a Phase I land development permit (the “Phase I Permit”) issued to Valara in August 2025 and Valara’s pending Phase II land development permit application (the “Phase II Application”). Plaintiff seeks an injunction against any future processing or approval of the HPCC as a Minor Land Development, which it alleges violates the Spartanburg County Unified Land Management Ordinance (“ULMO”), and requests that all construction, development, and use

activities be halted until the HPCC is reprocessed as a Major Land Development. Plaintiff also seeks a declaratory judgment that, under the ULMO, Valara's pending Phase II Application must be processed as a Major rather than Minor Land Development; that Valara has violated the ULMO by submitting its Minor Land Development applications for the HPCC; and that under the ULMO, Valara has exceeded the scope of its Phase I Permit by proceeding with development activities outside the permit's perimeter.

The Amended Complaint should be dismissed on one or more of the following grounds:

1. **Failure to Exhaust Administrative Remedies.** Each Count of the Amended Complaint should be dismissed because Plaintiff failed to exhaust its administrative remedies before seeking judicial review. *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964). Plaintiff has not alleged that it or any of its members ever appealed the Phase I Permit to the Board of Zoning Appeals when it was issued more than a year ago. Similarly, the Amended Complaint is devoid of allegations indicating that Plaintiff submitted a complaint to the County raising Valara's alleged violation of its Phase I Permit. Moreover, because the County has not rendered a decision on the Phase II Application, any challenge to the pending application is premature.

2. **Failure to Allege Violation of the ULMO.** Each Count of the Amended Complaint should be dismissed because the Amended Complaint does not adequately allege that Valara violated the ULMO when it submitted its Minor Land Development Applications, and Plaintiff's allegations that Valara exceeded the scope of its Phase I Permit fail as a matter of law. Plaintiff's strained and unworkable interpretation of the ULMO contradicts the ULMO's plain and unambiguous terms, under which construction of the HPCC plainly is a Minor, not Major, Land Development. And Plaintiff's allegations that development on the HPCC has exceeded the scope

of the Phase I Permit ignore the actual scope of Valara's land disturbance permits that expressly authorized grading and clearing activities beyond the physical boundaries of the Phase I Permit.

3. **Standing.** Counts II and III fail because neither Plaintiff nor its members have standing to seek injunctive relief under South Carolina's Planning Act. Plaintiff has failed to plead facts demonstrating that any of its members have been "specially injured" so as to confer statutory or constitutional standing upon them. Because none of Plaintiff's members possess standing to raise a claim for injunctive relief under the Planning Act, and the public importance exception does not apply, Plaintiff lacks associational standing to do the same.

Valara reserves the right to raise and advance additional grounds for dismissal prior to the hearing on this Motion.

Filed contemporaneously with this Motion is Valara's Memorandum in Support of Its Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Rule 12(b)(6) and Alternatively Rule 12(b)(1). This Motion and the accompanying Memorandum are based upon the Summons and Amended Complaint, including any exhibits attached to the Amended Complaint and thereby incorporated by reference; applicable statutory and case law; public documents available to the Court and referenced by Valara at or before the hearing; and any other matters as the Court may permit to be presented at any hearing held on this Motion or following any such hearing.

Respectfully submitted,

/s/ Bruce W. Bannister, Esq.
Bruce W. Bannister, Esq. (SC Bar No. 15679)
Alexander R. Stalvey, Esq. (SC Bar No. 71739)
BANNISTER, WYATT & STALVEY, LLC
24 Cleveland St., Suite 100
Greenville, SC 29601
(864) 298-0084
BBannister@bannisterwyatt.com

AStalvey@bannisterwyatt.com

/s/ Mitchell Willoughby, Esq.

Mitchell Willoughby, Esq. (SC Bar No. 6161)

Andrew J. D'Antoni, Esq. (SC Bar No. 100919)

Hunter R. Pope, Esq. (SC Bar No. 105471)

WILLOUGHBY HUMPHREY & D'ANTONI, PA

P.O. Box 8416

Columbia, SC 29202

(803) 252-3300

mwilloughby@whdlawyers.com

adantoni@whdlawyers.com

hpope@whdlawyers.com

Aaron H. Marks, P.C., Esq.

KIRKLAND & ELLIS LLP

601 Lexington Ave

New York, NY 10022

(212) 446-4800

aaron.marks@kirkland.com

Admitted Pro Hac Vice

Jeremy A. Fielding, P.C., Esq.

KIRKLAND & ELLIS LLP

4550 Travis St.

Dallas, TX 75205

(214) 972-1770

jeremy.fielding@kirkland.com

Admitted Pro Hac Vice

Michael K. Sciacotta, Esq.

KIRKLAND & ELLIS LLP

333 West Wolf Point Plaza

Chicago, IL 60654

(312) 862-2000

michael.sciaccotta@kirkland.com

Admitted Pro Hac Vice

Attorneys for Defendant Valara Holdings, LLC

September 11, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing NOTICE OF MOTION AND MOTION TO DISMISS through the electronic filing system on September 11, 2026, serving all counsel of record for Case No. 2026-CP-42-03416.

/s/Mitchell Willoughby, Esq.

Mitchell Willoughby

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Concerned Citizens of Spartanburg County,	)	Civil Action No. 2026CP4203416
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Valara Holdings LLC, Spartanburg County,	)	DEFENDANT VALARA HOLDINGS
and Spartanburg County Administrator,	)	LLC'S MEMORANDUM IN SUPPORT
	)	OF ITS MOTION TO DISMISS
	)	PLAINTIFF'S AMENDED
Defendants.	)	COMPLAINT PURSUANT TO RULE
	)	12(b)(6) AND ALTERNATIVELY
	)	RULE 12(b)(1)
	)	
	)	
	)	

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INTRODUCTION

Valara Holdings LLC (“Valara”) is building a state-of-the-art high-performance computing center in Spartanburg County (the “County”).¹ Lauded by state and local officials as “an incredible opportunity” and reflective of Spartanburg’s “talented workforce, [its] economic environment and [its] strong values,” the project represents significant projected capital commitments and approximately 150 full-time jobs.² In connection with the development, Valara has remediated pre-existing environmental conditions at the site; opted not to rely on grid power, in part to protect local ratepayers; and implemented mitigation measures to address concerns about increased traffic and pollution, including noise, light, and other environmental impacts.³

None of this matters to Plaintiff—an unincorporated organization formed for the sole purpose of opposing the project. Rather than follow the required administrative procedures established by the Unified Land Management Ordinance (the “ULMO”) enacted by Spartanburg County, Plaintiff instead has elected to challenge the project through litigation in court. Through this action, Plaintiff challenges the classification of two permit applications relating to the project as Minor Land Developments (Counts I & II)—Valara’s application for a Phase I permit, which was issued over a year ago (the “Phase I Permit”), and its pending Phase II permit application (the “Phase II Application”), which remains subject to the County’s review and final decision.

¹ Unless otherwise noted, capitalized terms not herein defined shall have the meaning ascribed to them in Plaintiff’s Amended Complaint.

² Am. Compl. ¶¶ 53, 55 nn.7 & 10 (citing Max White, *Spartanburg County Could See a \$2.8 Billion Investment, One of the Largest Ever in SC. What to Know*, POST & COURIER (Feb. 18, 2025), <https://perma.cc/462Q-QQQD>; Christian Boschult, *Spartanburg data center that got tax breaks wants 400 megawatt energy production increase*, POST & COURIER (Apr. 22, 2026), <https://perma.cc/5N4H-3H7B>).

³ See *id.*

Plaintiff also contends that Valara has exceeded the scope of its Phase I Permit (Count III). The Amended Complaint alleges that Valara and the County have violated and ignored the plain language of the ULMO, but it is Plaintiff who seeks to rewrite the ULMO and runs afoul of the administrative procedures the ordinance requires.

First, the Amended Complaint should be dismissed because Plaintiff failed to exhaust its administrative remedies. South Carolina law requires a party who wishes to challenge the County's decision on a permit application to appeal to the County's Board of Zoning Appeals before seeking judicial review. The Spartanburg County ULMO itself creates this right of appeal: Section 5.02-2 empowers the Board of Zoning Appeals "to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcement officer of this Ordinance"—language that squarely covers the issuance of a land development permit. ULMO § 5.02-2.⁴ Under the ULMO, Plaintiff was allotted ten days to file an appeal with the Board of Zoning Appeals. *Id.* § 1.04. The County issued the Phase I Permit on August 27, 2025. Plaintiff waited nearly ten months before coming to this Court, and did not actually challenge the Phase I Permit until it filed its Amended Complaint on August 12, 2026, nearly a full year after the permit's issuance and vastly outside the window to appeal.

Missed zoning-appeal deadlines are jurisdictional. They are not discretionary, and they are not equitably adjustable. Because Plaintiff never appealed the Phase I Permit within ten days of its issuance, any challenge to the Phase I Permit in this Court is foreclosed. Plaintiff cannot resurrect a year-old, un-appealed permitting decision by repackaging its challenge around a later, still-pending application. Plaintiff also may not challenge Valara's alleged violation of the Phase I Permit because Plaintiff does not allege any of its members pursued—much less exhausted—the

⁴ A copy of the ULMO is attached to Plaintiff's Amended Complaint as Exhibit 1.

complaint process the ULMO itself prescribes. That omission is not a pleading technicality, but the precise mechanism the County Council adopted to resolve these disputes short of litigation, and Plaintiff's failure to invoke it deprives this Court of a developed administrative record to review. Finally, because the County has not rendered a decision on the Phase II Application, any challenge to it is not merely premature but unripe: there is no final agency action for this Court to review, and no injury has yet occurred that this Court could redress.

Next, the Amended Complaint fails because it does not adequately allege that Valara violated the ULMO when it submitted its Minor Land Development Applications or allegedly exceeded the scope of its Phase I Permit. Strip away the rhetoric about billion-dollar price tags and megawatts, and Plaintiff's entire case rests on asking this Court to rewrite a defined term because Plaintiff finds the definition inconvenient. The computing center qualifies as a Minor Land Development under the ULMO's plain text because the ULMO defines "Major Land Development" by setting forth specific uses: "commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments." ULMO § 1.02(1). It defines "Minor Land Development" as the residual category: "[a]ll other [u]ses [n]ot [c]lassified as Major" are "Minor." *Id.* Ex. A. A high-performance computing center is not among the enumerated Major uses, and Plaintiff does not—because it cannot—point to any part of the ULMO categorizing it as such. Plaintiff offers a strained interpretation of "Major Land Development" that requires this Court to read in words that do not appear in the ULMO, ignore other words that do, and substitute Plaintiff's assertions of ordinary usage and project scale for the County Council's actual definition of the term, which definition references neither square footage, nor capital investment, nor "scale" of any

kind. Not only does Plaintiff's proposed interpretation violate the cardinal rules of statutory construction, but it is also unworkable in practice. This Court should reject it.

Moreover, the development activities that Plaintiff alleges violated the Phase I Permit were in fact plainly authorized by Valara's land disturbance permits and were permitted by the conditional approval of Valara's Phase II Application. Plaintiff cannot manufacture a permit violation out of activity the County itself has separately and expressly authorized. Accordingly, each of Counts I, II, and III fails and the Amended Complaint should be dismissed.

Finally, Counts II and III independently fail because neither Plaintiff nor its members have standing to seek injunctive relief under South Carolina's Comprehensive Planning and Enabling Act (the "Planning Act"). For Plaintiff to have associational standing under the Planning Act, at least one of its members must have statutory or constitutional standing, which requires them to demonstrate they suffered "special injuries" distinct from those suffered by the public. Because Plaintiff fails to plead facts indicating that any of its members suffered a particularized harm that could not otherwise be claimed by the whole of the Spartanburg community, Plaintiff's members—and thus Plaintiff—lack standing to seek injunctive relief.

Together, these deficiencies leave no path forward for Plaintiff's claims. The Court should dismiss the Amended Complaint.

FACTUAL BACKGROUND⁵

A. Valara Makes a Critical Investment in Spartanburg County in Compliance with the ULMO.

Valara is responsible for the construction and operation of a high-performance computing center (the “HPCC”) at 4000 South Pine Street in Spartanburg County, South Carolina. *See* Am. Compl. ¶ 3. The HPCC will leverage “cutting-edge technology to support complex computational tasks in machine learning, data analytics, and complex systems modeling.” *Id.* ¶ 1 n.1.

Valara’s decision to construct the HPCC in Spartanburg drew high praise from state and local officials. Governor McMaster touted the investment as “yet another testament to the trust that industry leaders have for our talented workforce, our economic environment and our strong values.” *Id.* ¶ 55 n.10. Former Spartanburg County Councilman David Britt, previously Chairman of the Economic Development Committee, called development of the HPCC “an incredible opportunity,” *id.* ¶ 53 n.7, emphasizing that Valara “is a great company that’s going to be a good corporate citizen that doesn’t tax our infrastructure,” *id.* ¶ 1 n.1. Valara projects that the HPCC will create approximately 150 full-time jobs.

In early 2025, Valara began an extensive effort to ensure compliance with all the County’s land development requirements, including obtaining permits under the ULMO.

The ULMO, a product of the Planning Act, governs the County’s development and land use decisions, including permit applications. S.C. Code Ann. § 6-29-310; Am. Compl. ¶ 40. Under the ULMO, development or alteration of the use of land requires an applicable permit from the County. Am. Compl. ¶ 43. The ULMO divides permit applications into two categories for

⁵ For the sole purpose of this Motion to Dismiss, Valara takes as true the facts alleged in Plaintiff’s Amended Complaint. Valara otherwise wholly disputes the truth and accuracy of the Amended Complaint’s allegations.

administrative purposes: Major Land Development and Minor Land Development. *Id.* Major Land Development “includes but is not limited to commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.” ULMO § 1.02(1); Am. Compl. ¶ 46. The ULMO’s Exhibit A sets forth precisely what other “similar developments” fall within the Major Land Development’s definition, such as a “Motor Speedway or Testing Track,” a “Waste Management Facility,” a “Scrap Metal Processor,” or an “Asphalt Batch Plant.” ULMO Ex. A. High-performance computing centers are *not* included. *See id.* In contrast, a Minor Land Development is “any land development or land altering activity requiring a permit from the County other than a subdivision or Major Land Development.” *Id.* § 1.02(1); Am. Compl. ¶ 44. Exhibit A leaves no doubt: “All other [u]ses [n]ot [c]lassified as Major” Land Developments by Exhibit A are Minor Land Developments. ULMO Ex. A.

Whether an application is submitted as a Major Land Development or a Minor Land Development matters only “for administrative purposes.” *Id.* § 1.02(1). A Major Land Development permit application is reviewed by the Spartanburg County Planning Commission (the “Planning Commission”). Am. Compl. ¶ 47. And the Planning Commission is required to provide the community with an opportunity for “public comment, engagement, and information” before reaching a decision on a permit application, as well as to “set out the grounds for its approval or disapproval of a Major Land Development” permit. *Id.* ¶¶ 47-48. A Minor Land Development goes through “staff-level review . . . prior to approval.” *Id.* ¶ 45. In either scenario, an approved application receives the same development permit. *See* ULMO §§ 1.08, 1.13 (showing no subclassification of development permits into Major Land Development permits and Minor Land Development permits).

Any person aggrieved by the County’s decision to approve a Minor Land Development application and thus issue a development permit can—and must—appeal that decision first to the Spartanburg County Board of Zoning Appeals (the “Board of Zoning Appeals” or the “Board”) and then, only after exhausting appeals to the Board, may the aggrieved person seek relief in the courts. S.C. Code Ann. § 6-29-800(B); S.C. Code Ann. § 6-29-820(A); *see also infra* Argument § I.

On July 11, 2025, Valara submitted a Minor Land Development application for Phase I of construction. Am. Compl. ¶ 56. The County approved Valara’s Minor Land Development application on August 27, 2025, and issued Valara’s Phase I Permit. *Id.* No one—including Plaintiff and its members—elected to participate in the process by appealing the issuance of the Phase I Permit to the Board of Zoning Appeals. With all initial approvals in place, Phase I clearing and construction commenced.

In early 2026, Valara began preparations for Phase II. On April 6, 2026, Valara submitted a Minor Land Development application for “Phase II improvements.” Am. Compl. ¶ 66. On May 13, 2026, the County granted conditional approval of the Phase II Application, which meant that, while a building permit would not issue until final approval, mass grading in preparation for Phase II could commence and the County’s public works department could issue approval of the third modification to Valara’s land disturbance permit, which now covers a substantial portion of the site. *See* Ex. 1, May 13, 2026, Phase II Approval Letter; Ex. 2, Valara’s Land Disturbance Permits at 4.⁶ The third modification built upon Valara’s previous land disturbance permits and sanctioned

⁶ At the motion-to-dismiss stage, the Court may consider not only the complaint but also documents “referenced” in the complaint. *See Carolina First Corp. v. Whittle*, 343 S.C. 176, 190, 539 S.E.2d 402, 410 (Ct. App. 2000) (“Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference.”). The Phase II Application and Valara’s land disturbance permit are incorporated by reference in the

tree-cutting, mass grading, and other impacts in support of Phase II and beyond the Phase I Permit development boundary. *See* Am. Compl. ¶ 78; Ex. 2, Valara’s Land Disturbance Permits. While Valara has taken steps towards obtaining final approval of the Phase II Permit, its application remains pending with the Spartanburg County Administrator (the “SCA”), the entity tasked with administering the ULMO and a defendant in this action. *See* Am. Compl. ¶¶ 33, 66.

B. Plaintiff Files Suit in Contravention of the ULMO.

Plaintiff Concerned Citizens of Spartanburg County was formed by several Spartanburg residents to oppose development of the HPCC. *See id.* ¶ 18. According to Plaintiff, its members include Mark Felk, Ricky Heath, and Kip Darwin, who allegedly reside “near the [HPCC].” *Id.* ¶¶ 20-21. On June 22, 2026, Plaintiff filed a petition in front of South Carolina’s Public Service Commission raising similar challenges to the HPCC and seeking to halt construction.⁷ On July 6, 2026, Plaintiff filed a single-count Complaint against Valara, the County, and the SCA, challenging only the Phase II Application. *See* Compl. On August 12, 2026, Plaintiff filed an Amended Complaint bringing two new counts that raised, for the first time, a challenge to the Phase I Permit and the scope of Valara’s construction under it. *See* Am. Compl. ¶¶ 92-107.

The Amended Complaint challenges the Phase I Permit and the Phase II Application, alleging that Valara violated the ULMO by filing a Minor Land Development application rather

Amended Complaint. Counts I and II directly challenge the Phase II Application, Count III relies on the land disturbance permit, and the Amended Complaint quotes and cites both extensively. *See* Am. Compl. ¶¶ 66, 77, 78, 87, 104-105; *see also Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) (“[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto prevents a plaintiff . . . from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based.”).

⁷ On August 27, 2026, after briefing and oral argument, the Public Service Commission dismissed Plaintiff’s petition in its entirety.

than a Major Land Development application and by exceeding the scope of the Phase I Permit. Plaintiff seeks a declaration that any proposed development on the HPCC must be submitted as a Major Land Development application under the ULMO; a declaration that the County improperly issued the Phase I Permit in violation of the ULMO; a declaration that the County must cease processing the Phase II Application; and a declaration that Valara's ongoing construction activities violate the ULMO. The Amended Complaint also seeks an injunction of all ongoing construction until Valara receives approval of a Major Land Development application for the HPCC, as well as an injunction on any future processing of Minor Land Development applications for the HPCC. *See id.*, Prayer for Relief, ¶¶ 1-7.

While Plaintiff criticizes Valara's and the County's interpretation of and alleged non-compliance with the ULMO, Plaintiff itself has failed to comply with the ULMO's administrative requirements. The ULMO requires the SCA to act on an application before any challenge to that decision is appealed to the Board of Zoning Appeals. As explained above, the ULMO explicitly permits aggrieved persons (as Plaintiff and its members claim to be) to timely appeal the SCA's or any enforcement officer's decision relating to a permit issuance or an alleged permit violation. *See* ULMO § 1.03 (Table 1), § 5.02-2(1). Only after exhausting that administrative review process can an appeal be taken to the circuit court. As Plaintiff's Amended Complaint concedes, none of this has happened.⁸

⁸ While this Motion to Dismiss is limited to challenging the legal sufficiency of the Amended Complaint, Valara reserves all rights to challenge Plaintiff's allegations on the merits.

LEGAL STANDARD⁹

Dismissal under Rule 12(b)(6) is proper “when the defendant demonstrates that the plaintiff has failed to allege facts sufficient to establish a cause of action.” *Disabato v. S.C. Ass’n of Sch. Adm’rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); *see* Rule 12(b)(6), SCRCPP. Although a court must treat “all well-pled allegations as true,” *Disabato*, 404 S.C. at 441, 746 S.E.2d at 333, it need not accept “conclusory allegation[s], unsupported by any particularized allegations of fact.” *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 455 n.9, 814 S.E.2d 643, 656 n.9 (Ct. App. 2018).

While failure to state a claim is raised under Rule 12(b)(6), “[a] challenge to subject matter jurisdiction should be raised by a motion to dismiss under Rule 12(b)(1).” *Ballenger v. Bowen*, 313 S.C. 476, 478 n.2, 443 S.E.2d 379, 380 n.2 (1994). However, standing and similar limitations are not properly characterized as jurisdictional, *see Nat’l Tr. for Historic Pres. in U.S. v. City of N. Charleston*, 447 S.C. 287, 292 n.2, 926 S.E.2d 230, 233 n.2 (2026), and a failure to exhaust administrative remedies is likewise properly assessed under Rule 12(b)(6), *see Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 176, 551 S.E.2d 263, 273 (2001).¹⁰ Valara accordingly moves to dismiss the Amended Complaint for failure to allege facts sufficient to establish a cause of action under Rule 12(b)(6). To the extent the Court nonetheless treats ripeness and standing as jurisdictional, Valara moves to dismiss under Rule 12(b)(1) in the alternative.

⁹ Unless otherwise noted herein, all emphasis is added, and all internal quotations, citations, alterations, and subsequent history are omitted.

¹⁰ While the County has moved for dismissal on failure to exhaust grounds under Rule 12(b)(1), because dismissal follows under either characterization, Valara’s Motion to Dismiss does not depend on whether the Court concludes that exhaustion presents a jurisdictional challenge.

ARGUMENT

The Court should dismiss the Amended Complaint because each count independently fails on multiple grounds. Plaintiff cannot shirk the ULMO's prescribed administrative process and run to this Court for relief. As set forth below, any challenge to the Phase I Permit is untimely because Plaintiff failed to appeal the decision to the Board within ten days of its issuance; and any challenge to Valara's activities under the Phase I Permit, or to the County's consideration of the Phase II Application, is improper because Plaintiff has not exhausted its administrative remedies. The Amended Complaint separately fails because Valara did not violate the ULMO. Under the ULMO's plain language, Valara is only required to submit a Minor Land Development application for any proposed land development to the HPCC; further, any activity conducted by Valara outside the Phase I Permit boundary did not require a land development permit under the ULMO and is permitted under Valara's land disturbance permit. Finally, Plaintiff lacks standing to bring Counts II and III because none of Plaintiff's members have suffered a particularized harm sufficient to confer statutory or constitutional standing upon them, nor associational standing upon Plaintiff, and the public importance exception to constitutional standing does not apply.

I. THE AMENDED COMPLAINT SHOULD BE DISMISSED BECAUSE PLAINTIFF FAILED TO COMPLY WITH THE ULMO'S ADMINISTRATIVE REVIEW PROCESS.

The Amended Complaint should be dismissed because (1) Plaintiff's challenge to the Phase I Permit is untimely because none of Plaintiff's members ever appealed the SCA's decision to the Board; (2) Plaintiff's challenge to Valara's alleged violation of its Phase I Permit is improper because Plaintiff failed to exhaust the administrative complaint process outlined in the ULMO; and (3) Plaintiff's challenge to the Phase II Application is both premature under the ULMO and unripe for resolution under the Declaratory Judgment Act (the "DJA").

South Carolina law is clear that “the exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts.” *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964). Over sixty years’ worth of precedent laid down by South Carolina courts confirms that this exhaustion-of-remedies requirement applies with full force in the zoning context. See, e.g., *id.*; *Moore v. Sumter Cnty. Council*, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990) (holding that landowners “must exhaust their administrative remedies before seeking judicial relief” from an allegedly invalid zoning ordinance); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976) (refusing to address whether a zoning ordinance was unconstitutional as applied to a specific property because “the Landowner . . . failed to pursue his administrative remedies by applying for a variance”); *Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 544-46, 860 S.E.2d 687, 693-94 (Ct. App. 2021) (holding that the trial court did not err in finding that “Appellants had not exhausted their administrative remedies because they had not appealed any decision of the Zoning Administrator to the Board of Zoning Appeals”).

This is no surprise. The Planning Act expressly contemplates an “administrative mechanism designed to enforce [local] zoning ordinance[s].” S.C. Code Ann. § 6-29-780(A). To that end, the Planning Act authorizes local zoning ordinances to “provide for the creation of a board to be known as the board of zoning appeals.” *Id.* And it grants that board the exclusive power to “hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.” S.C. Code Ann. § 6-29-800(A)(1). Any “person aggrieved” by an allegedly erroneous decision of an administrative official must exhaust their administrative remedies by appealing the alleged error to their local board of zoning appeals in the first instance. S.C. Code Ann. § 6-29-

800(B). Under the Planning Act, any such appeal must be filed “within a reasonable time, as provided by the zoning ordinance or rules of the board.” *Id.*

As Plaintiff acknowledges, “Spartanburg County utilizes its ULMO to govern development and land use decisions.” Am. Compl. ¶ 40. The ULMO permits individuals to submit alleged zoning violations to the SCA and obligates the SCA to “record and investigate such complaint[s], and take such action as provided by this Ordinance,” including “stop work order[s]” or “withholding permits.” ULMO §§ 1.17, 1.18. And pursuant to the authority granted by Section 6-29-780(A) of the Planning Act, the ULMO establishes the Board of Zoning Appeals and vests the Board with the power “[t]o hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcement officer of this Ordinance.” *Id.* §§ 5.02-1, 5.02-2(1). The ULMO prescribes the process that any person aggrieved must follow to challenge the issuance of a permit or a decision not to enforce an alleged permit violation: file an appeal with the Board “within 10 days of the date of the action.” *Id.* §§ 1.04, 5.02. Only *after* the Board of Zoning Appeals renders a final decision on the administrative appeal can a party aggrieved initiate an appeal in the state courts. *See, e.g.*, S.C. Code Ann. § 6-29-820(A); Board of Zoning Appeals Rule of Procedure art. IV, § 10; ULMO § 1.05 & Application Procedural Chart 2.

Here, neither Plaintiff nor any of its members exhausted, or even pursued, their administrative remedies before challenging the Phase I Permit, Valara’s alleged violation of the Phase I Permit, or the Phase II Application in this Court.

A. Plaintiff’s Challenge to the Phase I Permit Fails Because Plaintiff Never Appealed the Issuance of the Phase I Permit to the Board of Zoning Appeals.

Counts I and II fail to state a cause of action as to the Phase I Permit because they do not allege that Plaintiff or any of its members appealed the issuance of the Phase I Permit to the Board of Zoning Appeals, notwithstanding that Plaintiff concedes the Phase I Permit was issued on

August 27, 2025—nearly a year before Plaintiff challenged the Phase I Permit in this Court and well past the ULMO’s ten-day window for filing an appeal. *See* Am. Compl. ¶ 86. Because missed zoning-appeal deadlines are jurisdictional, Plaintiff has waived any right to challenge the SCA’s decision to issue Valara’s Phase I Permit. *See Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 334, 372 S.E.2d 584, 585-86 (1988) (holding that the failure to appeal a zoning decision in the requisite time period divested the zoning appeal board of jurisdiction to hear the appeal), *overruled on other grounds by Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995); *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310 (refusing to hear respondent’s challenge to a building permit issuance because she failed to appeal to “the Zoning Board of Adjustment” in the prescribed time); *Stanton v. Town of Pawleys Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (affirming dismissal for failure to exhaust administrative remedies where plaintiff never appealed denial of building permit to Board of Adjustment); *Meredith v. Elliott*, 247 S.C. 335, 346-47, 147 S.E.2d 244, 249 (1966) (“Having failed to follow the administrative remedy created by the statute . . . [plaintiffs] are precluded from resorting to the courts for relief.”); *Palumbo v. Waste Techs. Indus.*, 989 F.2d 156, 161 (4th Cir. 1993) (holding that a party may not circumvent a limitations period by recasting an untimely challenge as a plenary action).¹¹

¹¹ To the extent Plaintiff attempts to argue that its failure to appeal should be excused on equitable grounds, such excuses similarly fail. For example, South Carolina will not employ estoppel or reliance to override a zoning determination even where the official who made the underlying statement lacked authority to bind the government. *See, e.g., McCrowey v. Zoning Bd. of Adjustment of City of Rock Hill*, 360 S.C. 301, 306, 599 S.E.2d 617, 620 (Ct. App. 2004); *DeStefano v. City of Charleston*, 304 S.C. 250, 257-58, 403 S.E.2d 648, 653 (1991). If a landowner who received an affirmative governmental approval cannot stop enforcement where that approval was unauthorized, a neighbor who identifies no representation made to it at all cannot invoke equity to rewrite a jurisdictional filing deadline. Nor can Plaintiff excuse its delay on a theory of late notice. The ULMO starts the clock on “the date of the action”—the date the permit issued—not the date a neighbor later concludes the project is larger than first assumed. ULMO § 1.04. And the ULMO does not require individualized notice to adjacent owners before a staff-level Minor Land Development determination becomes appealable. If

Plaintiff's own pleadings confirm it had what it needed to appeal. In Plaintiff's Motion for Preliminary Injunction, filed with this Court on August 19, 2026, it admits that "[i]n April 2025, NorthMark Strategies announced that its subsidiary, Valara Holdings, was planning a \$2.8 billion project to transform the former Kohler manufacturing facility in Spartanburg, S.C., into a state-of-the-art high-performance computing (HPC) center." Mot. for Prelim. Inj. at 4. Valara applied for the Phase I Permit on July 11, 2025, and the permit was pending in front of the SCA until the end of August 2025. *Id.* at 5. Shortly thereafter, construction began, and according to Plaintiff, its members watched construction proceed at the site and were affected by it as it occurred. *See* Am. Compl. ¶¶ 22-23 (Felk), 24-26 (Heath); 27-28 (Darwin). Nothing about the HPCC's true nature was concealed prior to or at the time the Phase I Permit was issued; the facts Plaintiff needed to raise its challenge were apparent from the Phase I Permit and the construction that immediately followed it. Indeed, Plaintiff argues that Phase I, standing alone, was "plainly a major development" and that it could not "plausibly be considered 'minor.'" Mot. for Prelim. Inj. at 24-25. If Phase I was itself facially sufficient to require Major Land Development review, as Plaintiff now insists, Plaintiff cannot simultaneously contend that it lacked sufficient information to challenge the County's Phase I classification when the Phase I Permit issued. Plaintiff's members were undeniably on "notice" of "the action," and any claim that Plaintiff lacked the information needed to properly appeal the Phase I Permit rings hollow. ULMO § 1.04. Plaintiff simply failed to appeal.

the absence of a letter to the neighbors rendered Section 1.04 inadequate, no Minor Land Development permit in Spartanburg County could ever become final. South Carolina does not treat notice objections that way even where notice *is* required: a challenge to the adequacy of notice of a zoning enactment is itself subject to a hard deadline, so long as the government substantially complied with applicable procedures. *See* S.C. Code Ann. § 6-29-760(D).

B. Plaintiff's Challenge to Valara's Alleged Violation of Its Phase I Permit Fails Because Plaintiff Never Filed a Complaint with the County.

Count III fails to state a claim as to Valara's alleged violation of its Phase I Permit because the Amended Complaint is devoid of allegations indicating that any of Plaintiff's members first filed a complaint with the SCA, upon receipt of which "the appropriate County agent or enforcement officer *shall record and investigate such complaint*, and take such action as provided by this Ordinance." ULMO § 1.17. The ULMO prescribes a process for policing alleged permit violations. Under the ULMO's administrative framework, Plaintiff first needed to file a complaint raising Valara's alleged violation of its Phase I Permit with the SCA, at which point a County enforcement officer would be required¹² to "investigate" the complaint and could conduct an "inspection[] of [the] land disturbing activity . . . to ascertain compliance with approved permit applications." *Id.* §§ 1.15, 1.17. Were the enforcement officer to conclude that Valara was exceeding its Phase I Permit and thereby "in violation of an approved plan or plat granted by the County," the officer could issue penalties, including an "injunction . . . [or] stop work order"—*precisely the relief Plaintiff seeks here.* *Id.* § 1.18. Then, if Plaintiff believed the ultimate decision of the enforcement officer to be in error, it could appeal that decision to the Board of Zoning Appeals for review. *See id.* § 5.02-2(1). Only after the Board rendered a decision could Plaintiff appeal that ruling to the state court. *See* S.C. Code Ann. § 6-29-820(A).

Plaintiff did none of this. And it cannot "circumvent the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under" Section 6-29-905. *Charleston Dev. Co.*, 433 S.C. at 544, 860 S.E.2d at 693. Because Plaintiff failed to engage with, let alone exhaust, the ULMO's administrative process for challenging permit

¹² The ULMO explicitly defines "shall" as "always mandatory." ULMO art. 6.

violations, Count III must be dismissed. *See Deciero v. Horry County*, 2020 WL 13281220, at *1 (S.C. Com. Pl. Sep. 23, 2020) (dismissing a claim where “[p]laintiff ha[d] not made a specific complaint alleging a zoning violation” to the county before filing suit challenging said violation in court); *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310 (“[T]he exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts.”). Indeed, construction is alleged to have proceeded openly at the site for ten months before Plaintiff filed suit, and Plaintiff’s members allege that they observed and were affected by that construction throughout, *see* Am. Compl. ¶¶ 22-28—yet at no point did any of them invoke the complaint process the ULMO prescribes.

C. Plaintiff’s Challenge to the Phase II Application Fails Because Plaintiff Did Not Exhaust Its Administrative Remedies, and the Claim is Otherwise Unripe.

Counts I and II fail to state a claim as to Valara’s pending Phase II Application because the Amended Complaint contains no allegation that Plaintiff has exhausted the available administrative remedy. Nor could it: as Plaintiff admits, the Phase II Application remains under review, and no permit has been issued. *See* Am. Compl. ¶ 66. Thus, there is no final administrative decision to appeal. Rather than participate in and allow the required administrative process to run its course, Plaintiff rushed to this Court seeking judicial review before the SCA has even acted on the application—let alone before the Board of Zoning Appeals has ruled on any appeal.

Beyond Plaintiff’s improper circumvention of the ULMO’s enforcement mechanism, the Amended Complaint’s challenge to the Phase II Application fails for a related, but independently dispositive, reason: no ripe, justiciable controversy exists. Under the DJA, “[d]eclaratory judgment actions must involve an actual, justiciable controversy.” *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 228 n.7, 467 S.E.2d 913, 918 n.7 (1996). A justiciable controversy exists only when there is “a real and substantial controversy *which is ripe and*

appropriate for judicial determination, as distinguished from [a] dispute of a contingent, hypothetical or abstract character.” *Orr v. Clyburn*, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982). Critically, “an issue that is contingent, hypothetical, or abstract is not ripe for judicial review,” and a claim resting on “a threat of possible injury” is accordingly “too contingent or remote to support present adjudication.” *Jowers v. S.C. Dep’t of Health & Env’t Control*, 423 S.C. 343, 353-54, 815 S.E.2d 446, 451 (2018); *Waters*, 321 S.C. at 227, 467 S.E.2d at 918.

The DJA’s ripeness requirement serves a critical function: it “prevent[s] the courts . . . from entangling themselves in abstract disagreements” that may not come to pass. *Columbia Ins. Co. v. Reynolds*, 225 F. Supp. 3d 375, 379 (D.S.C. 2016). Count I challenges Valara’s “*pending*” Phase II Application. Am. Compl. ¶ 66. The South Carolina Supreme Court has held that where an issue may resolve itself in Plaintiff’s favor through the ordinary course of the administrative process, it is neither “ripe” nor “appropriate for judicial determination.” *Orr*, 277 S.C. at 542, 290 S.E.2d at 807. So too here. Plaintiff asks this Court to usurp the County’s administrative discretion by intervening *before* the SCA has rendered its decision on Valara’s Phase II Application (or the Board of Zoning Appeals has resolved any appeal). But the County could deny the application, approve it subject to conditions, or otherwise resolve the issues Plaintiff raises, any of which could eliminate or materially alter the controversy Plaintiff asks this Court to decide now. This renders any challenge to the Phase II Application under the DJA procedurally improper.¹³

¹³ Even if the SCA had reached a final decision approving the Phase II Application, Plaintiff’s claim still would not have been ripe for judicial review until the administrative appeal process was exhausted. Although the DJA permits courts to “determine[] any question of construction or validity arising under the . . . ordinance,” S.C. Code Ann. § 15-53-30, South Carolina law is clear that Plaintiff cannot “invoke[] [the DJA] to avoid or circumvent the legislature’s exclusive method for challenging” an administrative agency’s construction of a statute or ordinance. *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 82, 742 S.E.2d 371, 374 (2013); *see also Charleston Cnty. Sch. Dist. v. S.C. State Ports Auth.*, 283 S.C. 48, 50-51, 320 S.E.2d 727, 729-30 (Ct. App. 1984) (affirming dismissal of action seeking a

* * *

In short, the Court should not permit Plaintiff to bypass the administrative pathway set forth in the Planning Act and the ULMO and be heard in this Court. Because Plaintiff and each of its members have failed to exhaust or otherwise engage with the administrative review process, they “cannot . . . attack the validity” of the Phase II Application, the Phase I Permit, or Valara’s actions under either in this Court. *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310. Accordingly, the Amended Complaint should be dismissed.

II. ALTERNATIVELY, THE AMENDED COMPLAINT SHOULD BE DISMISSED BECAUSE VALARA DID NOT VIOLATE THE ULMO.

Even if Counts I, II, and III were procedurally proper in the first instance (they are not), the Amended Complaint still fails to state a claim that Valara violated the ULMO by submitting Minor Land Development applications for Phase I and Phase II of the HPCC (Counts I and II) or conducting development activities outside the perimeter of the Phase I Permit (Count III). *See* Am. Compl. ¶¶ 86-90, 95, 100-104.

Plaintiff’s fundamental error is substituting its own subjective impression of what seems “major” or “minor” for the defined land development categories enumerated in the ULMO. The ULMO’s plain text provides a definition for Major Land Developments, identifies in Exhibit A the specific uses that fall within that definition, and explicitly mandates that “[a]ll other [u]ses [n]ot [c]lassified as Major” Land Developments are classified as Minor Land Developments. ULMO § 1.02(1), Ex. A. The Amended Complaint does not (and cannot) allege that the HPCC

declaration that plaintiff’s “right to the collection of taxes . . . [wa]s adversely affected by the erroneous construction of the statutes by the Commission” because the claim was not ripe for judicial determination until the plaintiff exhausted administrative remedies). Plaintiff will have the opportunity to appeal the County’s grant of the Phase II Application. But until it has exhausted that administrative remedy, no justiciable controversy exists. *See Charleston Cnty. Sch. Dist.*, 283 S.C. at 51, 320 S.E.2d at 729.

falls within the list of Major Land Developments outlined in Exhibit A. Thus, by the ULMO's plain terms, the HPCC is a Minor Land Development as a matter of law; Valara's Minor Land Development applications for the HPCC were proper; and Counts I and II must be dismissed.

Count III fares no better and similarly fails as a matter of law. Under the ULMO, Valara was not required to obtain a land development permit to conduct clearing and grading activities expressly permitted under its land disturbance permits. *See* Ex. 2, Valara's Land Disturbance Permits. Because the specific ground-altering activities that Plaintiff alleges exceeded the perimeter of Valara's Phase I Permit were fully permitted under its valid land disturbance permits, Count III fails to state a claim upon which relief can be granted.

A. Valara's Minor Land Development Applications Did Not Violate the ULMO.

In South Carolina, "[t]he cardinal rule of statutory construction is that courts will ascertain and effectuate the intent of the lawmaking body." *Historic Charleston Found. v. Krawcheck*, 313 S.C. 500, 504, 443 S.E.2d 401, 404 (Ct. App. 1994). "In ascertaining the intent of the lawmaking body, the ordinance must be read as a whole; sections which are part of the same general statutory law must be construed together and each given effect if it can be done by any reasonable construction." *Id.* Where, as here, the ordinance's "language is plain and unambiguous and conveys a clear and definite meaning, . . . the court has no right to look for or impose another meaning." *Boehm v. Town of Sullivan's Island Bd. of Zoning Appeals*, 423 S.C. 169, 185, 813 S.E.2d 874, 882 (Ct. App. 2018).

The plain language of Section 1.02(1) and Exhibit A of the ULMO, read as a whole, establishes the unambiguous meaning of the defined term "Major Land Development." Under Section 1.02(1), a Major Land Development "includes but is not limited to commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments." ULMO § 1.02(1).

The definition does not reference square footage, building height, or any other quantitative metric. And while Section 1.02(1) uses the phrases “includes but is not limited to” and “similar developments,” Exhibit A is plainly intended to fill those gaps by setting forth a comprehensive list of the fourteen property types that were not included in, or are “similar” to, the developments in Section 1.02(1)’s definition, but are still classified as Major Land Developments under the ULMO—such as “Motor Speedway[s] or Testing Track[s],” “Waste Management Facilit[ies],” “Scrap Metal Processor[s],” and “Asphalt Batch Plant[s].” *Id.* Ex. A. Notably absent from Section 1.02(1) and Exhibit A’s definition of “Major Land Development” is any reference to high-performance computing centers. *See id.* § 1.02(1), Ex. A.¹⁴ And as Exhibit A’s plain language makes clear, “[a]ll other [u]ses [n]ot [c]lassified as Major” Land Developments are “Minor Land Developments.” *Id.* Ex. A.

Section 1.02(1) and Exhibit A must be read together. *See Historic Charleston Found.*, 313 S.C. at 504, 443 S.E.2d at 404 (holding that an “ordinance must be read as a whole” and “sections which are part of the same general statutory law must be construed together and each given effect[.]”). And when read together, the plain language of those provisions is clear that only those uses specifically enumerated in Section 1.02(1) or similar in nature to the same, *i.e.*, those uses explicitly listed in Exhibit A, qualify as “Major Land Developments,” and “[a]ll other [u]ses [n]ot [c]lassified as Major” Land Developments are Minor Land Developments. Indeed, a residual default clause—classifying everything not deemed Major as Minor—has practical meaning only if Major is a bounded category, not an unbounded determination driven by whether a project feels “major” to Plaintiff. To put it another way, an “all other” class can exist only in relation to a

¹⁴ The ULMO has been amended twenty-four times since its enactment, and the County Council has declined to add data or high-performance computing centers to the ULMO’s definition of Major Land Developments. ULMO cover page, 105.

specifically enumerated and defined class. Any contrary interpretation would render this critical language meaningless surplusage. *See S.C. Nat'l Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (“Full effect must be given to each section of a statute and words should not be . . . taken away.”).

In sum, applying the ordinance as written, Plaintiff must allege that the HPCC falls within the specifically enumerated uses listed in Section 1.02(1) or Exhibit A to state a claim under Counts I and II. Plaintiff cannot do so: the ULMO makes no mention of high-performance computing centers. Accordingly, the HPCC qualifies as a Minor Land Development, as a matter of law, and Plaintiff does not and cannot allege that Valara or the County violated the ULMO by submitting, or approving, Valara’s Minor Land Development applications for the development of the HPCC. Moreover, the ULMO classifies applications, not projects. To the extent Plaintiff alleges that Valara improperly “bifurcated and split the permitting process,” nothing in the ULMO directs the SCA to aggregate separate applications, and nothing authorizes classification based on a developer's anticipated future phases. Am. Compl. ¶ 8.

Recognizing its incurable pleading defect, Plaintiff invites this Court to engage in interpretative gymnastics, to read words into the ULMO that do not exist, ignore the words that do, and substitute its own views as to the “ordinary” usage of “major” for the lawmaking body’s actual, written definition of a Major Land Development. In other words, Plaintiff asks this Court to do what the County Council did not do: import a size-and-cost test that exists nowhere in the ordinance’s text. This Court should reject Plaintiff’s invitation.

First, Plaintiff alleges that the ULMO requires the Court “to engage in a common-sense, comparative analysis”: “to determine whether a proposed land use is a major or minor development, [it] must determine whether [the proposed land use] is more similar to the major

uses . . . listed in the ordinance or the minor uses.” Am. Compl. ¶ 71. But this is an *ad hoc* test that Plaintiff has created whole cloth and appears nowhere in the ULMO. See *Consumer Advoc. for State v. S.C. Dep’t of Ins.*, 397 S.C. 599, 602, 725 S.E.2d 708, 710 (Ct. App. 2012) (“The court has no right to add the words [the legislature] omitted . . .”). To the contrary, Plaintiff’s proposed inquiry directly conflicts with the ULMO’s plain text, which mandates no such comparative analysis and instead merely provides that “[a]ll other [u]ses [n]ot [c]lassified” as Major Land Developments in Section 1.02(1) or Exhibit A are Minor Land Developments—period. ULMO Ex. A. Plaintiff’s ‘comparative analysis’ test is not in the ordinance; it is Plaintiff’s own gloss, and this Court should decline the invitation to enact it from the bench. If the County Council had desired a dollar-value or square-footage threshold, it could have written one—plenty of ordinances do exactly that. This one does not.

Second, Plaintiff asks this Court to eschew the ULMO’s definition of Major Land Development and decide if the HPCC is “a ‘major’ development” according to the term’s alleged ordinary usage, considering the project’s “scale,” whether it is “controversial,” and its “environmental and land use impact.” Am. Compl. ¶¶ 80-81. But “[w]here the [ordinance] . . . contains words that are . . . defined, the . . . definitions should generally be followed,” not cast aside for ordinary meaning. *Bell Fin. Co. v. S.C. Dep’t of Consumer Affs.*, 297 S.C. 111, 114, 374 S.E.2d 918, 920 (Ct. App. 1988). Thus, “the relevant question is not whether” the HPCC is a major land development in ordinary parlance but whether it is a Major Land Development “*as the [ULMO] defines that phrase.*” *Van Buren v. United States*, 593 U.S. 374, 388 (2021). It is not. The ULMO’s enumerated classifications confirm that the County Council intentionally rejected a subjective ‘scale, impact, and controversy’ standard: “Salvage Yard[s]” can be massive in physical scale; “Sexually Oriented Business[es]” generate intense community controversy; and “Mining

Operation[s]” have significant environmental and land use impacts. ULMO Ex. A. Yet, local lawmakers classified each as a “Minor Land Development” under the ULMO. Lawmakers funneled all other unenumerated uses into the residual Minor Land Development category, regardless of their size, associated controversy, or impact. *Id.* § 1.02(1), Ex. A.

Plaintiff’s proposed interpretation would produce an unworkable test that is bound to leave applicants and the County guessing as to the category into which their proposed use falls, with serious consequences for guessing it wrong, including costly stop-work injunctions and even potential criminal liability. *See* Am. Compl. ¶¶ 88-89 (alleging filing the wrong application violates the ULMO); S.C. Code Ann. § 6-29-950(A) (“A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor.”). Plaintiff’s elastic standard—governed by subjective impressions of what feels “major”—would open the floodgates to speculative, neighbor-driven litigation over land-use decisions that unambiguously fall within the default Minor Land Development category. Every new project could invite fact-intensive litigation over potential environmental or community impacts, stripping local administrative decisions of finality and replacing defined terms with the subjective preferences of neighboring challengers—precisely the sort of chaotic result the Minor Land Development process was designed to avoid. Moreover, South Carolina gives “great deference” to the officials charged with interpreting and applying a local zoning ordinance, and the County’s construction of its own ordinance “should be given some consideration and not overruled without cogent reason.” *Gurganious v. City of Beaufort*, 317 S.C. 481, 487, 454 S.E.2d 912, 916 (Ct. App. 1995); *Purdy v. Moise*, 223 S.C. 298, 304-05, 75 S.E.2d 605, 608 (1953).

Alternatively, even if the Court concludes that Section 1.02(1) should not be read in conjunction with Exhibit A (it should be), the HPCC still would not fall under Section 1.02(1)’s

definition of a Major Land Development. Under the doctrine of *ejusdem generis*, “[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace **only** objects similar in nature to those objects enumerated by the preceding specific words.” *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001); *see also Cooper River Bridge v. S.C. Tax Comm’n*, 182 S.C. 72, 72, 188 S.E. 508, 510 (1936) (noting the adoption of and applying the *ejusdem generis* doctrine under South Carolina law). The developments specifically enumerated in Section 1.02(1) are “commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.” ULMO § 1.02(1). The relevant common attribute among these specified developments is **form** not size, impact, or cost. *See Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022) (*ejusdem generis* focuses on the “common attribute[s]” shared by the specific items). Each listed development is a planned, multi-component layout—a park, a subdivision, a center, or a multi-unit complex. The “similar developments” clause therefore reaches other developments of that nature and form. It does not reach a single-operator reuse of an existing industrial plant simply because the plant is large or the repurposing is expensive. Under any interpretation of the ULMO, the HPCC does not fall within its definition of a Major Land Development.

Finally, even accepting Plaintiff’s interpretation of the ULMO and assuming the County was required to determine whether the HPCC was a “Major” or “Minor” land development based on ordinary usage of these terms, the County’s conclusion that Valara’s proposed HPCC constitutes a “Minor Land Development” is a factual finding entitled to great deference by this Court. *See Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 185, 767 S.E.2d 221, 225 (Ct. App. 2014). *Furr* is instructive; there, a county zoning board was tasked with determining

whether a hospice facility was more like a nursing home or a hospital, the former being a permitted use under the zoning ordinance and the latter being prohibited. *Id.* The board concluded that the hospice facility was more like a nursing home and thus constituted a permitted use. *Id.* On appeal, neighboring residents who were concerned about increased traffic and the environmental impact of the property argued that the board's decision "involved its interpretation of the Horry County zoning ordinances and, therefore, constitutes a question of law" subject to less deference. *Id.* at 180-83. The Court of Appeals disagreed, concluding that "[a] determination by a zoning board that a particular purpose or activity does or does not constitute a 'use' is a finding of fact," and because the board's determination required them to undertake "a factual inquiry to discern the type of care, staffing, and activity that would be involved at the [hospice] facility along with consideration of the relevant ordinances," the board was making a factual finding entitled to great deference. *Id.* at 184-85.

So too here. Under Plaintiff's interpretation of the ULMO, the County is required to engage in a fact-finding exercise, discerning whether the HPCC constitutes a "Minor" or "Major" land development based on its size, scale, and impact, and how those attributes compare to the other uses listed in Exhibit A. Under *Furr*, any such factual finding by the County would be entitled to deference by this Court. *Id.* at 185. And that deference requires the Court to refrain from second-guessing the County's decision unless "it is arbitrary[] [or] capricious." *Austin v. Bd. of Zoning Appeals*, 362 S.C. 29, 33, 606 S.E.2d 211, 211 (Ct. App. 2004). But the Amended Complaint makes no allegations that the County's decision to classify the HPCC as a "Minor Land Development" was arbitrary or capricious. At most, Plaintiff alleges that it and its members personally disagree with the County's classification decision, Am. Compl. ¶¶ 82-83, but that is not enough to render the County's decision arbitrary or capricious, *see Furr*, 411 S.C. at 183-185, 767

S.E.2d at 224-225. Thus, this Court should dismiss Counts I and II even if it accepts Plaintiff's incorrect interpretation of the ULMO.

B. The Alleged Activities Conducted by Valara Outside the Scope of Its Phase I Permit Did Not Violate the ULMO.

The Amended Complaint alleges that Valara is “exceed[ing] the scope of the ‘Phase I’ permitted boundary, which is the only area of land development authorized by the First Minor Land Development Permit . . . [and] Valara is effectively ignoring the development limits in its Development Permit.” Am. Compl. ¶ 77. Plaintiff provides satellite images of the HPCC site in support, allegedly showing “tree-cutting, grading, and excavating well outside the Phase I boundary.” *Id.* fig. 2. The fundamental flaw in Plaintiff's allegations is that under the ULMO, no land development permit is needed for “tree-cutting, grading, and excavation” activities. While the ULMO prohibits land from being “used” or converted to any other “use” without a prior development permit, ULMO § 1.13, the word “use” is a term of art in the zoning context, and it refers to “[t]he purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained,” *Heilker v. Zoning Bd. of Appeals for City of Beaufort*, 346 S.C. 401, 407, 552 S.E.2d 42, 45 (Ct. App. 2001). Here, Valara's clearing and grading activities do not “use” or “convert” the land as to require a land development permit under the ULMO. To the contrary, these activities, including “tree cutting . . . [and] mass grading,” are properly permitted under Valara's land disturbance permits, not one of which Plaintiff challenges in its Amended Complaint. Am. Compl. ¶ 78; Ex. 2, Valara's Land Disturbance Permits. Because the land disturbance permits allow Valara to engage in activities such as tree-cutting and grading, which do not constitute land “use” under the ULMO, Plaintiff's allegations that Valara is engaging in such activities are insufficient to state a claim and Count III fails as a matter of law.

III. COUNTS II AND III SHOULD BE DISMISSED BECAUSE PLAINTIFF LACKS STANDING TO SEEK INJUNCTIVE RELIEF UNDER S.C. CODE ANN. § 6-29-950(A).

Counts II and III should be dismissed because Plaintiff and its members lack standing to challenge the Phase I Permit and Phase II Application. Whether Plaintiff possesses the associational standing required to bring Counts II and III necessarily turns on whether one of Plaintiff's individual members possesses statutory or constitutional standing. *See Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 302, 551 S.E.2d 588, 590 (Ct. App. 2001). Because the Amended Complaint fails to plead facts indicating that Plaintiff's members have suffered particularized harms, Plaintiff's members lack statutory (and constitutional) standing to seek injunctive relief under the Planning Act. Accordingly, Plaintiff does not have associational standing to bring Counts II and III, and both should be dismissed.

A. Plaintiff Lacks Standing Because the Amended Complaint Fails to Allege That Plaintiff's Members Have Suffered a Particularized Injury.

Plaintiff alleges that its members have been “specially damaged” by Valara’s “unlawful” development activities and seeks to enjoin Valara’s ongoing construction under the Planning Act.¹⁵ *See* Am. Compl. ¶¶ 97-98, 106. Under the Planning Act, when a “building, structure, or land is or

¹⁵ To the extent Count III also invokes the DJA to seek a declaration “finding Valara to be in violation of the ULMO” by allegedly exceeding the scope of its Phase I Permit, Am. Compl. ¶ 107, the claim is procedurally improper because it does not present a “question of construction or validity arising under the . . . [ULMO].” S.C. Code Ann. § 15-53-30. Instead, Count III only addresses the scope of the Phase I Permit, and whether Valara has complied with it. Regardless, any challenge to the scope of Valara’s activities under the Phase I Permit is unripe because the Amended Complaint does not allege that any of Plaintiff’s members first raised a complaint with the County, as required under the ULMO. *See supra* Argument I(C); ULMO § 1.17 (“Whenever a violation of this Ordinance occurs, or is alleged to have occurred, the appropriate County agent or enforcement officer shall record and investigate such complaint, and take such action as provided by this Ordinance. Complaints may be filed in writing or verbally, stating fully the cause and basis thereof.”); *Deciero*, 2020 WL 13281220, at *1 (dismissing a claim as unripe where “[p]laintiff ha[d] not made a specific complaint alleging a zoning violation” to the county before filing suit challenging said violation in court).

is proposed to be used in violation of any ordinance . . . an adjacent or neighboring property owner ***who would be specially damaged*** by the violation may . . . institute injunction . . . to prevent” the violation. S.C. Code Ann. § 6-29-950(A). The “specially damaged” standard “incorporates the particularized injury requirement of general standing doctrine as a requirement for the [Planning Act] to apply.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014). In other words, both constitutional and statutory standing require “a concrete [and] particularized . . . invasion of a legally protected interest.” *Id.* at 75. Such an invasion must “affect the plaintiff in a personal and individual way,” rather than amount to a generalized grievance that impacts the public at large. *Id.*

The Amended Complaint falls short of alleging that any of Plaintiff’s members suffered individualized harms sufficient to confer statutory and constitutional standing. At best, Plaintiff alleges that members Heath and Felk are “being harmed by the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site.” Am. Compl. ¶¶ 23, 26. But these alleged harms do not affect Heath and Felk in any “personal and individual way”—to the contrary, these allegations “are simply complaints about inconveniences suffered broadly by all persons residing in or passing through” Spartanburg, which the South Carolina Supreme Court has found “insufficient to establish standing.” *Carnival Corp.*, 407 S.C. at 76-77, 753 S.E.2d at 851. In *Carnival*, the Court considered—and squarely rejected—closely analogous generalized grievances asserted by Plaintiff here, holding allegations of increased “crowds, pollution, and traffic” and reduced “use and enjoyment of the local environment and . . . [of] homes [and] neighborhoods” resulting from a cruise ship’s alleged violations of a zoning code did not constitute a concrete, particularized injury. *Id.* This Court should do the same.

Plaintiff's allegations of procedural harm suffer the same defect. According to the Amended Complaint, "the public, Plaintiff, and its members" have been "deprive[d] . . . of rights provided by the ULMO and South Carolina law for Major Land Developments," including the opportunity to attend meetings and offer comments. Am. Compl. ¶ 7. Further, Plaintiff alleges that members Heath, Felk, and Darwin have been harmed by the "lack of transparency" and a failure to understand the full scope of the HPCC project. *Id.* ¶¶ 23, 26, 28. But by Plaintiff's own admissions, these alleged harms belong to "the public" at large, not to Plaintiff or its members individually. *Id.* ¶ 7. Indeed, Plaintiff *repeatedly* underscores that its supposed harms are suffered by all "citizens of Spartanburg County." *Id.* ¶¶ 16-17 ("Judicial review is necessary now to prevent the denial of the rights of the Plaintiff, its members, and the *citizens of Spartanburg County*" and "[t]imely review by this Court can ensure that . . . the Plaintiff, its members, and the *citizens of Spartanburg County* are afforded their procedural and substantive rights before any permit is issued."); *see also id.* ¶¶ 11, 28. As the South Carolina Supreme Court has made clear: "[a] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the . . . laws . . . does not possess standing." *Carnival Corp.*, 407 S.C. at 75, 753 S.E.2d at 850.

Nor do Heath, Felk, and Darwin's vague, unexplained "concern[s]" and "trouble[s]" about how the HPCC might injure them in the future suffice. Am. Compl. ¶¶ 22-23, 26-28. No matter how "deeply concerned" or "deeply troubled" Plaintiff's members may be, *id.* ¶¶ 22-23, 26-28, alleged "fear[s] . . . of future harm" do not give rise to a particularized injury, *Beaufort Realty Co.*, 346 S.C. at 303, 551 S.E.2d at 590. Nor does "mere offense, disagreement, or distaste" with Valara's use of its own property "qualify as a concrete and particularized injury." *Nat'l Park Serv. v. Nat'l Tr. for Historic Pres.*, No. 26A203, 2026 WL 2564318, at *2 (U.S. Aug. 31, 2026). And

the same goes for Heath’s “health” “worrie[s]” and Darwin’s “concern[s]” about “his health” and “his family’s health”—these mere “worries” and “concerns” are purely speculative. Am. Compl. ¶ 28; *see Beaufort Realty Co.*, 346 S.C. at 303, 551 S.E.2d at 590; *see also Overcash v. South Carolina Elec. & Gas Co.*, 364 S.C. 569, 575, 614 S.E.2d 619, 622 (S.C. 2005) (“[T]he special or particular injury requirement . . . is satisfied only by injury to the individual’s real or personal property.”).

Because the Amended Complaint fails to plead allegations of particularized harm, Plaintiff’s members lack statutory and constitutional standing. Consequently, Plaintiff lacks associational standing to seek injunctive relief under the Planning Act.

B. The Rarely Invoked Public Importance Exception Does Not Apply.

In an attempt to bypass its obvious lack of standing, Plaintiff asks that this Court relax South Carolina’s “stringent standing test” in the name of public importance. *Commander Health Care Facilities, Inc. v. S.C. Dep’t of Health & Env’t Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006); *see* Am. Compl. ¶ 19. Although the South Carolina Supreme Court has recognized a public importance exception to the constitutional standing requirements, it has instructed courts to “be cautious with this exception, lest it swallow the rule.” *Jowers*, 423 S.C. at 360, 815 S.E.2d at 455. To that end, the South Carolina Supreme Court has cautioned lower courts to “avoid an overzealous use” of the public importance exception and cabin it to cases where the “matter of importance . . . [is] inextricably connected to the public need . . . for future guidance,” thereby “transcend[ing] a purely private matter” into one of “public importance.” *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013); *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008); *see also Carnival Corp.*, 407 S.C. at 80-81 (rejecting argument to apply the public importance exception in a zoning dispute because “[c]ourts are not bodies for the resolution of public policy and generalized grievances”).

This is no such dispute. South Carolina courts have invoked this rare exception where, for example, county commissioners challenged the constitutionality of a statute that directly authorized their removal, *see Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007), or where a school district challenged the constitutionality of the governor’s use of emergency funding during the COVID-19 pandemic, *see Adams v. McMaster*, 432 S.C. 225, 236, 851 S.E.2d 703, 708-09 (2020). In both cases, the state Supreme Court applied the public importance exception and concluded that the claims required resolution for “future guidance” to the public. In contrast, South Carolina courts regularly refuse to apply the public importance exception to private zoning disputes that fail to provide such future guidance. *See ATC S., Inc.*, 380 S.C. at 199, 669 S.E.2d at 341 (refusing to apply the public importance exception because although “zoning is a matter of public importance . . . the same may be said of most legislative and executive actions” and there was no “public need for court resolution for future guidance”); *see also Carnival Corp.*, 407 S.C. at 80-81, 753 S.E.2d at 853.

Here, the Amended Complaint seeks injunctive relief based on Plaintiff’s theory that Valara’s submission of Minor Land Development applications and its construction activities violate the ULMO; these claims do not, unlike those in *Davis* and *Adams*, raise broader questions about proper use of public funding or challenge the constitutionality of new legislation. *See Adams*, 432 S.C. at 236, 851 S.E.2d at 708; *Davis*, 372 S.C. at 500, 642 S.E.2d at 742. Instead, the Amended Complaint is a dispute over the proper classification and construction scope of a single project under the ULMO, which is precisely the type of interpretive question reserved for the SCA in the first instance. Because Plaintiff categorically lacks standing to seek injunctive relief under the Planning Act, Counts II and III must be dismissed.

CONCLUSION

For the reasons outlined above, Valara respectfully requests that the Court dismiss Plaintiff's Amended Complaint.

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Respectfully submitted,

/s/ Bruce W. Bannister, Esq.

Bruce W. Bannister, Esq. (SC Bar No. 15679)
 Alexander R. Stalvey, Esq. (SC Bar No. 71739)
BANNISTER, WYATT & STALVEY, LLC
 24 Cleveland St., Suite 100
 Greenville, SC 29601
 (864) 298-0084
 BBannister@bannisterwyatt.com
 AStalvey@bannisterwyatt.com

/s/ Mitchell Willoughby, Esq.

Mitchell Willoughby, Esq. (SC Bar No. 6161)
 Andrew J. D'Antoni, Esq. (SC Bar No. 100919)
 Hunter R. Pope, Esq. (SC Bar No. 105471)
WILLOUGHBY HUMPHREY & D'ANTONI, PA
 P.O. Box 8416
 Columbia, SC 29202
 (803) 252-3300
 mwilloughby@whdlawyers.com
 adantoni@whdlawyers.com
 hpope@whdlawyers.com

Aaron H. Marks, P.C., Esq.

KIRKLAND & ELLIS LLP
 601 Lexington Ave
 New York, NY 10022
 (212) 446-4800
 aaron.marks@kirkland.com
Admitted Pro Hac Vice

Jeremy A. Fielding, P.C., Esq.

KIRKLAND & ELLIS LLP
 4550 Travis St.
 Dallas, TX 75205
 (214) 972-1770
 jeremy.fielding@kirkland.com
Admitted Pro Hac Vice

Michael K. Sciacotta, Esq.
KIRKLAND & ELLIS LLP
333 West Wolf Point Plaza
Chicago, IL 60654
(312) 862-2000
michael.sciaccotta@kirkland.com
Admitted Pro Hac Vice

Attorneys for Defendant Valara Holdings, LLC

September 11, 2026
Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing DEFENDANT VALARA HOLDINGS LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6) AND ALTERNATIVELY RULE 12(b)(1) through the electronic filing system on September 11, 2026, serving all counsel of record for Case No. 2026-CP-42-03416.

/s/ Mitchell Willoughby, Esq.

Mitchell Willoughby

APPENDIX W

**IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG**

CONCERNED CITIZENS OF
SPARTANBURG COUNTY,

Plaintiff,

v.

VALARA HOLDINGS, LLC,
SPARTANBURG COUNTY, and
SPARTANBURG COUNTY
ADMINISTRATOR,

Defendants.

Case No. 2026CP4203416

**PLAINTIFF’S RESPONSE TO
MOTIONS TO DISMISS**

The Valara Power Plant is the largest development in Spartanburg County’s history. Yet the County approved it without public notice, without public proceedings, and without review by the County’s Planning Commission. The Planning Enabling Act plainly authorizes Plaintiff’s claims here, and dismissal of this serious matter would be improper.

The County and Valara may not use secrecy as a shield against judicial review. They argue that this Court may not decide the merits of this case because Plaintiff did not first appeal the permit to the Board of Zoning Appeals or ask the County to enforce the terms of the existing Phase I permit. Not so. Explicit statutory language in the South Carolina Planning Enabling Act authorizes “an adjacent or neighboring property owner” who is “specially damaged” by a violation of Spartanburg’s Ordinance to “institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection. . . , or to correct or abate the violation.” S.C. Code Ann. § 6-29-950(A). Contrary to Defendants’ arguments, the Planning Enabling Act explicitly makes this remedy “*in addition to other remedies.*” *Id.* (emphasis added). This

language speaks for itself: The South Carolina legislature created a right of action for specially damaged neighbors to protect their property before it was too late. Defendants cite no cases in which a local ordinance, enacted by local officials, defeats an unambiguous right of action created by state law.

More, even if administrative exhaustion did apply, it is discretionary, not jurisdictional. South Carolina courts frequently excuse exhaustion where the facts are undisputed and the issue is a question of law. It is also excused when the administrative remedy is unavailable or inadequate. Should the Court find exhaustion could apply, so, too, would these exceptions.

Turning to Valara and the County's substantive arguments, Defendants wrongly argue that Valara's Data Center and Power Plant is a "Minor" project because the Ordinance does not expressly list "data centers" or "power plants" as examples of Major Land Developments. That argument overlooks the plain text of the Ordinance. The Ordinance states that the "Major" development category "*includes but is not limited to*" specified "commercial and industrial" projects "*and similar developments.*" Exhibit A of the Ordinance provides other examples of Major Land Development captioned by the phrase: "Major, *to include.*" Plainly, this list is not exclusive, but merely illustrative, and the definition includes any "similar" major development. And in every sense, this development is "Major." Ordinance § 1.02. Defendants' strained rewriting of the Ordinance would produce an absurd result: the largest development in Spartanburg County's history being considered "Minor" and escaping review by the County's Planning Commission—all while Spartanburg County's Public Health and Safety Committee continues to hold hearings on the impacts of this major project, yet no public hearings are held on the permits actually authorizing the project.

Last, Plaintiff has standing to bring its claims. Its members are neighboring and adjacent property owners who have suffered, and will continue to suffer, a myriad of concrete injuries from the construction and operation of the Data Center and Power Plant. This more than satisfies the favorable standard on motions to dismiss.

LEGAL STANDARD

A motion to dismiss is strictly confined to the facts of the complaint. *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011). Any facts that go beyond those four corners are properly pled in a motion for summary judgment rather than a motion to dismiss, which requires notice to all parties and the opportunity to fully develop relevant facts. *Brown v. Leverette*, 291 S.C. 364, 366–67, 353 S.E.2d 697, 698–99 (1987).

A motion to dismiss is not a vehicle to debate the merits of a claim or the interpretation of fact. *Chestnut v. AVX Corp.*, 413 S.C. 224, 227–28, 776 S.E.2d 82, 84 (2015). Instead, in deciding a motion to dismiss, courts consider whether, “taking the facts alleged as true and construing all reasonable inferences and doubts in plaintiff’s favor,” the plaintiff would be entitled to relief. *Farmer v. CAGC Ins. Co.*, 424 S.C. 579, 588, 819 S.E.2d 142, 147 (2018). The motion fails if “facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Brown*, 291 S.C. at 366.

ARGUMENT

While Valara and the County together spend over 50 pages making intricate arguments asking this Court to dismiss this case, at bottom, the issue is very simple—the Planning Enabling Act clearly authorizes all of Plaintiff’s claims to be brought in this forum now. More, even if exhaustion did apply, it is a discretionary policy doctrine that is subject to multiple exceptions, including for issues involving pure questions of law. This exception clearly applies to the

question of whether the Data Center constitutes a “Major” or “Minor” Land Development under the plain text of the Ordinance and undisputed permitting documents. .

Dismissal would be improper. The relevant question here is whether Plaintiff has stated sufficient facts to plausibly allege a claim for relief. Plaintiff easily meets this standard on both the issue of whether the project requires major versus minor approval (Counts I and II), and whether unlawful construction is occurring (Count III). Further, Plaintiff is entitled to discovery on its unlawful construction claim to address the Defendants’ fact-based defenses to that claim. Finally, Plaintiff clearly has standing as its members are specially damaged by the unlawful permitting and ongoing construction at the site.

I. THE SOUTH CAROLINA PLANNING ENABLING ACT EXPRESSLY GRANTS THIS COURT JURISDICTION TO HEAR COUNTS II AND III NOW.

Defendants argue for dismissal of all of Plaintiff’s claims for various procedural reasons. According to Valara and the County, Plaintiff is too late to challenge claims about a Phase I permit, even though no one knew the true nature of the project when it issued, yet simultaneously too early to challenge a Phase II permit that is still pending, but pursuant to which Valara has commenced massive construction activities and which the County has already explained it will approve as a second “Minor” development. County’s Br. at 4. Defendants argue Plaintiff’s claims are not properly before this Court, yet at the same time Valara can continue to complete this project that harms neighbors and adjacent landowners until it is too late for any meaningful relief.

Defendants are wrong; Plaintiff may pursue its claims about the Phase I and Phase II approvals and ongoing construction (Counts II and III)¹ pursuant to explicit statutory authority

¹ In Count I, Plaintiff challenged the same actions pursuant to the Declaratory Judgment Act in order to obtain appropriate declarations of rights before it is too late. Even if these claims did

from the South Carolina Planning Enabling Act. This statute provides an express cause of action for adjacent and neighboring landowners to sue over ordinance violations when they are faced with special damages, as they are here. *See* S.C. Code Ann. § 6-29-950(A). More, the Act unambiguously authorizes injured neighbors to sue for injunctive and other relief ***without*** having to pursue administrative remedies. The Act does not leave property owners injured by ordinance violations to the whims of local administrators; it empowers them to go directly to court to stop the unlawful conduct. As such, Valara and the County’s bureaucratic arguments are wholly inapplicable to Plaintiff’s claims under the Act (Counts II–III). Defendants’ reading of the Ordinance to impose exhaustion requirements on these claims would render the Ordinance directly contrary to the Planning Enabling Act—making the Ordinance itself unlawful.

A. The Planning Enabling Act Provides a Right of Action for Specially Damaged Neighbors to Sue Over Ordinance Violations Now.

Tellingly, in its 34-page brief, Valara never once quotes the relevant text of the section creating Plaintiff’s causes of action for Counts II and III, South Carolina’s Planning Enabling Act. Neither does the County in its 20-page brief. That provision provides:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, . . . an adjacent or neighboring property owner who would be specially damaged by the violation may ***in addition to other remedies***, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation[.]

S.C. Code Ann. § 6-29-950(A) (emphasis added).

Valara and the County simply ignore that the Legislature authorized these claims “in addition to other remedies.” *Id.* As a result of this oversight, Defendants mistakenly argue that

have to be exhausted, which they do not, *see infra* Part II, all of Plaintiff’s claims are cognizable under the Planning Enabling Act.

Plaintiff may not pursue its claims under this express statutory right of action without first availing itself of the County's Board of Zoning Appeals process. Valara's Br. in Supp. of Mot. to Dismiss ("Valara's Br.") at 12–19; County's Br. at 8–11. As to Plaintiff's claim that Valara is impermissibly constructing outside the scope of its Phase I permit (Count III), Defendants argue that Plaintiff had to first file a complaint with a county official before pursuing an action here.

To state the obvious, the administrative remedies that Defendants would require Plaintiff to exhaust are "other remedies" under Section 6-29-950(A). Even if those other remedies do exist, the Legislature explicitly empowered neighboring property owners injured by ordinance violations to, "*in addition*," sue directly in state court. *Id.* (emphasis added). It would violate the plain text of the Act to add an administrative exhaustion requirement into the clear contrary language of Section 6-29-950(A). Indeed, as the United States Supreme Court has made clear, courts must not impose extra-statutory exhaustion requirements in the face of contrary legislative intent. *E.g., Darby v. Cisneros*, 509 U.S. 137, 144–45 (1993) ("'[O]f 'paramount importance' to any exhaustion inquiry is congressional intent.'" (quoting *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992))).

In interpreting materially identical language in another statute, our Court of Appeals held that an administrative remedy provided "[i]n addition to" other remedies "should [not] be construed to mandate a further administrative review prior to proceeding in the courts," which would contradict the "clear import of the language used" and "the intent of the Legislature." *Greenville Baptist Ass'n v. Greenville Cnty. Treasurer*, 281 S.C. 325, 328, 315 S.E.2d 163, 165 (1984). In arguing to the contrary, Valara and the County cite a plethora of cases about administrative exhaustion requirements for *other types of claims* that do not address or apply to

claims under Section 6-29-950(A).² These cases are irrelevant, because exhaustion turns on the “language used” in the statutory cause of action, *see* S.C. Code Ann. § 6-29-950(A), and judicially-imposed exhaustion requirements yield in the face of “the intent of the Legislature.” *Greenville Baptist Ass’n*, 281 S.C. at 328.³ Similarly, Defendants’ cases on “zoning appeals deadlines” for *other types of claims* neglect to mention that S.C. Code Ann. § 6-29-950(A) has no such deadline to bring an action in Circuit Court.⁴

Valara discusses “[o]ver sixty years’ worth of” inapt case law, Valara’s Br. at 12, but fails to address the clear, governing text set out by the Legislature in Section 6-29-950(A). No published appellate decision has ever held that a claim under Section 6-29-950(A) requires exhaustion of administrative remedies. Indeed, the leading Supreme Court case on Section 6-29-950(A) analyzes its elements without mentioning exhaustion as a prerequisite for suit. *See*

² *See* Valara’s Br. at 12, (citing *Lominick v. City of Aiken*, 244 S.C. 32, 135 S.E.2d 305 (1964) (not a Section 6-29-950(A) case); *Moore v. Sumter Cnty. Council*, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990) (same); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 221 S.E.2d 848 (1976) (same)); County’s Br. at 8, 11 (citing *De Pass v. Spartanburg*, 324 S.C. 198, 203, 107 S.E.2d 350, 351-352 (1959) (not a Section 6-29-950(A) case); *Video Gaming Consultants, Inc. v. S.C. Dep’t of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (same); *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 82, 742 S.E.2d 371, 375 (2013) (same)).

³ *Charleston Dev. Co. v. Alami*, 433 S.C. 533, 544, 860 S.E.2d 687, 693 (2021), is misleadingly cited by Valara for the proposition that Plaintiff “cannot circumvent the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under’ Section 6-29-905 [sic].” Valara’s Br. at 16 (quoting *id.* at 544). In point of fact, *Charleston Dev. Co.* dealt with a claim under a local ordinance, not Section 6-29-950, and the Court of Appeals expressly did not rule on the point quoted in Valara’s brief because the Plaintiff had “failed to present evidence of their damages.” 433 S.C. at 538, 544–45. *Charleston Dev. Co.* provides no support for Valara’s position.

⁴ Valara’s Br. at 14 (citing *Botany Bay Marina, Inc. v. Townsend*, 296 S.C. 330, 372 S.E.2d 584 (1988) (not a Section 6-29-950(A) case); *Lominick*, 244 S.C. at 44, 135 S.E.2d at 310 (same); *Stanton v. Town of Pawleys Island*, 309 S.C. 126, 420 S.E.2d 502 (1992) (same); *Meredith v. Elliott*, 247 S.C. 335, 147 S.E.2d 244 (1966) (same); *Palumbo v. Waste Techs. Indus.*, 989 F.2d 156, 161 (4th Cir. 1993) (same).

Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014) (“In short, under section 6–29–950 a specially damaged, adjacent or neighboring property owner can bring an action for an injunction based on an alleged violation of a zoning ordinance.”).

The South Carolina Supreme Court’s silence on exhaustion in *Carnival* makes sense. If exhaustion of County remedies were required prior to bringing a claim under Section 6-29-950(A), it would render the words “in addition to other remedies” meaningless and would make the cause of action duplicative of another provision in the Planning Enabling Act. In Section 6-29-820(A), interested parties may appeal decisions of the Board of Zoning Appeals to circuit court; if specially damaged neighbors also had to appeal to the Board before filing claims under Section 6-29-950(A), this distinct cause of action would be surplusage. Valara’s reading thus “flouts the interpretive cannon against surplusage—the idea that ‘every word and every provision is to be given effect and that none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.’” *Neilsen v. Preap*, 586 U.S. 392, 969 (2019) (quoting A. Scalia, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 174 (2012)).⁵

In sum, Plaintiff has clearly stated viable claims for relief in Counts II and III (the Phase I permit, Phase II permit, and ongoing construction) pursuant to the Planning Enabling Act.

Neither Valara nor the County provide an answer for the fact that, in the case of neighbors

⁵ Additionally, exhaustion cannot be required because Section 950(A) grants injured neighbors the right to sue to “prevent” a “proposed” land use that would violate an ordinance. The Board of Zoning Appeals has no jurisdiction to review proposed projects not yet approved by the County, *see* § S.C. Code 6-29-800(B) (limiting review to “action” by the County), meaning that it would be impossible to exhaust this claim. Imposing an exhaustion requirement would effectively nullify this claim.

injured by ordinance violations, the Legislature has determined that immediate judicial recourse is available.

B. Defendants' Reading of the Ordinance Creates an Impermissible Conflict with the Planning Enabling Act.

Defendants commit another grave error in arguing that the Ordinance requires Plaintiff to first go to the Board of Zoning Appeals, in contradiction of the plain text of Section 6-29-950(A). Under Defendants' reading, the Ordinance itself would impermissibly be in conflict with state law.

While the state has granted local governments broad powers to enact ordinances "respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality" S.C. Code Ann. § 5–7–30, the grant of power is given to local governments with "the proviso that legislation thereunder shall not be inconsistent with the laws of the State." *City of Charleston v. Jenkins*, 243 S.C. 205, 208, 133 S.E.2d 242, 243 (1963). A city ordinance conflicts with state law when its conditions are inconsistent or irreconcilable with the state law. *Town of Hilton Head v. Fine Liquors, Ltd.*, 302 S.C. 550, 553, 397 S.E.2d 662, 664 (1990) (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169–70, 164 S.E. 444, 445 (1932)). Where there is a conflict between a state statute and a city ordinance, the ordinance is void. *State v. Solomon*, 245 S.C. 550, 574–75, 141 S.E.2d 818, 831 (1965).

Here, Defendants' reading would create a conflict between Section 6-29-950(A) and the provisions of the Ordinance that Defendants claim require exhaustion before the Board of Zoning Appeals. Under Defendants' reading of the Ordinance, a property owner with special damages, as alleged here, must first seek review through the Board of Zoning Appeals before filing suit in court. This conflicts with the Planning Enabling Act, which expressly allows "an adjacent or neighboring property owner who would be specially damaged by the violation[.]" to

“*in addition to other remedies*, institute injunction, mandamus, or other appropriate action or proceeding *to prevent* the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation.” S.C. Code Ann. § 6-29-950(A).

Defendants’ reading creates a conflict with the statute because, while the statute expressly allows “an injunction, mandamus, or other appropriate action” to be filed “in addition to other remedies,” *id.*, under Defendants’ interpretation of the Ordinance, no such case can be filed unless and until a Board of Zoning Appeals case is filed.

The same is true for Defendants’ argument that a neighboring property owner who is concerned about ongoing unlawful construction must file a complaint with the County Administrator and wait for the County official to “record and investigate such complaint, and take such action as provided by this Ordinance.” Ordinance § 1.17. This renders the Ordinance in express conflict with state law allowing injured neighbors with special damages to seek relief to “prevent” or “abate the violation.” S.C. Code Ann. § 6-29-950(A).

Because of this conflict, any alleged provision of the Ordinance requiring a Board of Zoning Appeals challenge, or reporting to the County Administrator, by neighbors who are specially damaged by Ordinance violations is invalid. *Solomon*, 245 S.C. at 574.

In short, Defendants ignore the text of the governing Act, distracts the Court with volumes of irrelevant case law, and construes a county ordinance to trump a state statute. All of Plaintiff’s claims are properly before this Court now.

II. EXHAUSTION IS DISCRETIONARY AND WOULD SERVE NO PURPOSE HERE.

To the extent that exhaustion could apply, Valara and the County are wrong to argue that it requires dismissal. In South Carolina, the doctrine of exhaustion is “a rule of policy, convenience, and discretion rather than of law, and is not jurisdictional.” *Andrews Bearing Corp.*

v. Brady, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973). Because the exhaustion requirement is discretionary and “not an invariable rule,” it is well settled that “failure to exhaust administrative remedies may be excused.” *Id.* (quoting *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966)). Whether to excuse exhaustion rests in the sound discretion of the trial court. *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 101, 674 S.E.2d 524, 529 (S.C. Ct. App. 2009).

Here, even if exhaustion were otherwise required, it should be excused as to all of Plaintiff’s claims.

A. Exhaustion Does Not Apply When, as Here, Administrative Remedies Are Inadequate to Address the Alleged Harm.

The exhaustion doctrine does not apply when alternative remedies are inadequate to address the alleged harm. *See Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). “[A]dministrative remedies need not be sought if they are inherently inadequate or are applied in such a manner as in effect to deny the petitioners their rights.” *Johnson v. Seaboard Air Line R.R. Co.*, 405 F.2d 645, 652 (4th Cir. 1968) (quoting *McCoy v. Greensboro City Bd. of Educ.*, 283 F.2d 667, 670 (4th Cir. 1960)). For that reason, South Carolina courts excuse exhaustion when the administrative remedy would be vain or futile, *e.g.*, *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (S.C. Ct. App. 2010), when the agency lacks authority to provide adequate relief, *e.g. id.*; *Charleston Trident Home Builders, Inc. v. Town Council of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006), and/or when administrative delay would effectively deny relief, *e.g.*, *Storm M.H.*, 400 S.C. at 487.

Those exceptions apply here. For example, in *Storm M.H.*, the Supreme Court ruled that a student denied entry to a school did not have to exhaust an appeal to the school board because the “remedies would have been inadequate given the immediacy of the Student’s enrollment date and the potential delay of an administrative appeal.” 400 S.C. at 487. That is, when the delay of

the administrative process would require the plaintiff to suffer imminent harm, the administrative remedy is inadequate and exhaustion is not required. The same principle applies here. The Amended Complaint alleges that Plaintiff's members are suffering imminent and ongoing harm from construction of this project, including immense noise, dust, and light pollution, and harm to local wildlife and trees that give the neighborhood its character. Amended Compl. ¶¶ 18–32. Given the immediacy of these harms and the potential delay that would be caused by the administrative process, those remedies are inadequate and exhaustion is not required.

Another reason administrative remedies are inadequate is that Plaintiff had no notice of the true nature or scale of this project during the short appeal window for the First Minor Land Development Permit. Contrary to Valara's factual arguments that Plaintiff had adequate information to appeal the Phase I permit, Valara's Br. at 15, Plaintiff has alleged that its members did not learn the true scope of the project until after construction had begun and after the 10-day appeal period for the Phase I permit had expired. *See* Am. Compl. ¶¶ 56–57, 66. That is because Valara and the County impermissibly segmented the project into multiple phases. *Id.* The segmentation both obscured the true scope of the project and placed it within the purview of the County's staff and Board of Zoning Appeals—entities that lack transparency and the authority to permit a Major Land Development like the Valara Data Center and Power Plant. The correct administrative review under the Ordinance is a public review before the Planning Commission, not an inadequate review by unauthorized agents. Under these circumstances, Plaintiff is free to request judicial declaration and enforcement of Plaintiff's rights.

Exhaustion may also be excused on grounds of futility. The County has made clear that it considers Valara's project to be a Minor Land Development and Valara's unlawful construction to be a moot point. *See* County's Br. at 14-15. Indeed, the County has specifically told this Court

that “the Valara Data Center is properly classified as a Minor Land Development under the express language of the Spartanburg County Unified Land Management Ordinance.” County's Mot. to Dismiss ¶ 3. Entreaties to the County would be futile in light of the County's “hard and fast position” on these points. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006) (quoting *Thetford Properties IV Ltd. P'ship v. U.S. Dep't of Hous. & Urban Dev.*, 907 F.2d 445, 450 (4th Cir. 1990)).⁶ Further, the resulting delay would undermine the very relief that Plaintiff seeks and subject members to prolonged harm. Plaintiff's Counts II and III seek to enjoin the unlawful construction to prevent ongoing harm to Plaintiff's members. Because the proffered administrative remedies would render that relief ineffective, they are inadequate and should be excused. *See Storm M.H.*, 400 S.C. at 487.

B. Exhaustion Need Not Apply to Pure Questions of Law, Like Whether the Valara Data Center and Power Plant is a Major Land Development.

In addition to the above exceptions, South Carolina courts routinely excuse exhaustion where “the facts are undisputed and the issues are solely ones of law.” *State Dairy Comm'n of S.C. v. Pet, Inc.*, 283 S.C. 359, 362, 324 S.E.2d 56, 57 (1984), *overruled on other grounds by R.L. Jordan Co. v. Boardman Petroleum, Inc.*, 338 S.C. 475, 527 S.E.2d 763 (2000).

In those circumstances, administrative review serves little purpose because the court owes no deference to the agency's legal conclusions. *See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644–45 (2000); *Helicopter Sols., Inc. v. Hinde*, 414 S.C. 1, 10, 776 S.E.2d 753, 758 (Ct. App. 2015) (standard of review). This exception

⁶ Further as to Count III, Defendants claim that Plaintiff should have filed a complaint with the County Administrator alleging that Valara was developing beyond the boundary of its First Minor Permit. In the same breath, the County has filed an affidavit from the Director of Public Works, Mr. Travis Brown, who testifies that the County has already investigated the issue and taken no enforcement action. Brown Aff. ¶ 19; County Br. at 7. Submitting a complaint after the County has already investigated would be a futile waste of time.

applies with particular force when the only issue is a plaintiff's challenge to the legality of the government's actions. *See Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 537, 201 S.E.2d 241, 243 (1973) (excusing exhaustion when the only question was whether the South Carolina Tax Commission had applied the correct tax classification to plaintiff's property); *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966) (upholding an injunction without exhaustion when "the undisputed facts" showed the government agent had acted without authority).

This case presents the same posture. The only question presented in Plaintiff's Counts I and II is whether the Valara Data Center and Power Plant is a "Major Land Development." That question may be decided solely based on the language of the Ordinance and the undisputed facts included in Valara's permits and applications. It is a question of law that this Court would have to decide for itself after review by the Board of Zoning Appeals. *See Valara's Br.* at 17–18. Because that intermediary review would provide no benefit to the Court's analysis, exhaustion should be excused.

For all these reasons, Defendants' exhaustion arguments fail. This Court, alone, can provide timely and effective relief to Plaintiff's members. Plaintiff requests that it do so without further delay.

III. PLAINTIFF HAS ALLEGED MORE THAN SUFFICIENT FACTS TO ASSERT THAT VALARA AND THE COUNTY ARE VIOLATING THE ORDINANCE.

As a threshold matter, in arguing that Counts I–III fail to state a claim for violations of the Ordinance, Defendants ignore Plaintiff's modest burden on a motion to dismiss. Valara raises complex and novel legal arguments (as to Counts I and II) and factual disputes that require discovery (as to Count III) that go to the merits of the case and are not appropriate for resolution on a Rule 12(b)(6) motion. *See Chestnut v. AVX Corp.*, 413 S.C. 224, 227–28, 776 S.E.2d 82, 84

(2015). “The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case.” *Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987). “The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

Applying the correct standard under Rule 12(b)(6), Plaintiff has alleged more than sufficient facts to state valid claims in Counts I–III that Valara and the County are violating the Ordinance.

A. Counts I and II Adequately Allege that Valara’s Data Center and Power Plant are a “Major Land Development” Being Reviewed, Approved, and Constructed as a “Minor Land Development,” in violation of the Ordinance.

Valara first claims that the costliest development in the history of Spartanburg County—a \$2.8 billion dollar data center and 457-megawatt powerplant sprawled over hundreds of acres of land—is a “Minor Land Development” under the Ordinance. Valara’s Br. at 19–27. For over seven full pages of its brief, Valara strains to re-write the plain meaning and simple, one-sentence definitions of “Major” and “Minor” provided in the Ordinance. To reach the result that the most “Major” development in County history is, in fact, nothing but a “Minor Land Development,” Valara selectively quotes the Ordinance’s definitions, omitting the key operative language that is fatal to Valara’s position. Ultimately, Valara would write the words “Major” and “Minor” out of the Ordinance entirely, requiring the Court to discard all common sense and plain meaning. The Court should summarily reject these arguments.

Valara’s argument on the major/minor issue boils down to this: “Major” and “Minor” are defined terms, the Court may not consult their plain meaning or common sense, and the Ordinance sets forth a “*comprehensive*” list of every single Major Land Development, which

does not include a “high performance computing center” or a power plant. Valara’s Br. at 20–22 (emphasis added). These arguments are patently wrong.

Valara first states that the Ordinance “defines ‘Major Land Development’ by setting forth specific uses: ‘commercial and industrial parks and subdivisions, townhouse developments, shopping centers, manufactured home parks, condominium and apartment complexes, and similar developments.’” Valara’s Br. at 3 (quoting Ordinance § 1.02(1)). Nothing could be further from the truth. Valara conveniently omits the first six words of the sentence, which state that Major Land Development “*includes but is not limited to*” these commercial and industrial projects and other “similar developments.” Ordinance § 1.02(1) (emphasis added). When on page 21 of its brief Valara first grapples with the terms “includes but is not limited to” and “similar developments,” it claims that “Exhibit A [to the Ordinance] is plainly intended to fill those gaps by setting forth a *comprehensive list* of the fourteen property types that were not included in, or are ‘similar’ to, the developments in Section 1.02(1)’s definition, but are still classified as Major Land Developments under the [Ordinance].” Valara’s Br. at 21 (emphasis added). Valara conveniently omits the caption of the list in Exhibit A: “Major, *to include*.”

Valara’s argument is just an attempt to rewrite the governing provision in the Ordinance and avoid its plain language. Valara cannot avoid the key, conspicuous, and intentional language: “*but is not limited to*.” In describing Major Land Development, the Ordinance *twice* uses the open-ended word “to include,” making it doubly clear that this is not an exhaustive list of examples but an illustrative one. Ordinance § 1.02(1) & Ex. A. The Ordinance expressly states that the specific examples of Major Land Developments are just that—examples—not an exclusive or restrictive list. Valara cannot escape the plain and ordinary meaning of the term “Major Land Development,” which is not somehow made irrelevant simply because the

Ordinance provides illustrative examples. To the contrary, courts read statutory definitions “in light of the conventional meaning of the term it defines.” *Delligatti v. United States*, 604 U.S. 423, 438 (2025).

The Ordinance clearly provides that any land development that is “Major” is reviewed by the Planning Commission. Ordinance § 1.02; Application Procedural Chart 1. As the Merriam-Webster Dictionary sets out, the obvious definition of “major” is “considerable,” “notable,” or “prominent or serious in size, amount, or degree.” Webster’s Dictionary Online, *Major* (2026). Under any the plain and common usage of “major,” the Valara multi-billion dollar development—the largest in Spartanburg County history—is major. So, whether the Data Center and Power Plant constitute a “commercial or industrial park” (which they do) or a “similar development” (which they clearly do), the decisive fact is that any rational person would consider this a Major Land Development. That resolves this case, especially under the lenient standards of Rule 12(b)(6).

Throughout its brief, Valara serially omits the word “include” from its quotations of the Ordinance. *See* Valara’s Br. at 20–26. For obvious reason. This term, which the County used twice in explicating Major Land Development, *see* Ordinance at § 1.02 & Exhibit A, is fatal to Valara’s position that the Ordinance provides a “comprehensive” list of every single Major Land Development. “Both the Supreme Court and this Court have held that ‘the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.’ ***In fact, ‘when ‘include’ is utilized in a statute, it is generally improper to conclude that entitles not specifically enumerated are excluded.*”** *United States v. Helton*, 944 F.3d 198, 206 (4th Cir. 2019) (citing, inter alia, *Fed. Land Bank of St. Paul v. Bismark Lumber Co.*, 314 U.S. 95 (1941)); Antonin Scalia & Bryan Garner, *READING LAW: THE INTERPRETATION OF LEGAL*

TEXTS 132 (2012) (“The verb *to include* introduces examples, not an exhaustive list.”); Black’s Law Dictionary (12th ed. 2024) (“Include” means “to contain *as part of something*. The participle *including* typically indicates a *partial* list. But some drafters use phrases such as *including without limitation* and *including but not limited to*—which mean the same thing.” (emphasis added)); Merriam-Webster Dictionary (2026) (defining “include” as “to take in or comprise as *part of a whole or group*” (emphasis added)). In short, the Ordinance makes crystal clear that the listed examples of Major Land Development are *not exhaustive*, but illustrative.

The Ordinance is doubly and triply clear on this point. Not only does the Ordinance twice use the nonexclusive verb “include,” it erases any conceivable doubt by stating that “Major Land Development” is “*not limited to*” a list of illustrative examples and other similar developments.

So, what other projects qualify as “Major Land Development” outside of the examples provided in the Ordinance? The Ordinance provides simple criteria: The plain meaning of “Major,” as guided by whether the project is “similar to” the illustrative examples. Ordinance § 1.02(1).⁷ Contrary to Valara’s claim, the Court need not—and must not—stick its head in the sand and discard common sense and plain meaning in determining which projects are “Major” or “Minor.” *See Bond v. United States*, 572 U.S. 844, 861 (2014) (“In settling on a fair reading of a statute, it is not unusual to consider the ordinary meaning of a defined term”). Far from “import[ing] a size and cost test that exists nowhere in the ordinance’s text,” Valara’s Br. at 22,

⁷ Valara is mistaken that, if the Ordinance’s examples of Major Land Development are read not as exhaustive but illustrative, it would turn the Ordinance’s statement that “All other Uses Not Classified as Major [are] Minor” into “meaningless surplusage.” Valara’s Br. at 21–22 (quoting Ordinance Ex. A). This clause retains ample independent meaning, providing that all uses not listed in the “Major” examples or “similar” to the Major examples are Minor Land Development.

Plaintiff simply submits that the County must not ignore the plain English language of its Ordinance.

Applying the plain language of the Ordinance, Plaintiff has more than plausibly alleged that Valara’s Data Center and Power Plant are a Major Land Development. Further, looking at the nonexclusive list of illustrative examples, this data center and power plant are certainly “similar” to a “commercial” or “industrial park.” Ordinance § 1.02(1) & Exhibit A. Valara’s own Phase I permit expressly categorizes the project as “Heavy Industry.” Ex. 1 to Pl.’s Mot. for Prelim. Injunction.⁸ As Plaintiff thoroughly alleged in the Amended Complaint, Valara’s \$2.8 billion Data Center and 457-megawatt Power Plant include multiple large industrial buildings with heavy equipment spread across hundreds of acres of land. Am. Compl. ¶¶ 1–3. Valara would be the largest source of multiple toxic air pollutants in the County, and one of the largest sources of harmful particulate matter in the State. *Id.* ¶ 74. Valara’s project will—and has already begun to—radically exceed the impacts and footprint of the former Kohler plant, drastically exceeding the noise, air, and dust pollution, and visual blight of the old plant, and clear-cutting and grading forested areas where beautiful trees once stood. *Id.* ¶¶ 6, 76–78. This complex is undeniably major. Without doubt, it is also similar to an industrial or commercial park. *See* Black’s Law Dictionary, *Industrial Park* (12th ed. 2024). (“A piece of land, often in a suburb or at the edge of a city, where factories or businesses are located.”). An industrial and commercial project of this scale dwarfs the Ordinance’s examples of Minor Land Development—such as a single-family

⁸ On a motion to dismiss, the Court may consider documents “referenced” in the complaint, *Carolina First Corp. v. Whittle*, 343 S.C. 176, 190, 539 S.E.2d 402, 210 (S.C. Ct. App. 2000), including the Phase I permit, which was repeatedly cited, discussed, and challenged in the Amended Complaint. *E.g.*, Am. Compl. ¶¶ 56, 84–98.

home, a trailer, a sign, or a temporary use. *Id.* Ex. A. At the motion to dismiss stage, this puts the matter to rest.⁹

Lastly, and perplexingly, Valara claims that Plaintiff’s reading of the Ordinance would require a “fact-finding exercise, discerning whether the [Data Center] constitutes a ‘Minor’ or ‘Major’ land development,” Valara’s Br. at 26, yet in the same breath argues for dismissal under Rule 12(b)(6), which only requires Plaintiff to allege sufficient facts to plausibly assert that Valara’s Data Center is a Major Land Development. Suffice it to say, if Valara is correct, it would defeat its own motion to dismiss.¹⁰

In short, Plaintiff has more than met its burden—which, it bears repeating, is only to plausibly allege that Valara’s Data Center and Power Plant constitute a “Major Land Development.”

B. Count III Adequately Alleges that Valara is Violating the Ordinance by Exceeding the Scope of its Proposed Phase I Permit.

Count III of Plaintiff’s complaint is not subject to dismissal on the merits. *See* Valara’s Br. at 27. On motions to dismiss, allegations are accepted as true, and dismissal is appropriate only when the face of plaintiff’s complaint fails to state a cause of action. *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 698–99 (1987). To the extent a motion to dismiss exceeds the four corners of the complaint, the Court must allow the plaintiff to respond with discovery or

⁹ While accusing Plaintiff of re-writing the Ordinance, it is Valara who would make up exclusions from the Major Land Development definition that appear nowhere in the Ordinance. Valara’s Br. at 25 (arguing “similar developments” clause excludes “single-operator reuse of an existing industrial plant,” a fictitious exclusion found nowhere in the text of the Ordinance).

¹⁰ Valara also quibbles with the standard of review for the County’s determination. No matter the standard that applies, it is arbitrary and capricious and a clear error of law to deem this project a Minor Land Development.

provide adequate notice that it intends to treat the 12(b)(6) as a motion for summary judgment.

Id.

Plaintiff's Count III clearly meets this standard. There, Plaintiff alleges that Valara has engaged in multiple activities that have "exceeded the scope of the 'Phase I' permitted boundary, which is the only area of land development authorized by the First Minor Land Development Permit." Am. Compl. ¶ 77. Specifically, Plaintiff alleges, and provides support for, a broad number of unpermitted activities that are developing the property for new uses, including grading, structural alterations, construction, and clearing. *Id.* ¶ 13, 78–79. Indeed, Plaintiff provides satellite imagery detailing the scope of construction allowed by Phase I as compared to actual construction occurring on the site. *Id.* Figs. 1 & 2. Plaintiff alleges that these activities have caused its neighboring members special harm, meeting all the elements of a claim under the Planning Enabling Act. *See supra* Part I.A. and *infra* Part IV. When taken as true, these facts more than support a claim that Valara is engaging in construction outside the bounds of its Phase I permit—and the Court's inquiry must end there. *See Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013). And the County's own brief in support of dismissal admits that Valara has exceeded their permits by "approximately two acres." County's Br. at 20. The question of precisely what activities the Phase I permit authorizes and which of Valara's actions exceed the scope of that permit is an issue of fact that cannot be dismissed at this stage without discovery.

To request a contrary outcome, Valara impermissibly looks beyond the four corners of Plaintiff's complaint. Valara claims various other permits have authorized every activity that it has conducted at the Project and that such activities do not require a development permit under the Ordinance. Valara's Br. at 27. Based on the County's concession that Valara has exceeded the

scope of its permits, Valara's argument seems implausible.¹¹ It is also legally suspect: the stormwater permits attached to its brief, Ex. 2, only appear to authorize stormwater discharges associated with land development, not the development activity itself. This is an issue of fact that requires discovery to ascertain what Valara's existing permits actually allow.

IV. PLAINTIFF HAS ALLEGED SUFFICIENT FACTS TO ESTABLISH STANDING.

Valara argues that Plaintiff lacks standing because the Amended Complaint fails to allege facts sufficient to establish statutory or constitutional standing. Valara's Br. at 28. Its primary contention is that Plaintiff has failed to plead allegations of particularized harm under the Planning Enabling Act, which provides statutory standing for an "adjacent or neighboring property owner who would be specially damaged by [a] violation [of any ordinance]." S.C. Code Ann. § 6-29-950(A). Valara's argument ignores both the allegations actually contained in the Amended Complaint and the lenient standard governing a motion to dismiss. As Valara acknowledges, the Court must evaluate standing under the Rule 12(b)(6) standard when considering a motion to dismiss. Valara's Br. at 10. Accordingly, the Court must accept all well-pled allegations as true and draw all reasonable inferences in Plaintiff's favor. SCRCF, Rule 12(b)(6); *see Disabato v. S.C. Ass'n of Sch. Adm'rs*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013); *Turner v. Daniels*, 404 S.C. 430, 431 n. 1, 746 S.E.2d 40, 41 n. 1 (2013).

Plaintiff has easily satisfied that standard. As a threshold matter, Valara does not dispute that Plaintiff's members are "adjacent or neighboring property owner[s]" under S.C. Code Ann. §

¹¹ Dismissal based on Valara's attached stormwater permits is at the very least premature. The Court may not accept Valara's statements on good faith and construe the facts *against* the non-movant. Having pleaded facts supporting a claim for violations of the Phase I permit, Plaintiff is entitled to discovery to determine whether, contrary to Valara's assurances, any activity at the Project has exceeded the scope of Valara's permits.

6-29-950(A), nor could it. The Amended Complaint alleges that members of the Plaintiff live “adjacent to and near the Data Center,” are suffering a myriad of specific harms from its construction, and will continue to suffer harms when the Data Center and Power Plant right next door become operational. Am. Compl. ¶¶ 18–32. It borders on frivolous to claim that neighbors of a massive industrial construction site and 457-megawatt Power Plant that will spew hundreds of tons of toxic air pollutants, *id.* ¶¶ 61–62, suffer no “individualized harms” from its construction and operation. Valara’s Br. at 29. As the Supreme Court has made clear, “[t]hose living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large.” *Preservation Soc’y of Charleston v. S.C. Dep’t of Health & Env’tl Control*, 430 S.C. 200, 216, 845 S.E.2d 481, 489 (2020) (emphasis added).

Going further beyond the bar at the pleading stage, the Amended Complaint identifies *multiple* members of Concerned Citizens who reside adjacent to or near the proposed facility and specifically alleges, with factual allegations, that those members will be specially harmed by Valara’s project. *See* Am. Compl. ¶¶ 21–28, 97. For example, for Concerned Citizens’ member and neighbor Mark Felk, “the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site” are harming his peace and solace as a property owner. *Id.* ¶¶ 21–23. He will continue to suffer harms associated with the Data Center and Power Plant’s operation, including noise, air, light, and water pollution. *Id.* Likewise, members Mr. Darwin and Mr. Heath live in close proximity to the facility and will experience similar impacts. *Id.* ¶ 24–29. These are not mere “generalized grievances”—they are injuries suffered by *neighbors* of the Data Center *personally on their own property*. *See Preservation Soc’y*, 430 S.C. at 216 (“Here, members would suffer the environmental consequences Petitioners allege the project will create, such as

breathing problems and other adverse health effects; increases in hazardous diesel soot; and increases in noise, traffic, and water pollution.”). These harms to members’ use and enjoyment of their neighborhood and their own properties constitute textbook particularized injuries repeatedly acknowledged by South Carolina and Federal courts. *Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 139–40, 747 S.E.2d 468, 473–74 (2013) (“[I]nterference with the interest in the private use and enjoyment of the land” constitutes an injury to property rights, including harm to “the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land” and “freedom from annoyance and discomfort,” and listing as an example of interference with property interests “odors, dust, and small particles emanating from the plant” near plaintiff’s home (citation and quotations omitted)); *Biden v. Nebraska*, 600 U.S. 477, 489 (2023) (“[H]arm to a legally protected interest, like property,” constitutes “an injury in fact.”); *S.C. Wildlife Fed’n v. S.C. Coastal Counc.*, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988) (recognizing injury to aesthetic and recreational interests in enjoying wildlife is injury-in-fact).

These injuries are not shared equally by the public at large. To state the obvious, the public at large does not live right next door to Valara. These injuries are uniquely and disproportionately borne by neighboring property owners who will experience the greatest levels of noise, light, air pollution, traffic, and construction-related harm on their own unique properties. While the broader community may experience some effects from Valara’s construction and operation, many of Plaintiff’s members live in close proximity to the facility and will bear the most severe consequences of the project. And, these harms are unique—for example, a Spartanburg County resident who lives miles away from the facility will not experience noise pollution from the facility in their home. These allegations are more than sufficient to withstand a motion to dismiss. *See, e.g., Town of Arcadia Lakes v. S.C. Dep’t of*

Health & Env't Control, 404 S.C. 515, 745 S.E.2d 385 (S.C. Ct. App. 2013) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)) (“At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice” to withstand a motion to dismiss based on lack of standing).

Valara’s lone citation to contest particularized harm, *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, is easily distinguishable because the plaintiffs there “***made no allegations that they own adjacent or neighboring property***,” instead relying on harms to “Charleston citizens” and “the public.” 407 S.C. 67, 76–79, 753 S.E.2d 846, 851–52 (2014) (emphasis added). Indeed, as the Supreme Court later clarified, “[t]hose living near the project are most likely to be impacted in ways that are distinguishable from the impacts generally falling upon the public at large, and some jurisdictions have emphasized the significance of this geographic proximity in cases involving the assessment of a project's environmental consequences.” *Preservation Soc’y*, 430 S.C. at 216 (citing *City of Davis v. Coleman*, 521 F.2d 661, 670–71 (9th Cir. 1975)).

Moreover, Valara attempts to diminish and undercut the harms suffered from their Data Center and Power Plant by stating that they are generalized grievances about mere “inconveniences” suffered by the general public. The fact that the broader public will also experience harm from the Data Center has no bearing on whether a particular plaintiff has suffered injury-in-fact sufficient to establish standing. *See Fed. Election Comm’n v. Akins*, 524 U.S. 11, 24 (1998) (“Often the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found ‘injury in fact.’”); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016) (“The fact that an injury may be suffered by a large number of people does not of

itself make that injury a nonjusticiable generalized grievance.”); *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009) (holding that the fact that a plaintiff’s deprivation of the right to vote was shared by all residents of a city “does not necessarily mean that his injury is merely a ‘generalized grievance.’”). Valara essentially argues that projects with widespread impacts can never confer standing because harms will be felt by the broader public. If this were true, no one would have standing to challenge the most impactful projects. That is not the law.

Valara further suggests that the procedural harms suffered by Plaintiff’s members are generalized grievances that do not grant Article III standing. This argument completely ignores a long line of precedent explicitly holding to the contrary. *See Lujan* 504 U.S. at 572 n.7 (1992) (noting the deprivation of “a procedural right to protect [plaintiff’s] concrete interests” constitutes an injury in fact); *see also Doe v. Public Citizen*, 749 F.3d 246, 263 (4th Cir. 2014) (“The Supreme Court consistently has held that a plaintiff suffers an Article III injury when he is denied information that must be disclosed pursuant to a statute”); *Massachusetts v. U.S. Env’tl Protection Agency*, 549 U.S. 497, 518 (2007) (“A litigant who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result.” (citation and quotations omitted)). It is well-settled that the deprivation of procedural rights constitutes injury-in-fact where, as here, Plaintiff has concrete interests in the proceedings. Valara’s argument to the contrary is misleading at best.¹²

¹² Valara also argues that public importance standing is unavailable in this action, suggesting that the doctrine applies only in cases involving constitutional violations or the improper expenditure of public funds. But South Carolina courts have never limited public importance standing to those narrow categories of cases. To the contrary, the doctrine exists to broaden traditional standing requirements where matters of substantial public concern warrant judicial review. *See*

To the extent that this Court wishes to examine the merits of the standing arguments raised by Valara, doing so under a motion to dismiss is improper and the motion must be converted to summary judgment to allow outside facts to be brought in. SCRCRCP Rule 12(b) (if “matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56”). If the Court determines that consideration of standing is appropriate at a later stage of this proceeding and wishes to look beyond the pleadings, Plaintiff has submitted multiple affidavits affirming the allegations set forth in the Amended Complaint.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny the County and Valara’s Motions to Dismiss.

Respectfully submitted this 16th day of September 2026,

/s/ Catherine Wannamaker

Catherine Wannamaker (S.C. Bar No. 102895)

Susie Carlson (S.C. Bar No. 106396)

Carl Brzorad (S.C. Bar No. 105413)

Frank S. Holleman III (S.C. Bar No. 2564)

e.g., S.C. Pub. Interest Found. v. S.C. Dep't of Transp., 421 S.C. 110, 118, 804 S.E.2d 854, 858 (2017); *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004). The relevant inquiry of whether there is public importance standing is whether the issue presented is “of such public importance as to require its resolution for future guidance.” *Baird v. Charleston Cnty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999); *Sloan v. Greenville Cnty.*, 356 S.C. at 551 (finding public importance standing appropriate because resolution of the issue would “likely have an impact on government practices beyond the confines of [the particular dispute]”). At its core, this action concerns the County's handling of the permitting process for a major industrial development and its alleged failure to provide transparency and meaningful public participation throughout that process. Accordingly, even if Plaintiff's members had not alleged that its members were specially harmed by Valara and the County, standing would independently exist under the public importance exception.

Southern Environmental Law Center
525 East Bay Street, Suite 200
Charleston, SC 29403
(843) 720-5270
cwannamaker@selc.org
scarlson@selc.org
cbrzorad@selc.org
holl2759@bellsouth.net

Counsel for Plaintiff

APPENDIX X

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
	)	
Concerned Citizens of Spartanburg	)	Civil Action No. 2026-CP-42-03416
County,	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANTS'
vs.	)	MOTIONS TO DISMISS
	)	
Valara Holdings LLC, Spartanburg County,	)	
and Spartanburg County Administrator,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court on Defendants Valara Holdings LLC's ("Valara") and Spartanburg County's and Spartanburg County Administrator's (collectively, the "County") Motions to Dismiss, which were heard along with Plaintiff Concerned Citizens of Spartanburg County's ("Plaintiff") Motion for Preliminary Injunction before the undersigned on September 17, 2026. After a thorough review of the pleadings, motions, memoranda, and applicable case law, this Court **GRANTS** Valara's and the County's Motions to Dismiss. Because the Court's ruling has the effect of dismissing Plaintiff's Amended Complaint, it likewise disposes of Plaintiff's Motion for Preliminary Injunction.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleges it is an association of individuals living and owning property near a parcel of property in Spartanburg County upon which Valara is developing what it calls a "high-performance computing center," and which Plaintiff refers to in its Complaint as a "data center" (the "Data Center"). Plaintiff alleges Valara and the County have violated the Spartanburg County Unified Land Management Ordinance, Spartanburg County Ordinance No. O-99-015 (December

31, 1999, as subsequently amended) (“ULMO”), by processing two of Valara’s permit applications relating to the construction of the Data Center as “Minor Land Developments,” as that term is defined in the ULMO. Plaintiff alleges the permits should be categorized as “Major Land Developments” under the ULMO. The first permit application was filed in July 2025 for purposes of redeveloping an existing manufacturing facility at the site. The County approved the July 2025 application and issued the permit in August 2025. This approval is referenced in this Order as the “Phase I Permit.”

In April 2026, Valara filed an application for a second Minor Land Development permit to address additional planned development at the Data Center site. That application is still pending with the County, and it is referenced as the “Phase II Application.” Plaintiff alleges the processing of these applications as Minor Land Development permits violates the ULMO and is irreparably harming the landscape and Plaintiff’s members’ rights.

Plaintiff seeks declaratory and injunctive relief, requesting an Order from this Court stating that the County must require Valara to obtain a Major Land Development permit for the Data Center project and that Valara’s Phase I Permit was issued in violation of the ULMO. Plaintiff also seeks to enjoin the County from issuing any additional Minor Land Development Permits for the Data Center and to enjoin Valara from conducting any additional construction or land disturbance activities at the Data Center site.

Specifically, Plaintiff alleges three claims for relief in its Amended Complaint, to wit:

COUNT I: Declaratory Judgment Act – The Data Center is a Major Land Development being Reviewed, Approved, and Constructed as a Minor Land Development, in violation of the ULMO

COUNT II: Planning Enabling Act – The Data Center is a Major Land Development being Reviewed, Approved, and Constructed as a Minor Land Development, in violation of the ULMO

COUNT III: Declaratory Judgment Act & Planning Enabling Act – Valara is Substantially Exceeding the Scope of its First Minor Land Development Permit, Conducting Development Activities without a Land Development Permit in violation of the ULMO

In its Prayer for Relief, Plaintiff requests this Court do the following:

1. Declare that the Valara Data Center is a Major Land Development under Spartanburg County's ULMO;
2. Declare that the County improperly and unlawfully issued Valara's First Minor Land Development Permit because the project is actually a Major Land Development requiring full review and public process;
3. Declare that the County must immediately cease processing Valara's Second Proposed Minor Land Development Permit;
4. Permanently enjoin Spartanburg County from processing any Minor Land Development permit application submitted for this facility;
5. Declare that the County and Valara have violated the ULMO by processing the First Minor Land Development Permit and the Second Proposed Minor Land Development Permit as minor land development permits;
6. Declare that the County and Valara are violating the ULMO by allowing construction, redevelopment, and grading activities to commence before all required development permits have been approved; and
7. Enjoin the unlawful erection, construction, reconstruction, alteration, conversion, grading, clearing, and any other construction or development activities at the Valara site until all required permits are issued.

Valara's and the County's Motions to Dismiss are based on their collective positions that (1) Plaintiff lacks standing to maintain certain claims in this action; and (2) Plaintiff is barred from maintaining this action due to its failure to exhaust its administrative remedies.

LEGAL ANALYSIS

In considering Valara's and the County's Motions to Dismiss, the Court bases its ruling solely on the allegations set forth in the Plaintiff's Complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In addition, the Court will presume all well-pled facts to be true. *Gressette v. South Carolina Electric and Gas Co.*, 370 S.C. 377, 378-79, 635 S.E.2d 538 (2006).

I. STANDING

Valara argues Plaintiff lacks standing to pursue injunctive relief in Counts II and III of its Amended Complaint. Based on the allegations as pled in the Amended Complaint, this Court agrees.

Our courts have long held and established that constitutional standing requires three elements: (1) “the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest”; (2) “a causal connection must exist between the injury and the challenged conduct”; and (3) “it must be likely that a favorable decision will redress the injury.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014). An association, such as Plaintiff, may possess standing by virtue of associational standing on behalf of its members if “one or more of its members will suffer an individual injury by virtue of the contested act.” *Carnival*, 407 S.C. at 75-76 (internal quotations omitted).

Section 6-29-950(A) of the South Carolina Code Annotated provides the following regarding the remedies available for an alleged violation of any zoning ordinance and those who may seek such remedies, in relevant part:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county ***or an adjacent or neighboring property owner who would be specially damaged by the violation*** may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

S.C. Code Ann. § 6-29-950(A) (emphasis added). Under this Court’s current standard of review, the members of Plaintiff’s association do qualify as “adjacent or neighboring property owner[s]”

of the Data Center site. However, Plaintiff must also show it has been “specially damaged” by the alleged violation in a manner sufficient to confer statutory standing upon it to maintain its claim for injunctive relief. It has not.

In Plaintiff’s Amended Complaint, the alleged injuries to Plaintiff’s members are either speculative or non-particularized. *See* Am. Compl. ¶¶ 18-32. For example, the members allege disruption of general peace and solace; lack of transparency regarding the permitting process; generalized noise, dust, tree-clearing, and traffic concerns on the Data Center site; potential environmental, health and community impacts, and potential disruption to enjoyment of property and quality of life. *Id.* While the Court acknowledges that these are all understandable concerns, they are not particularized injuries sufficient to confer constitutional, statutory, or associational standing upon Plaintiff. Generalized grievances suffered by the public as a whole, as seen here, are insufficient to establish standing. *Carnival*, 407 S.C. at 76.

Plaintiff also argues the public-importance exception to standing should apply if it is found not to otherwise possess standing to pursue its claims as alleged in Counts II and III of the Amended Complaint. “South Carolina courts recognize an exception to the requirement that a plaintiff possess standing where an issue is of such public importance as to require its resolution for further guidance.” *Carnival*, 407 S.C. at 79 (internal quotations omitted). Similar to *Carnival*, this action involves the application of a zoning ordinance. In this case, it is the application of the ULMO to the Data Center project. As the court noted in *Carnival*, if there are parties who have suffered the requisite injuries sufficient to confer standing upon them, then those parties may bring the claims. *Carnival*, 407 S.C. at 81. Otherwise, the Court finds that the issues raised by Plaintiff in the Amended Complaint are public policy concerns and generalized grievances that are not

appropriate for resolution by the courts. As such, the Court finds the public-importance exception to standing does not apply to this case as currently pled.

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

Valara and the County argue the Amended Complaint should be dismissed because: (1) Plaintiff's challenge to the issuance of the Phase I Permit is untimely because Plaintiff's members never appealed to the Board of Zoning Appeals regarding the SCA's decision to grant the Phase I Permit; (2) Plaintiff's challenge to Valara's and the County's alleged violation of its Phase I Permit is improper because Plaintiff failed to exhaust the administrative complaint process outlined in the ULMO; and (3) Plaintiff's challenge to the Phase II Application is both premature under the ULMO and unripe for resolution under the Declaratory Judgment Act (the "DJA"). The Court agrees.

South Carolina law provides that "the exhaustion of administrative relief available to a party is necessary before the party can seek redress in the courts." *Lominick v. City of Aiken*, 244 S.C. 32, 44, 135 S.E.2d 305, 310 (1964); *see also Moore v. Sumter Cnty. Council*, 300 S.C. 270, 274, 387 S.E.2d 455, 458 (1990) (holding that landowners "must exhaust their administrative remedies before seeking judicial relief" from an allegedly invalid zoning ordinance); *Dunbar v. City of Spartanburg*, 266 S.C. 113, 118, 221 S.E.2d 848, 850 (1976) (refusing to address whether a zoning ordinance was unconstitutional as applied to a specific property because "the Landowner . . . failed to pursue his administrative remedies by applying for a variance"); *Charleston Dev. Co., LLC v. Alami*, 433 S.C. 533, 544-46, 860 S.E.2d 687, 693-94 (Ct. App. 2021) (holding that the trial court did not err in finding "Appellants had not exhausted their administrative remedies because they had not appealed any decision of the Zoning Administrator to the Board of Zoning Appeals").

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Planning Act”) expressly contemplates an “administrative mechanism designed to enforce [local] zoning ordinance[s].” S.C. Code Ann. § 6-29-780(A). To that end, the Planning Act authorizes local zoning ordinances to “provide for the creation of a board to be known as the board of zoning appeals.” *Id.* It grants that board the exclusive power to “hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance.” S.C. Code Ann. § 6-29-800(A)(1). Any “person aggrieved” by an allegedly erroneous decision of an administrative official must exhaust their administrative remedies by appealing the alleged error to their local board of zoning appeals in the first instance. S.C. Code Ann. § 6-29-800(B). Under the Planning Act, any such appeal must be filed “within a reasonable time, as provided by the zoning ordinance or rules of the board.” *Id.*

As Plaintiff acknowledges, “Spartanburg County utilizes its ULMO to govern development and land use decisions.” Am. Compl. ¶ 40. The ULMO permits individuals to submit alleged zoning violations to the SCA and directs the SCA to “record and investigate such complaint[s], and take such action as provided by this Ordinance,” including “issu[ing] stop work order[s]” or “withhold[ing] permits.” ULMO §§ 1.17, 1.18. Pursuant to the authority granted by Section 6-29-780(A) of the Planning Act, the ULMO establishes the Board of Zoning Appeals and vests the Board with the power “[t]o hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the enforcement officer of [the] Ordinance.” *Id.* §§ 5.02-1, 5.02-2(1). The ULMO prescribes the process that any person aggrieved must follow when challenging the issuance of a permit or other alleged violation of the Board: file an appeal with the Board “within 10 days of the date of the action.” *Id.* §§ 1.04, 5.02. Only after the Board

of Zoning Appeals renders a final decision on the administrative appeal can an aggrieved party initiate an appeal in the circuit court. *See, e.g.*, S.C. Code Ann. § 6-29-820(A); Board of Zoning Appeals Rules of Procedure Art. IV, § 10; ULMO § 1.05 & Application Procedural Chart 2. In this action, neither Plaintiff nor any of its members exhausted, or even pursued, their administrative remedies before challenging the Phase I Permit, Valara’s alleged violation of the Phase I Permit, or the Phase II Application in this Court.

“‘A [circuit court] must have a sound basis for excusing the failure to exhaust administrative relief.’” *Robinson v. S.C. Dep’t of Emp. & Workforce*, 443 S.C. 63, 74, 902 S.E.2d 41, 47 (Ct. App. 2024) (alteration in original) (quoting *Hyde v. S.C. Dep’t. of Mental Health*, 314 S.C. at 209, 442 S.E.2d at 583 (1994)); *see also Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 526-27, 520 S.E.2d 339, 350-51 (Ct. App. 1999) (holding a party's belief "even with good reason[] that [the agency would] reject her claim, d[id] not establish futility as a basis for excusing exhaustion in the absence of a definitive statement by the agency administrator").

“‘[An] exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of them would be a vain or futile act.’” *Ward v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000). “Futility, however, must be demonstrated by a showing comparable to the administrative agency taking ‘a hard and fast position that makes an adverse ruling a certainty.’” *Cox v. S.C. Educ. Lottery Comm’n*, 441 S.C. 209, 221, 893 S.E.2d 342, 348 (quoting *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010)); *see also Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 526-27, 520 S.E.2d 339, 350-51 (Ct. App. 1999) (holding a party's belief “even with good reason[] that [the agency would] reject her claim, d[id] not establish futility as a basis for excusing exhaustion in the absence of a definitive statement by the agency administrator”).

The allegations of Plaintiff's Amended Complaint in this action do not demonstrate that the County has taken a hard and fast position as to the disputed permitting process or enforcement of the ULMO such that Plaintiff's engagement in the appeal procedures under the ULMO would be futile. Therefore, the Court does not find it has a sound basis for excusing Plaintiff's failure to exhaust its administrative remedies regarding the issuance of the Phase I Permit, or the alleged violations thereof, in this case. This finding is consistent with the court's holding in *Lominick, supra*, in which the court prohibited a party from challenging the issuance of a building permit in circuit court because that party had not appealed the decision to the Board of Zoning Appeals. *Lominick*, 244 S.C. at 44.

In further support of its argument that this Court should excuse Plaintiff's failure to exhaust administrative remedies, Plaintiff argues that alternative remedies are inadequate to address the alleged harm. *See Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012). The Court disagrees. Had Plaintiff exercised its opportunity to appeal the Phase I Permit, the Board of Zoning Appeals must have conducted a hearing, received pertinent evidence and testimony, and rendered a decision on the appeal. If necessary, that decision, with an underlying record, may have then been appealed to the circuit court.

Plaintiff also argues that the doctrine of exhaustion of administrative remedies does not apply where the facts are undisputed and the issues are solely ones of law. The Court does not find the question before it is purely one of law. The appeals process under the ULMO would allow a factual record to be developed regarding the permit process and the SCA's decision to permit the Data Center project as a Minor Land Development.

Plaintiff has not yet had the opportunity to exhaust its administrative remedies as to the Phase II Application, because that application has not yet been finalized. "The existence of an

actual, justiciable controversy is essential to jurisdiction to render a declaratory judgment. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from this dispute of a contingent, hypothetical or abstract character.” *Orr v. Clyburn*, 277 S.C. 536, 542, 290 S.E.2d 804, 807 (1982). The Court finds that Plaintiff’s allegations as to Phase II are not ripe for adjudication because the outcome of the Phase II Application is not yet legally certain.

Therefore, Plaintiff’s Amended Complaint is **DISMISSED** for failure to exhaust the administrative remedies available to it as to the issuance of the Phase I Permit and Phase II Application, as well as the alleged violations of the ULMO pursuant to the Phase I Permit. Plaintiff’s claims for relief, including injunctive relief, to the extent they arise out of the Planning Act in Counts II and III of their Amended Complaint, are **DISMISSED** for lack of standing.

[Electronic Signature Page Follows.]



Spartanburg Common Pleas

Case Caption: Concerned Citizens Of Spartanburg County VS Valara Holdings, Llc ,
defendant, et al
Case Number: 2026CP4203416
Type: Order/Dismissal

IT IS SO ORDERED!

s/ J. Derham Cole, Jr. 2789

Electronically signed on 2026-10-06 16:35:48 page 11 of 11

APPENDIX Y

*Excerpts of Spartanburg County Council Meeting, Sep. 9, 2026
Statements of Councilmember Mo Abusoft [“Speaker_0”]*

00:29:09,572 --> 00:29:10,272 [speaker_5]

No, I don't wanna fuss.

00:29:10,292 --> 00:30:12,502 [speaker_0]

Okay. So, so Cole, this doesn't sound unreasonable. So let's, so let's, let's get a reading now, and then let's look into what, what the proper standard, what we think the proper standard should be. Let's talk to experts. Let's get that done. And then let's make sure that we go back out there and check at various parts during this project. Uh, NorthMart sounds like, sounds like if, if you are not, if, if you don't have a work stoppage, this sounds like something very easily that you could supply also. Um, and, and we'll do it ourselves 'cause then we'll hear that there's lies being done. But it sounds like something that could easily be done to make people feel more comfortable, if you're not ultimately stopped from produ- uh, from going forward. Um, now, this transparency issue. I mean, I think we should... I mean, unless somebody wanna tell me something I'm missing here, I mean, can we get... Can we just get an answer on what was in this original application to us? I mean, is this something-

00:30:12,892 --> 00:30:14,992 [speaker_1]

So the document was not an application to the county.

00:30:15,152 --> 00:30:15,312 [speaker_0]

Okay.

00:30:15,352 --> 00:31:15,716 [speaker_1]

It was part of a project profile sheet, which effectively is an informational filing that a company will provide to the Department of Commerce. It is their document. On many projects, they will share it and say, "Here is what this project looks like." To Councilman DeShields' point, the county does not decide, uh, whether or not to engage with the project necessarily on the basis of megawattage. We're looking at the totality of investment and job count, and a variety of other factors that are different depending on the types of projects. Generally, this is a sheet that is used by practitioners within the economic development, but it is the document of the Department of Commerce. The Department of Commerce has chosen not to release it under a provision of FOIA that excludes certain types of documents used in economic development operations, and they have summarily denied release of that. That is where it sits. It exists. We have seen it. You all have seen it. Um, and so, but it was not a document filed with the county. It is not a component of an application for land use purposes.

00:31:15,816 --> 00:31:17,176 [speaker_0]

What was in the original thing?

00:31:17,656 --> 00:31:26,976 [speaker_1]

The original thing provided a number of megawattages that showed a ramp up over a series of years, ultimately ending up in a megawattage of a facility of at least 400 or more megawattage.

00:31:27,016 --> 00:31:29,376 [speaker_0]

And that, that was documented from the beginning as best you know?

00:31:29,756 --> 00:31:34,696 [speaker_1]

As best I know from when I saw it. Um, what took place before that I simply could not speak to.

00:31:34,836 --> 00:33:38,016 [speaker_0]

All right. L- let me, uh, uh, let me get ahead on something. I keep hearing this about. Let me explain to you about the economic development process that existed int- that existed while David Burt was the leader of economic development. David Burt was immensely successful

during his time leading economic for this county. He is a multi-billion dollar creator. That created a, um, a situation where those things... And you guys weren't on council yet for this period. I, I preexisted these gentlemen. Economic development projects went to the state, went to a f- a few, a few economic development pro- um, professionals at One Spartanburg, and you guys c- correct me if I throw something off here, then went to s- a very small cadre of staff members, and the only person who got early information on economic development from county, from the elected officials, was David. Okay? And I am a little bit bothered because, because I stood at this council table. Some of you guys, some of the people have were here. Some of the people that have, that, that have short memories were, were, were at those meetings, and I s- and I talked about having a different process. But, but David was so successful that that was the process that not only council, the rest of the council people wanted, the community wanted, was that they liked the way it was going. I've never signed an NDA. I didn't get... Nobody else got that early information. That stayed with a couple of economic development professionals at One Spartanburg, staff here, the state commerce office, and David Burt, and he was immensely successful at that. So I'm not criticizing that at all, but I did bring that up early in my tenure here, and there was no support from the community or from really anybody else to change an immensely successful process. So understand that nobody, we wouldn't, other council people would not have known about that first application, just so you understand.

00:33:38,096 --> 00:33:40,876 [speaker_5]

Did he tell you it was not gonna be a data center?

00:33:40,916 --> 00:33:42,736 [speaker_0]

He t- I didn't get anything until-

00:33:42,976 --> 00:33:44,965 [speaker_5]

Well, he told you it wasn't gonna be a data center

00:33:45,416 --> 00:34:31,176 [speaker_0]

... 1001. I don't know anything about that. But the idea, you've, you've brought this up about this initial application, and then people will add on a layer about NDAs and other thing. I've never signed an NDA as long I've been on council. You know why? Because early economic development project information did not come to me, and that was the consensus not only of the county council, not only the county staff, not only One Spartanburg, but the broad majority of this community that controls the representation up here. All right? And so, a- and that was brought up at a council meeting. It was brought up in very direct terms, and it wasn't some, "Yeah, move, let's change the process. Let's go." No, it wasn't. It wanted to stay the way it is, and it was immensely successful under him.

00:34:31,976 --> 00:34:35,636 [speaker_5]

Was it, did he also tell you it's not gonna use any more waters in Coal Plant?

00:34:36,916 --> 00:34:38,696 [speaker_1]

M- Mis- uh, I'm sorry. Ask, say the question again.

00:34:38,936 --> 00:34:38,946 [speaker_5]

Albu, Alber-

00:34:38,956 --> 00:34:42,736 [speaker_0]

He didn't tell me anything because guess what? He, it didn't, it didn't run through me.

00:34:42,766 --> 00:34:45,466 [speaker_5]

He told the TV that on national news.

00:34:45,745 --> 00:35:38,256 [speaker_0]

Mis- whatever you're saying he told, what I'm telling you is we, I did not get any... I, I learned mostly about this project on third reading, and that was the way that all the economic development projects were run under that immensely successful process. They did it so, uh, which the, the, the story was always told to me that before when it was a broader process, information leaked out. Okay? And that was something that got brought up at this dais in front of some of the same people that come, at the time were coming to council meetings talking about globalist conspiracies and things, and nobody got behind, "Yeah, let's change that." No, it had been what had led to where economic development was. Now in hindsight, it wa- it's, "Well, well, did you know then?" But I didn't. You wanna hear the... I'm giving you... I'm, I'm not mad at you. I'm giving you straight answers.

00:35:38,266 --> 00:35:40,316 [speaker_5]

Well, no, I'm, I'm, I've only been here five months.

00:35:40,516 --> 00:35:40,756 [speaker_0]

Okay.

00:35:40,836 --> 00:35:41,576 [speaker_5]

How long have you been here?

00:35:41,876 --> 00:35:43,096 [speaker_0]

Okay, I've been here six years.

00:35:43,176 --> 00:35:44,796 [speaker_5]

Okay, well, you've been here a lot longer than me.

00:35:44,856 --> 00:35:46,166 [speaker_0]

I've, I've been on council, yeah. Well, f-

00:35:46,376 --> 00:35:46,385 [speaker_5]

Yeah

00:35:46,385 --> 00:35:47,056 [speaker_0]

... fair enough, mis-

00:35:47,286 --> 00:35:47,286 [speaker_5]

Yeah

00:35:47,286 --> 00:35:50,216 [speaker_0]

... fair enough. You came to get answers. Those are straight answers.

00:35:50,636 --> 00:35:51,436 [speaker_5]

I appreciate that.

00:35:51,726 --> 00:35:59,506 [speaker_0]

Okay? So if you think we're somehow hiding, I have to ask, I have to ask, uh, uh, Mr. Alverson what was in the initial thing just like you do. I have no idea.

00:35:59,516 --> 00:36:06,876 [speaker_5]

Well, where did May 18th 450 megawatts come from, and where did the megawatts that she

says she told somebody-

00:36:06,936 --> 00:36:09,885 [speaker_0]

She did. She told Commerce. She sto- she told-

00:36:10,256 --> 00:36:11,696 [speaker_5]

She didn't tell you what's going on?

00:36:12,196 --> 00:36:12,486 [speaker_0]

Talkin'-

00:36:12,486 --> 00:36:13,816 [speaker_5]

Coal didn't tell you?

00:36:13,846 --> 00:36:13,846 [speaker_0]

No.

00:36:13,846 --> 00:36:14,226 [speaker_5]

He didn't? Okay.

00:36:14,316 --> 00:36:17,586 [speaker_0]

Economic development was kept. I'm, I'm gonna, I'm gonna repeat myself one more time.

00:36:17,616 --> 00:36:18,676 [speaker_5]

Okay, I'm listening.

00:36:18,856 --> 00:37:43,888 [speaker_0]

A project came in. Oftentimes this project, yes, correct me, 'cause y- y- they really would know, still would know more. Projects oftentimes come to Commerce first. They're looking for a site that fits their needs. I need certain power needs. I see n- I need certain water needs. I cer- I need certain proximity logistically. All right? State commerce tells them, "There are these sites throughout, throughout the state." All right? Then they will... Or they may respond to an o- or like a, like a, a posting from One Spartanburg. "We've got this site. Hey, it's really nice. What do you... Does anybody have a... You wanna come and talk to us about this?" It goes to One Spartanburg. Okay? We have, that's our economic development team. That's Ca- that's Catherine, that's Alan. It's a small team over there. Then it may go c- either simultaneously or right after to staff, and then David Britt. And, and that's really where it would stay at the time. David Britt signed NDAs or, or kept the information to himself. It didn't get spread to us because there was a fear if you had s- other council people receiving that information, then the recipe for Coke would somehow get out and ruin the people in Cone. That's how, that's how it was run under that particular regime, and it was done very successfully. We didn't get most of that information until third reading. Like, what was that? We got, we were with code names just like you were. You had code names.

00:37:43,988 --> 00:37:44,568 [speaker_5]

My code.

00:37:45,928 --> 00:38:15,398 [speaker_0]

Whatever. Yes. So I, I mean, if there's any misconception about, nobody ever had, I never had to sign an NDA 'cause I never had any information for that kinda thing. And I didn't, and, and nothing. Did I always like that? No. But you could not, you could not argue with the results. And when I did argue about it, guess what? There was no support out here in the community. They didn't say, "Oh, yeah, let's open it up." No. They said, "We're doing it well, and we're gonna

APPENDIX Z

The Supreme Court of South Carolina

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners,

v.

South Carolina Department of Health and Environmental Control and Roper Pond, LLC, Respondents.

Appellate Case No. 2013-001521

Lower Court Case No. 2009AL0700069

ORDER

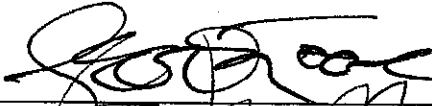
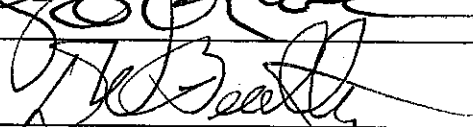
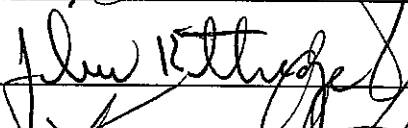
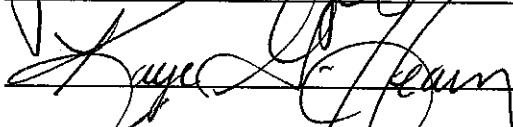
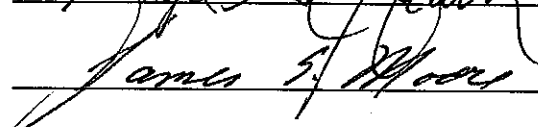
We granted a petition for a writ of certiorari to review the court of appeals' decision in *Town of Arcadia Lakes v. South Carolina Department of Health and Environmental Control*, 404 S.C. 515, 745 S.E.2d 385 (Ct. App. 2013), in which the court of appeals affirmed certifications for certain construction activities (including land disturbance and storm water discharges) under a state-wide general permit. Essentially, Petitioners' contention is that Respondent Roper Pond, LLC, (Roper) does not qualify for coverage under a state-wide general permit, and therefore, Roper's construction activities are not authorized to proceed.

At oral argument before this Court, the parties conceded Roper's construction project proceeded and was completed during the pendency of this matter.¹ As all

¹ "[T]he serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision." S.C. Code Ann. § 1-23-610 (A)(2) (Supp. 2014); *see also* S.C. Code Ann. § 1-23-600(H)(5) (Supp. 2014) ("A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.");

construction activities subject to and authorized by the state-wide general permit have been completed, Roper's coverage under the state-wide general permit has now terminated.

Accordingly, we dismiss this matter as moot, as it is now impossible for this Court to grant any redress in the context of the issues as framed and litigated below (i.e., modify or revoke authorization for Roper's construction activities under the state-wide general permit).² See *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. If there is no actual controversy, this Court will not decide moot or academic questions." (citing *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973))).

	_____ C.J.
	_____ J.
	_____ J.
	_____ J.
	_____ A.J.

Columbia, South Carolina

April 9, 2015

Rule 241(b)(11), SCACR (noting that, in appeals from administrative tribunals, the service of a notice of appeal does not automatically stay matters decided in orders).

² As to Petitioners' concerns regarding post-construction stormwater, sedimentation, and water-quality issues, counsel for Respondent South Carolina Department of Health and Environmental Control (DHEC) assured this Court at oral argument that DHEC has the ongoing ability to receive and investigate post-construction complaints and the prosecutorial discretion to initiate regulatory enforcement proceedings for any violations of applicable law.

cc:

W. Thomas Lavender, Jr., Esquire

Joan Wash Hartley, Esquire

Amy Elizabeth Armstrong, Esquire

Stephen Philip Hightower, Esquire

Jacquelyn Sue Dickman, Esquire

James Blanding Holman, IV, Esquire

The Honorable Jana Shealy

APPENDIX AA

The South Carolina Court of Appeals

Upstate Forever, South Carolina
Native Plant Society, and South
Carolina Wildlife Federation, Appellants,

v.

South Carolina Department of
Health and Environmental
Control and Greenville Water
System, Respondents.

The Honorable John D. McLeod
Administrative Law Court
Trial Court Case No. 2009-AL-07-00226

ORDER

Appellants appeal an order from the administrative law court (the ALC) affirming the decision of the Board of the Department of Health and Environmental (the Department) and granting Respondents' motion for summary judgment. Respondents have filed a motion to dismiss this appeal as moot because no justiciable controversy exists due to the completion of the project. Additionally, Respondents argue Appellants' sole issue on appeal, whether the Department has the authority to impose minimum stream flow requirements as a condition of its water quality certification permits, is a purely hypothetical question that does not fall within any of the mootness exceptions. However, Appellants argue this appeal is not moot because this court can provide effectual relief and a cognizable remedy. In support, Appellants argue the Department has the discretion to establish any limitations on certification permits, the ability to modify the conditions of the certification, and the authority to mandate protections for navigable waterways in South Carolina. Moreover, Appellants asserts that even if

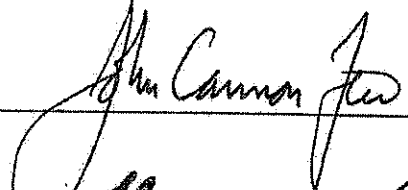
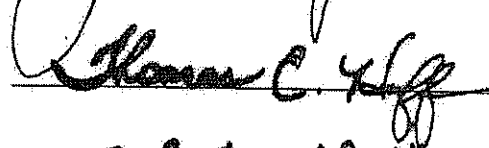
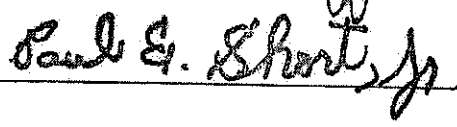
Exhibit A

this court determines the appeal is moot, the public importance exception applies because the consequences of a low flow stream are of global significance.

Generally, this Court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Sloan v. Dep't of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Id.* at 567-68, 549 S.E.2d at 596. However, the public importance exception to mootness permits a court to consider moot issues if "the issue . . . present[s] a question of imperative and manifest urgency requiring the establishment of a rule for future guidance in matters of important public interest." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 27, 630 S.E.2d 474, 478 (2006) (citation and quotation marks omitted).

After careful consideration of the parties' filings, we dismiss this appeal as moot. Furthermore, we find the public importance exception does not apply to this appeal. Moreover, because we dismiss this appeal, we need not address Trout Unlimited's motion to file an amicus curiae brief.

IT IS SO ORDERED.

 C.J.
 J.
 J.

Columbia, South Carolina

cc: Amy E. Armstrong, Esquire
Eugene C. McCall, Jr., Esquire
Randolph R. Lowell, Esquire
Chad N. Johnston, Esquire
Stephen Philip Hightower, Esquire
David D. Armstrong, Esquire
Frank S. Holleman III, Esquire
Nicholas S. Torrey, Esquire

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