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S.C. SUPREME COURT

THE 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

Appellate Case No. 2026-002350

Concerned Citizens of Spartanburg County, ... Petitioner,

v.

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

RESPONDENTS SPARTANBURG COUNTY AND SPARTANBURG COUNTY ADMINISTRATOR'S RETURN AND MEMORANDUM IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT

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Respondents Spartanburg County and Spartanburg County Administrator respectfully submit this Return in opposition to the Petition for Extraordinary Writ filed by Petitioner Concerned Citizens of Spartanburg County on October 23, 2026.

INTRODUCTION

This matter arises from Spartanburg County's classification of a proposed high-performance computing center ("Project") as a Minor Land Development under the County's Unified Land Management Ordinance ("ULMO"). Although Petitioner attempts to frame this matter as a policy dispute regarding the development and regulation of data centers in Spartanburg and across South Carolina, the underlying issue is narrow. The key issue here is whether the County properly interpreted and applied its land development ordinance in processing permits for the Project. Specifically, Petitioner challenges the County's classification of the Project as a "Minor Land Development." That issue is governed by the ULMO and the administrative review procedures established by South Carolina law.

Petitioner initiated this action in the Spartanburg County Court of Common Pleas challenging the County's issuance of a Phase I Minor Land Development permit for the Project and its current processing of a Phase II development permit. On October 6, 2026, following briefing and a hearing, the Circuit Court dismissed Petitioner's Amended Complaint for failure to exhaust administrative remedies and separately dismissed Counts II and III of Petitioner's Amended Complaint for lack of standing. On October 20, 2026, Petitioner appealed that decision to the South Carolina Court of Appeals. Nevertheless, Petitioner now seeks to invoke this Court's original jurisdiction to obtain the same injunctive relief previously requested from and denied by the Circuit Court.

This Petition should be denied for numerous reasons. First, Petitioner has not demonstrated extraordinary circumstances warranting the exercise of this Court's original jurisdiction. The

issues presented arise, not from public concern about data centers, but rather more narrowly from the application of a local ordinance to a development project. Petitioner has not established why those issues cannot be addressed through the appellate process nor has Petitioner established an emergency requiring immediate intervention.

Second, Petitioner has not demonstrated that it will suffer immediate, irreparable harm absent an extraordinary writ. The alleged injuries of Petitioner's members arise primarily from construction activities authorized by separate grading permits or from speculative concerns regarding future operations of the compute center. Moreover, Petitioner has not, and cannot, establish that those alleged injuries result from the County's classification of the project as a Minor Land Development.

Third, Petitioner cannot establish a likelihood of success on the merits. As the Circuit Court correctly held, Petitioner did not exhaust applicable administrative remedies under the South Carolina Local Government Comprehensive Planning Enabling Act and the ULMO. Petitioner also lacks standing as to Counts II and III of the Amended Complaint. Additionally, Petitioner cannot demonstrate that the County improperly classified this Project. Contrary to Petitioner's position, the size, scope, and cost of a Project do not determine its classification as either a Minor or Major land development under the County's ULMO.

Finally, Petitioner has not established that there are no adequate remedies at law. The Phase II application for this Project is still being processed by the County. If that application is approved, Petitioner can avail itself of the administrative process. Petitioner cannot bypass those procedures, or halt the County's valid processing of a permit application, simply because it disagrees with the County's consistent application of its own ordinances. For these reasons, the Petition should be denied.

BACKGROUND

A. Spartanburg County's Land Development Permitting Process

Spartanburg County regulates the development and use of land within the unincorporated areas of the County, including in the vicinity of this site, through its ULMO. (ULMO, Pet'r App. at 32.) 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) (Pet'r App. at 32.)

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.

B. 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 a former Kohler Industrial facility. The existing facility was developed 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. See Spartanburg County, Citizen Self Service, Minor Land Development Permit No. DEVELOPPER-0725-0918. 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. (Am. Compl. ¶¶ 58–59, Ex. 3, Pet'r App. at 19.) 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.)

C. 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.

D. 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 also 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 here 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, Valara's engineers, were notified on site and requested to include the area within an existing permit-modification application 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.)

E. Procedural History

Plaintiff Concerned Citizens of Spartanburg County initiated this Action on July 6, 2026, initially challenging only the County's processing of the Phase II Application. On August 12, 2026, Petitioner filed an Amended Complaint challenging the County's issuance of the Phase I Permit and alleging that Valara's ongoing construction was exceeding the scope of that permit. Petitioner did not seek preliminary injunctive relief until August 20, 2026—six weeks after filing suit, approximately a year after initial permits were issued, and months after Petitioner's members admit that they were aware of the scope of the Project. That motion for preliminary relief sought to enjoin any further permitting of or construction on the Project.

These Defendants moved to dismiss the case and opposed the motion for a preliminary injunction. On September 17, 2026, Circuit Court Judge J. Derham Cole, Jr. heard the motions. On October 6, 2026, Judge Cole issued an order dismissing the case due to Petitioner's lack of standing and failure to exhaust administrative remedies. (Order, Pet'r App. at 483.) Judge Cole also denied the motion for preliminary injunction. (Id.)

Specifically, the court held that neither Petitioner 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." (Id. at 8, Pet'r App. at 491.) The Court found that Petitioner had not demonstrated that an administrative appeal would be futile or that the available administrative procedures were inadequate. (Id. at 9, Pet'r App. at 492.) The Court also rejected Petitioner's argument that exhaustion was unnecessary because the issues

presented were purely legal, explaining that the administrative process would allow for the development of a factual record concerning the County's permitting decisions. (Id.) Accordingly, the Court concluded that there was no basis to excuse Petitioner's failure to exhaust its administrative remedies and dismissed the Amended Complaint. (Id.)

The Court also held that Petitioner lacked standing to pursue injunctive relief under the Planning Enabling Act in Counts II and III. (Id. at 4, Pet'r App. at 487.) Although Petitioner's members are nearby property owners, the court found that the Amended Complaint did not allege that they were "specially damaged," because the alleged injuries were "either speculative or non-particularized." (Id. at 4-5, Pet'r App. at 487-488.) The court also declined to apply the public-importance exception. (Id. at 5-6, Pet'r App. at 488-489.)

Petitioner filed a notice of appeal with the South Carolina Court of Appeals on October 20, 2026. *See* Case No. 2026-002323. Petitioner filed this Petition three days later, on October 23, 2026, asking this Court to exercise its original jurisdiction and issue a writ.

LEGAL STANDARD

This Court's original jurisdiction is extraordinary and sparingly exercised. The Court "will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance." Rule 245(a), SCACR; see also Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991) ("[T]his Court has indicated it will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State."); In re Breast Implant Prod. Liab. Litig., 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 n.2 (1998) (writs issue only "when exceptional circumstances exist"); State v. Isaac, 405 S.C. 177, 185 n.6, 747 S.E.2d 677, 681 n.6 (2013) (such writs "are intended only for the most *extraordinary* and exceptional situations.")

This Court applies the traditional preliminary injunction factors when considering a petition requesting temporary injunctive relief. See, e.g., Smith v. Planned Parenthood S. Atl.,

C.A. No. 2022-001005, 2022 WL 3478531, at *1 (S.C. Aug. 17, 2022). A party seeking a temporary injunction must establish: (1) immediate, irreparable harm if the injunction is not granted; (2) a likelihood of success on the merits; and (3) no adequate remedy at law. Id. The Court has 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). Importantly, where a party seeks to enjoin a public body "in the performance of actions or duties provided by statute," it must show that the body "exercised its power in an arbitrary, oppressive or capricious manner." Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018).

ARGUMENT

This Petition is an attempt to obtain reconsideration of the Circuit Court's denial of preliminary injunctive relief through an improper procedural avenue. Although Petitioner characterizes its request as a writ necessary to preserve the status quo, it seeks the same practical result as its previously denied request for preliminary injunctive relief, namely, an order halting further permitting or development of the Project. The Circuit Court denied that request after voluminous briefing, an extensive hearing, and consideration of the parties' arguments and applicable law. Petitioner has already appealed that Order and has an established means of obtaining review of that decision. Plaintiff cannot circumvent the appellate process merely by recasting its request for preliminary injunctive relief as a petition for an extraordinary writ. Petitioner has identified no extraordinary circumstance justifying a separate proceeding in this Court to obtain substantially the same relief. This Court's original jurisdiction should not be used as a substitute for the appropriate appellate process, nor has Petitioner demonstrated the need for such extraordinary relief. Accordingly, the Petition should be denied.

I. THE PETITION IS PROCEDURALLY IMPROPER AND DOES NOT WARRANT THE EXERCISE OF THIS COURT'S ORIGINAL JURISDICTION.

Rule 245(a) provides that the Court will not exercise its original jurisdiction over matters that can be determined in a lower court without material prejudice to the parties. The Court generally exercises its original jurisdiction only where extraordinary circumstances exist, such as an emergency or a question of significant public interest. See Key v. Currie, 305 S.C. 115, 406 S.E.2d 356 (1991). Moreover, extraordinary writs are generally unavailable where other effective remedies exist. See Rowe v. City of West Columbia, 334 S.C. 400, 407–08, 513 S.E.2d 616, 620 (Ct. App. 1999).

Here, Petitioner has already appealed the Circuit Court's Order dismissing its Amended Complaint and denying its request for preliminary injunctive relief. To the extent Petitioner seeks an injunction while that appeal is pending, the South Carolina Rules of Civil Procedure expressly provide a mechanism for obtaining such relief. Rule 62(c) authorizes the trial court to grant an injunction pending appeal. Rule 62(g) provides that an application for such relief should first be made to the trial court unless doing so is not practicable. SCRCP Rule 62(g). Petitioner does not contend that it sought such relief from the Circuit Court or explain why doing so would have been impracticable. Nor does Petitioner explain why it could not seek appropriate relief through the ordinary appellate process. Accordingly, Petitioner has not demonstrated that the available procedures are inadequate or that extraordinary relief through this Court's original jurisdiction is necessary.

Petitioner likewise has not demonstrated an emergency warranting the exercise of this Court's original jurisdiction. Construction of the Project has been ongoing since 2025, and Petitioner's members acknowledge that they became aware of the scope of the Project by March or April 2026. (See, e.g., Pack Aff. ¶ 7, Pet'r App. at 257.) Nevertheless, Petitioner waited until

July 2026 to commence this action, until August 2026 to seek preliminary injunctive relief, and more than two weeks after the Circuit Court's Order to file the present Petition. Petitioner's own delay undermines its contention that immediate intervention by this Court is necessary.

Finally, Petitioner has not established that this case presents a question of significant public interest warranting the exercise of this Court's original jurisdiction. Petitioner relies heavily on newspaper articles, proposed legislation, and public concerns regarding data center development to establish the purported significance of this dispute. (Pet. at 3-4, 18-19.) However, this case does not concern whether data centers should be permitted in South Carolina or how such facilities should be regulated. Instead, the central issue is whether the County properly classified this particular Project as a Minor Land Development under the Spartanburg County Unified Land Management Ordinance. That question requires interpretation and application of a local ordinance to the particular facts of this Project, not resolution of a statewide policy question concerning data centers.

Petitioner also identifies concerns regarding neighboring landowners' standing and the availability of judicial review. (Pet. at 18-19.) However, the Circuit Court did not hold that neighboring landowners are categorically prohibited from challenging development projects. The Court determined that Petitioner failed to allege particularized injuries sufficient to establish standing and failed to exhaust its available administrative remedies. (Order, pp. 4-10, Pet'r App. at 487-493.) Although data center development may be a matter of public concern, that does not transform this particular dispute over the County's application of its land development ordinance into a question of significant public interest justifying the exercise of this Court's original jurisdiction. Accordingly, Petitioner has failed to establish a sufficient basis for this Court to exercise its original jurisdiction.

II. PETITIONER CANNOT ESTABLISH THAT ITS MEMBERS WILL SUFFER IRREPARABLE HARM

To obtain an injunction, Petitioner must establish that it will suffer irreparable harm in the absence of injunctive relief. Scratch Golf Co. v. Dunes W. Residential Golf Props., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). 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 party'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.").

A. Petitioner Improperly Delayed Seeking Relief

Petitioner'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 Petitioner 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 Petitioner sought preliminary injunctive relief.

More importantly, even accepting Petitioner's assertion that its members did not appreciate the scope of the Project until early 2026, Petitioner 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, Pet'r App. at 257.) 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, Pet'r App. at 274), and Mr. Felk states that he developed concerns about the Project earlier in 2026. (Felk Aff. ¶ 9, Pet'r App. at 265.) Yet Petitioner did not commence this action until July 6, 2026. Petitioner then filed an Amended Complaint on August 12, 2026, but did not move for preliminary injunctive relief until August 20, 2026. Following the Circuit Court's Order, Petitioner waited over two weeks to file this Petition. Thus, Petitioner's members were aware of the circumstances Petitioner now contends requires immediate equitable intervention months before Petitioner filed suit, for several additional weeks before Petitioner sought preliminary injunctive relief, and now for two additional weeks before seeking this Court's review of the same request.

That delay is particularly significant given the nature of Petitioner's claimed injuries. Petitioner 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 did not begin immediately before Petitioner 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 Petitioner now alleges, those injuries would have been apparent well before August 2026 when Petitioner sought an injunction.

Petitioner 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 by this Court.

B. Petitioner Has Not Established That Its Alleged Injuries Were Caused by the County Actions It Challenges

Petitioner also fails to connect its alleged injuries to the County actions challenged in this case. Petitioner 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. Petitioner 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 Petitioner's allegations concerning grading. Petitioner 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, land development permitting and land disturbance permitting are separate permits, 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 Petitioner'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, Petitioner 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, Petitioner 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.

Petitioner 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, Petitioner has not demonstrated that requiring Major Land Development review will eliminate dust, noise, lighting, traffic, or other construction-related conditions about which Petitioner complains. 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, Petitioner cannot establish the irreparable harm necessary for preliminary injunctive relief.

C. Petitioner's Generalized and Speculative Allegations Do Not Establish Irreparable Harm

Petitioner has failed to establish an immediate, irreparable injury justifying injunctive relief. Petitioner primarily relies on alleged interference with its members' use and enjoyment of their properties, including increased noise, dust, traffic, and environmental concerns. However, this Court has held that such generalized concerns do not constitute particularized injuries

sufficient to establish standing. Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 76-78, 753 S.E.2d 846, 851-52 (2014).

Petitioner's allegations concerning future environmental impacts and other potential nuisances associated with the Project's operation are likewise insufficient to establish irreparable harm. The computing center is not yet operational, and Petitioner's concerns about potential future impacts are speculative. See Beaufort Realty Co. v. Beaufort Cnty., 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001) (explaining that prospective concerns of future harm are insufficient to establish an injury). Accordingly, Petitioner has not demonstrated an immediate, irreparable injury warranting injunctive relief.

D. Petitioner Has Not Established That Its Appeal Will Become Moot Absent an Injunction

Petitioner argues that, absent an extraordinary writ, the Project may be completed before the ordinary appellate process concludes, thereby rendering its appeal moot. (Pet. at 4, 11, 13.) However, Petitioner identifies no authority establishing that completion of construction necessarily renders a challenge to a land development permit moot. Importantly, Petitioner's Amended Complaint seeks both injunctive relief and declaratory relief concerning the County's permitting decisions. The Phase II application is still pending before the County and any final decision relating to that application is subject to the ULMO's administrative appeals process. Therefore, Petitioner has not demonstrated that continued construction or permit processing will necessarily foreclose meaningful judicial review. Petitioner's speculative concern that the appeal may become moot does not establish the material prejudice or emergency circumstances required for this Court to exercise its original jurisdiction pursuant to Rule 245(a) of the South Carolina Rules of Appellate Procedure.

III. PETITIONER HAS NO LIKELIHOOD OF SUCCESS.

A court "may consider a case's merit 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) (quoting Curtis v. State, 345 S.C. 557, 577, 549 S.E.2d 591, 601 (2001)). Petitioner claims that it "does not ask this Court to decide the appeal on its merits—but simply to issue a writ preserving the status quo and the jurisdiction of the courts to reach the merits of Petitioner's appeal." (Pet. at 4.) That framing mischaracterizes both the relief Petitioner seeks and the showing required to obtain it. Regardless, Petitioner has not and cannot establish a likelihood of success on the merits of its appeal.

A. Petitioner Failed to Exhaust Administrative Remedies.

The Circuit Court correctly found that Petitioner 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 Petitioner 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 if Petitioner believes that the permit should not have been issued or if construction exceeded the scope of that permit or violated its conditions. Petitioner 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. 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, Petitioner 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. Petitioner 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. Petitioner 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, Petitioner has likewise failed to exhaust its administrative remedies. The Phase II permit application is pending and no final permit has been issued. Thus, there is no final County decision from which Petitioner 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, Petitioner seeks judicial intervention while the administrative process remains ongoing.

Petitioner'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 Petitioner through the administrative process. Until the County completes that process and renders a final decision, Petitioner seeks judicial determination of a dispute that may be eliminated or materially altered by the County's final administrative action.

Petitioner'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, Petitioner cannot avoid the administrative remedies applicable to its claims merely by seeking declaratory relief.

Petitioner's argument that Section 6-29-950(A) allows it to circumvent the exhaustion requirements is misplaced. Petitioner argues that Section 6-29-950(A) of the Planning Act allows neighboring landowners who are "specially damaged" by a zoning violation to seek injunctive relief directly in state court without first appealing to the BZA. (Pet. at 17.) Importantly, Section 6-29-950(A) does not apply to Petitioner's requested relief. Section 6-29-950(A) allows a specially damaged landowner to seek injunctive relief where "a building, structure, or land **is or is proposed to be used in violation of any ordinance…"** (*emphasis added)*. The provision addresses circumstances in which the use or proposed use of a property violates an applicable zoning ordinance. It does not, however, address challenges to the issuance of a zoning, land development, or grading permit or provide an alternative means of challenging a zoning official's decision regarding a permit application. Rather, such challenges are governed by the relevant administrative appeals process.

Even if Section 6-29-950(A) was applicable, Petitioner's members are not "specially damaged" and, accordingly, lack standing under this provision. As the Circuit Court correctly found, the alleged injuries to Petitioner's members are either speculative or non-particularized. (Order, pp. 4-5, Pet'r App. at 487-488.) Specifically, the Court found that Petitioner's allegations concerning disruption of peace and quiet, lack of transparency in the permitting process, noise, dust, tree clearing, and potential environmental and health impacts did not constitute particularized injuries sufficient to establish standing. (Id.) Instead, the Court determined that Petitioner's allegations constituted generalized grievances applicable to the public as a whole and were insufficient to confer standing upon Petitioner. (Id.)

However, even assuming the applicability of Section 6-29-950(A) and that Petitioner's members have standing, Section 6-29-950(A) does not eliminate the requirement that

administrative remedies be exhausted before seeking judicial relief. Rather, the provision allows a landowner who is specially damaged by a violation of a zoning ordinance to seek injunctive relief in addition to other available remedies.

The Planning Act establishes a separate procedure for challenging decisions made by zoning officials. Specifically, Section 6-29-800(A)(1) authorizes the BZA 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). Pursuant to Section 6-29-800(B), a person aggrieved by such a decision must first appeal to the BZA. Accordingly, Petitioner cannot rely on Section 6-29-950(A) to bypass the administrative appeals process established by the Planning Act. Notably, Petitioner cites no South Carolina authority holding that Section 6-29-950(A) permits a neighboring landowner to challenge the issuance of a zoning permit directly in circuit court without first appealing to the BZA.

Because Petitioner failed to pursue the administrative remedies available to it, its claims are not properly before this Court. Petitioner therefore cannot establish a likelihood of success on the merits, as required to obtain the extraordinary remedy of a temporary injunction.

B. Petitioner Cannot Establish a Likelihood of Success on Its Claims That the Project Was Improperly Classified as a Minor Land Development

Even if Petitioner had exhausted its administrative remedies, Petitioner cannot establish that the County violated the ULMO by classifying the 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.

Petitioner 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 Project, as Minor Land Developments where those projects did not fall within a Major Land Development classification. (See Oakman Aff. ¶¶ 9–10.) Petitioner therefore cannot establish that the County violated the ULMO merely because the Project is substantial in size, scope, or financial investment. Therefore, Petitioner cannot demonstrate a likelihood of success on Counts I and II.

C. Petitioner Cannot Establish a Likelihood of Success on Its Claims Concerning Valara's Grading Activities

Petitioner 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 permits and land disturbance permits are separate County processes. Indeed, as Petitioner 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. Petitioner'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 Petitioner relies upon the approximately two acres identified outside the approved limits of disturbance, Petitioner 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 Petitioner'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, Petitioner has not demonstrated a likelihood of success on the merits.

IV. A WRIT IS NOT NEEDED TO PRESERVE THE COURT'S JURISDICTION PENDING APPEAL BECAUSE PETITIONER POSSESSES 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, Petitioner 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. Petitioner cannot establish that these remedies are inadequate simply because it failed to pursue them.

Petitioner acknowledges the ULMO appeal process but argues that it was inadequate because Petitioner and its members did not receive timely notice of the Phase I Land Development Permit. That argument does not render the administrative remedy inadequate. The fact that

Petitioner let the ULMO's appeal window close "is no ground in itself for allowing [Petitioner] 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 [Petitioner] from obtaining a legal remedy" does not render the legal remedy inadequate); see also 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.")

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 Petitioner identifies no authority establishing that the absence of such notice renders the available administrative remedy inadequate. Moreover, the Phase II application remains pending, and Petitioner retains the ability to pursue the administrative process following a final County decision on that application. In fact, Petitioner seeks to enjoin the County from processing that permit, thereby delaying the very process through which it could attempt to obtain the relief it seeks.

The fact that an administrative remedy requires Petitioner to first present its challenge to the appropriate administrative body likewise does not render that remedy inadequate. The Circuit Court expressly rejected Petitioner's argument that the available administrative remedies were inadequate, explaining that, had Petitioner appealed the Phase I Permit, the BZA would have conducted a hearing, received evidence and testimony, and rendered a decision that could then have been appealed to the circuit court. (Order, p. 9, Pet'r App. at 487-492.) See also 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 Petitioner was

required to pursue). Petitioner has therefore failed to establish that it lacks an adequate remedy at law and cannot satisfy this requirement for injunctive relief.

CONCLUSION

For the foregoing reasons, Respondents Spartanburg County and the Spartanburg County Administrator respectfully request that the Court deny Petitioner's Petition for Extraordinary Writ.

Respectfully submitted,

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