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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.

RESPONDENT VALARA HOLDINGS, LLC'S RETURN AND MEMORANDUM IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT

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Respondent Valara Holdings, LLC ("Valara") respectfully submits this Return in opposition to the Petition for Extraordinary Writ (the "Petition") filed by Petitioner Concerned Citizens of Spartanburg County ("Petitioner") on October 23, 2026.

INTRODUCTION

Petitioner asks this Court to do what the circuit court declined to do after full briefing and a hearing: halt construction of Valara's high-performance computing center in Spartanburg County (the "HPCC" or the "Project"). The Project has been under construction, in full public view, for more than a year under permits that no one timely challenged, and Valara has already invested approximately $1 billion in it. The circuit court dismissed Petitioner's Amended Complaint, and Petitioner's appeal of that ruling is pending in the Court of Appeals.

The Petition should be denied. It is not a genuine request for original-jurisdiction relief. Rather, it is a second attempt to obtain the same preliminary injunction, recast as a "writ" so that Petitioner can bypass the appeal it has already taken. Rule 245(a), SCACR, reserves this Court's original jurisdiction for extraordinary circumstances, when a matter cannot be determined in a lower court "without material prejudice." Petitioner cannot make that showing, because nothing prevents the Court of Appeals from deciding its appeal in the ordinary course. Nor does this ordinary land-use dispute present the kind of public-interest question that warrants this Court's immediate intervention.

Even on its own terms, the Petition fails because Petitioner cannot satisfy the requirements for injunctive relief, whether under the heightened burden for an injunction pending appeal or the ordinary standard for a preliminary injunction issued in the first instance. ***First***, Petitioner cannot establish irreparable harm, and its delay belies any claim of urgency. Petitioner waited sixteen months after the Project was announced, nearly a year after the first development permit issued and construction began, and months after its own members acknowledged concerns about the

Project's scale, before ever seeking injunctive relief. It then waited another seventeen days after the circuit court's order to file this Petition. The harms Petitioner asserts are construction-related inconveniences that an injunction would prolong rather than cure, speculative concerns about future operations, or the alleged loss of a public forum in which its members have actively participated. An injunction, by contrast, would inflict substantial harm on *Valara*: it would idle more than 1,500 skilled workers, impose damages exceeding $200 million, and jeopardize the jobs and tax revenue the Project will bring to Spartanburg County (the "County").

Second, Petitioner has no likelihood of success on appeal. The circuit court dismissed the Amended Complaint in its entirety for failure to exhaust administrative remedies and, independently, dismissed Counts II and III for lack of standing. Petitioner must overcome both grounds for dismissal. Its exhaustion arguments cannot be squared with the South Carolina Local Government Comprehensive Planning Enabling Act (the "Planning Enabling Act") or decades of this Court's precedent, and the circuit court's standing ruling faithfully applied this Court's decision in *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E.2d 846 (2014). Petitioner also ignores an additional ground the circuit court did not need to reach, which would require dismissal regardless: the HPCC is a Minor Land Development as a matter of law.

Third, Petitioner had, and still has, an adequate remedy: the administrative appeal process under the Planning Enabling Act and the County's Unified Land Management Ordinance ("ULMO"), including as to the Phase II Application that remains pending before the County.

Finally, if the Court is nonetheless inclined to grant relief, it should require a substantial bond under Rule 65(c), SCRCP—a requirement the Petition ignores entirely.

BACKGROUND

A. Valara and the Spartanburg HPCC

For more than a year, Valara has been constructing the HPCC on a 294-acre brownfield site at 4000 South Pine Street—the location of a former Kohler manufacturing facility in an industrial area of Spartanburg County, South Carolina (the "Property"). Suppl. App. 215-17.[1]

Contrary to the Petition's narrative of secrecy, the Project has been public from the outset. In early 2025, the Spartanburg County Council discussed the Project and its fee-in-lieu-of-tax ("FILOT") agreement at multiple public meetings. *See* Suppl. App. 218, 237-79. As early as February 18, 2025, local media reported that the Project involved a "high performance computing facility." Suppl. App. 281, 292-99. In April 2025, Valara's parent company announced that it would transform the former Kohler facility into a $2.8 billion high-performance computing center, and that announcement disclosed both the multi-phase development approach and Valara's intention to self-generate power to protect the community's power supply. Suppl. App. 218, 288-90.

When the Project was announced, State officials celebrated it as a "game changer" for the Spartanburg community, Suppl. App. 285, and the Governor called it a "milestone moment." Suppl. App. 233. That enthusiasm was well founded. Construction has involved more than 1,500 skilled workers, many from Spartanburg County, and once completed, the HPCC will create more than 150 permanent full-time jobs. The HPCC will also generate revenue for regional businesses and suppliers whose services will be required for regular maintenance and operations support, as

[1] To avoid duplication, Valara cites Petitioner's Appendix ("App.") for the operative circuit court pleadings and orders. Valara's Supplemental Appendix ("Suppl. App.") contains only (i) pleadings that Petitioner's Appendix does not reproduce in full and (ii) supplemental source documents.

well as hundreds of millions of dollars in tax revenue to support local schools, public safety, infrastructure, and services. *See* Suppl. App. 217.

Valara has committed to being a good neighbor since before it broke ground. At its own expense, Valara analyzed the HPCC's potential environmental impacts and remediated pre-existing hazards at the Kohler site, including by removing asbestos and lead-based paint, remediating a prior on-site landfill, and removing several tons of unexploded ordnance and related materials (as the Property served as a World War II army training camp during the 1940s). Suppl. App. 216-17. Valara has also taken steps to mitigate potential disturbances from both construction and operation of the HPCC. For example, it adjusted site lighting to address complaints from one of Petitioner's members about light pollution. *See* Suppl. App. 219. Going forward, Valara plans to construct berms and other sound barriers to minimize noise; it is rolling out a "good-neighbor" program to clean any alleged dust off the homes and cars of neighboring property owners who request that service; to address traffic concerns, it has implemented a traffic management plan to ease congestion; and to address turbine emissions, Valara will be implementing Continuous Emissions Monitoring Systems on the site. Suppl. App. 220-22.

B. The County's Permitting of the Project

In March 2025, Valara asked the Spartanburg County Planning Department whether the Project required a Minor or Major Land Development permit; the County's Senior Planner advised that the Project, as a change of use, required a Minor Land Development permit, and the Planning Department confirmed that classification at a Collaborative Development Review Meeting. *See* Suppl. App. 467-68. That determination was consistent with the County's historical practice of treating large-scale developments that do not fall within the ULMO's specified "Major" uses as Minor Land Developments regardless of size. *See* Suppl. App. 524-25.

Valara submitted its Phase I Minor Land Development application on July 11, 2025, and the County issued Minor Land Development Permit No. DEVELOPPER-0725-0918 on August 27, 2025 (the "Phase I Permit"). Suppl. App. 468-69, 480. Separately, under the County's Storm Water Management Ordinance, the County's Engineering Division issued Land Disturbance Permit No. LANDISTPER-0525-0743 on August 25, 2025, authorizing land-disturbing activities within 84 acres; approved modifications later increased the authorized limits of disturbance to 169.6 acres. Suppl. App. 528-29. County personnel have confirmed that the land-disturbing activities at issue occurred within the authorized area except for approximately two acres, which the County identified on a July 22, 2026 site visit and directed Valara to add to a modification application that was already pending. Suppl. App. 529.

On April 6, 2026, working with the County, Valara submitted its Phase II Minor Land Development application (the "Phase II Application"). Suppl. App. 470. On May 13, 2026, Planning Department staff issued a conditional approval, but the Phase II Application remains pending and no Phase II development permit (the "Phase II Permit") has issued to date. *See* Suppl. App. 470, 486, 525.

In parallel, Valara sought a permit under the Clean Air Act from the South Carolina Department of Environmental Services ("DES"). On July 18, 2025, DES issued a public notice of Valara's permit application, identifying the facility as a data center at 4000 South Pine Street powered by twenty-four natural-gas generators; the public comment period remained open through August 16, 2025. *See* App. 19, 156-58. DES issued the air permit on September 17, 2025. *Id.*

C. Petitioner and Its Members Sit on Their Hands While Construction Proceeds

Construction began soon after the Phase I Permit issued in August 2025: over 1,500 skilled workers have been engaged, materials and equipment have been delivered, and approximately $1 billion has been spent. Suppl. App. 217, 223-24. None of this has been done in secret: land

has been graded, trees cleared, and buildings partially constructed, all in public view. *See* Suppl. App. 216-17, 222-24. And as noted above, even before construction began, three County Council meetings disclosed that the Project was an approximately $2.8 billion high-performance computing facility, *see* Suppl. App. 237-79, 281; half a dozen press reports covered the Project, including several that described its multi-phase approach, *see* Suppl. App. 232-35, 281-99; and *multiple* *public* permit applications described the redevelopment of "the former Kohler Industrial Plant, . . . comprised of approximately 905,000 square feet of business space," Suppl. App. 480. Accordingly, neither Petitioner—an organization formed early this year for the sole purpose of "slow[ing] down construction" and "eventually stop[ping]" the HPCC, App. 269, 277—nor its members—many of whom concede they were aware of the Project in 2025, have watched construction carefully, and became concerned about the "massive scale of construction" by no later than March or April 2026, *see infra* p. 15—can credibly claim they lacked notice or did not understand the Project's scope. Yet no one appealed the Phase I Permit to the Board of Zoning Appeals ("BZA"), and no one filed a complaint with the County under the ULMO or the Storm Water Management Ordinance. *See* Suppl. App. 529. Instead, Petitioner waited nearly a year after the County issued the Phase I Permit before it sought to stop construction of the HPCC.

D. Procedural History

On June 22, 2026, Petitioner and the Southern Alliance for Clean Energy (the "Alliance") filed a Petition for Declaratory Order and Rule to Show Cause asking the South Carolina Public Service Commission (the "PSC") for the same form of relief Petitioner seeks here: an order halting construction of the HPCC. *See* Suppl. App. 1-17. On August 27, 2026, the PSC issued a directive unanimously granting Valara's motion to dismiss for lack of jurisdiction and further holding that the Siting Act confers no private right of action to enforce its provisions or to halt construction. Suppl. App. 90-91. The directive was followed by a full commission order on September 14, 2026.

Suppl. App. 92-115. Petitioner and the Alliance sought reconsideration on September 24, 2026, and Valara opposed. Suppl. App. 116-152. On October 8, 2026, the PSC issued a directive unanimously denying the motion for reconsideration. Suppl. App. 153-54. The full commission order was published on October 23, 2026. Suppl. App. 155-65. Petitioner and the Alliance filed a notice of appeal on October 30, 2026. Suppl. App. 546-48.

In parallel, on July 6, 2026, Petitioner sued Valara and the County, initially challenging only the County's processing of the Phase II Application. A month later, on August 12, 2026, Petitioner filed an Amended Complaint in which it also challenged the County's issuance of the Phase I Permit and alleged that Valara's ongoing construction was exceeding the scope of that permit. App. 1-31. Although both the Complaint and the Amended Complaint sought *permanent* injunctive relief, Petitioner did not seek *preliminary* injunctive relief until August 20, 2026—six weeks after filing suit, just shy of a year after the Phase I Permit issued and construction began, and after Valara had spent approximately $1 billion on labor, materials, and equipment. App. 176-212. That motion for preliminary relief sought to enjoin any further construction on the Project.

Valara and the County moved to dismiss the case and opposed the motion for a preliminary injunction. App. 336-84, 402-53. The circuit court heard the motions to dismiss and the motion for preliminary injunction on September 17, 2026, and on October 6, 2026, issued an order dismissing the case due to lack of standing and failure to exhaust administrative remedies (and denying the motion for a preliminary injunction in light of its dismissal). App. 483-94.

The circuit court ruled on two independent grounds. First, 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." App. 491. Because there was no basis to excuse exhaustion—the Amended

Complaint did not show that the County had taken "a hard and fast position" rendering an appeal futile; the BZA process was adequate because it would have provided a hearing, evidence, a decision, and a record for judicial review; and the questions presented were not purely legal—the court dismissed the Amended Complaint. *See* App. 491-93. Second, the court also held that Petitioner lacked standing to pursue injunctive relief under the Planning Enabling Act in Counts II and III. Although Petitioner's members are adjacent or neighboring property owners, the court found that the Amended Complaint did not allege that they were "specially damaged," because the alleged injuries—disruption of peace and solace, lack of transparency, generalized noise, dust, tree-clearing, and traffic concerns, and potential future impacts—were "either speculative or non-particularized." App. 487-88. The court also declined to apply the public-importance exception. *See* App. 488-89.

Petitioner filed a notice of appeal with the South Carolina Court of Appeals on October 20, 2026. Suppl. App. 542-45. Rather than let the ordinary appellate process play out or ask the circuit court for an injunction pending appeal, Petitioner filed this Petition three days later—on October 23, 2026, seventeen days after the circuit court's order issued—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, and will do so only for "an extraordinary reason such as a question of significant public interest or an emergency," *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991); *see Henson v. S.C. Dep't of Corr.*, No. 2025-000689, 2026 WL 2106838, at *3 (S.C. July 22, 2026) (writs are an extraordinary remedy the Court grants only in "rare circumstances" and "when 'exceptional circumstances' exist" (citation omitted));

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) (extraordinary writs "are intended only for the most *extraordinary* and exceptional situations").

This Court applies the traditional preliminary injunction factors when considering a petition for original jurisdiction requesting injunctive relief. *See, e.g.*, *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013). A party seeking a preliminary injunction must establish that: "(1) it would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The Court has warned that a preliminary injunction is "a drastic [remedy] and ought to be applied with caution." *Id.* "The party seeking an injunction has the burden of demonstrating facts and circumstances warranting an injunction." *Id.*

Petitioner's burden is particularly heavy here for three reasons. First, "the inherent purpose behind the equitable remedy of an injunction" is "to preserve the status quo." *County of Richland v. Simpkins*, 348 S.C. 664, 671, 560 S.E.2d 902, 905 (Ct. App. 2002), *modified on other grounds*, *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). Where, as here, Petitioner seeks to halt an entire project pending a final merits decision based on an alleged ordinance violation, it must "prove a violation [of the ordinance] to entitle [it] to an injunction." *Id.* at 669-71, 560 S.E.2d at 905-06 (affirming denial of a preliminary injunction 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). Second, to the extent Petitioner seeks to enjoin issuance of the Phase II Permit, relief that would restrain 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 County v. S.C. Dep't of Revenue*, 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018) (citation omitted). Third, because Petitioner seeks in substance an injunction pending appeal, it must "clearly show[] that, pending the appeal, it will result in irreparable injury or the miscarriage of justice." *Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912); *see also Silverthorne v. Barnwell Lumber Co.*, 96 S.C. 32, 79 S.E. 519, 519 (1913) ("A justice of this court has the power to make the order of injunction; but it ought not to be exercised unless the right of the appellant is very clear and beyond reasonable question.").

ARGUMENT

The Petition fails at the outset because it does not belong in this Court's original jurisdiction. It is a procedurally improper attempt to obtain a third review of a request for injunctive relief that two tribunals in two separate forums have already rejected. But even if the Court were to consider the Petition on the merits, Petitioner cannot carry its heavy burden—under either the heightened standard for an injunction pending appeal or the ordinary preliminary-injunction standard—on *any* of the elements it must prove for an injunction to halt construction of the HPCC: it faces no immediate irreparable harm, it has no likelihood of success on appeal, and it has an adequate remedy at law. The Petition should thus be denied.

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

This Court will not entertain a matter that can "be determined in a lower court in the first instance, without material prejudice to the rights of the parties." Rule 245(a), SCACR; *see State*

ex rel. Martin v. Moore, 54 S.C. 556, 560, 32 S.E. 700, 701 (1899) ("[W]here the right of appeal is provided for, that mode of correcting errors of law . . . must be resorted to."); *Pettiford v. S.C. State Bd. of Educ.*, 218 S.C. 322, 339, 62 S.E.2d 780, 788 (1950) (certiorari "cannot be made a substitute for an appeal" (citation omitted)). Under South Carolina Rule of Civil Procedure 62(c), "[w]hen an appeal is taken from . . . [a] final judgment . . . denying an injunction, the court in its discretion may . . . grant an injunction during the pendency of the appeal." Rule 62(c), SCRCP. However, "[a]n application for such relief should first be made to the trial court under Rule 62(c)." Rule 62(g), SCRCP. Only when an application has been denied, or when it is not practicable, "may [the application] first be made to an appellate court or a judge or justice thereof." *Id.*; *see also* Rule 241, SCACR. Courts will issue a writ only "in the absence of other effective relief." *Rowe v. City of West Columbia*, 334 S.C. 400, 407-08, 513 S.E.2d 379, 383 (Ct. App. 1999).

The purpose of original jurisdiction is to decide cases on their merits in the first instance—yet Petitioner disclaims any request for a merits ruling, Pet. at 4, and seeks only interim relief in a matter the circuit court has already heard. *See* Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 329 (3d ed. 2016) ("Because petitions for injunctive relief can easily be addressed to the lower courts, it is unlikely that the Supreme Court would be receptive to a petition for a writ of injunction in its original jurisdiction, except under the most extraordinary circumstances."). Indeed, Petitioner has already invoked the ordinary appellate process by noticing an appeal from the circuit court's order and seeks only to enjoin the Project while the appeal proceeds. That is a request for an injunction pending appeal—relief that the appellate rules address through the ordinary appellate process, not through a free-standing original action. Petitioner does not contend that it ever asked the circuit court for an injunction pending appeal, as Rule 62(g) requires, nor does it explain why the appellate court in which its appeal is pending could not entertain an

appropriate motion. Nor can the Petition be recast as a motion for supersedeas under Rule 241, SCACR: among other things, it is not verified, its caption does not match the appeal's, and it does not explain why relief was not first sought below. Rule 245(a) requires Petitioner to show why the matter cannot be determined in a lower court "without material prejudice." Petitioner's preference for a faster forum is not such a showing.

Even if this case posed an "emergency" that the lower courts could not promptly address—and Petitioner has not even attempted to explain why that would be the case—Petitioner's own delay would foreclose relief. Any such "emergency" is of Petitioner's own making: construction has proceeded openly since August 2025, and Petitioner's members admit they understood the Project's scale by March or April 2026 at the latest. *See* App. 260, 268, 277, 300-01. Petitioner then waited months to sue, six more weeks to seek a preliminary injunction, and seventeen days after the circuit court's order to file this Petition. Petitioner cannot manufacture an emergency through its own delay and then invoke that purported emergency to justify extraordinary relief. *Cf. Quince Orchard Valley Citizens Ass'n v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989) ("[A] long delay in seeking relief indicates that speedy action is not required." (citation omitted)).

Perhaps recognizing that it cannot establish an emergency—much less one that is not self-created—Petitioner devotes much of its Petition to newspaper articles, polling results, a moratorium "tracker," and pending legislative proposals concerning data centers generally, *see* Pet. at 3-4 & nn.1-4, 18-19 & n.12, in an effort to show that the Petition raises a "question of significant public interest" that this Court should address, *Key*, 305 S.C. at 116, 406 S.E.2d at 357 (writ is appropriate "[o]nly when there is an extraordinary reason such as a question of significant public interest or an emergency"); *see* Rule 245(a), SCACR. However, this Court has found such questions only in a limited set of cases: constitutional questions of government authority and

separation of powers, *see Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (2021); legislative and electoral matters, *see Mitchell v. Spartanburg Cnty. Legis. Delegation*, 385 S.C. 621, 685 S.E.2d 812 (2009); public finance and taxpayer interests, *see Davenport v. City of Rock Hill*, 315 S.C. 114, 432 S.E.2d 451 (1993); and public-health emergencies, *see Creswick v. Univ. of S.C.*, 434 S.C. 77, 862 S.E.2d 706 (2021) (COVID-19 mask mandates). Rule 245 does not authorize original jurisdiction over matters the trial courts can adequately resolve and that present no question of broad public significance. *See Key*, 305 S.C. 115, 406 S.E.2d 356; *Mod. Fin. Co. v. Hicks*, 235 S.C. 212, 110 S.E.2d 859 (1959).

None of Petitioner's three asserted interests meets this standard. Petitioner claims the public has an interest in: (i) whether adjacent "property owners have standing to challenge the government's approval of heavy industrial development," (ii) "the lack of transparency and public process to safely manage the surge of data center developments," and (iii) "[t]he denial of judicial review to neighbors of this project." Pet. at 18-19. Petitioner cites no case treating any of these interests as a question of significant public interest warranting this Court's original jurisdiction. And each, on inspection, describes nothing more than a dispute between a limited set of parties over a single project.

The first and third asserted interests—standing and judicial review—rest on a misreading of the circuit court's decision. The court did not hold that neighbors may never challenge a nearby project. It held only that, as pleaded, the members' alleged injuries were "either speculative or non-particularized"—concerns about "general peace and solace," "generalized noise, dust, tree-clearing, and traffic," and "potential" environmental and health impacts—and thus did not show that the members were "specially damaged" as the statute requires. App. 488-89, 493. That ruling does not leave neighbors without recourse; as the circuit court recognized, a neighbor who suffers

a real, concrete injury from the construction remains free to challenge it. *See* App. 488-89. Whether one association adequately pleaded a particularized injury is a fact-bound pleading question specific to these parties and this record—not an issue of broad public significance.

The second purported interest—"the lack of transparency and public process to safely manage the surge of data center developments"—fares no better. Pet. at 18. The Project has been discussed at numerous public County Council meetings, many of which Petitioner's members attended. Petitioner's own brief relies on extensive press coverage of the Project dating back to February 2025. *See id.* at 3 nn.1-2, 5 nn.5-6. More fundamentally, how to regulate data center development is a policy question for the political branches, not a basis for this Court's original jurisdiction. And those branches are acting: as Petitioner acknowledges, localities across the State are considering and adopting moratoriums on data center development, and legislators have introduced transparency proposals. *See id.* at 3-4, 4 nn.3-4. In fact, the Spartanburg County Council itself has adopted a moratorium on future data centers. *See* Suppl. App. 538-41.

In short, Petitioner asks this Court to resolve a statewide policy debate through an extraordinary writ in a single land-use dispute. The Court should decline that invitation.

II. PETITIONER WILL NOT BE IRREPARABLY HARMED ABSENT AN INJUNCTION.

Before an injunction can issue, Petitioner 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. Petitioner's purported harms must be "*likely*, not merely possible," and it must demonstrate "that the requested injunction would meaningfully prevent that 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—Petitioner 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) (emphasis added).

Petitioner cannot demonstrate irreparable harm because its delay belies its claim of immediate, irreparable harm, and, even setting delay aside, Petitioner's alleged harms are not immediate and irreparable.

A. Petitioner Improperly Delayed Seeking Relief.

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." *Hodel*, 872 F.2d at 80 (citation omitted).

In *Hodel*, the Fourth Circuit affirmed the denial of a preliminary injunction against construction of a road where a citizens' group waited nine months after environmental approval to seek relief. *See id.* at 79-80. The delay here is longer. Notwithstanding Petitioner's complaints about an alleged lack of "transparency or public process" for approval of data centers in South Carolina, and its specious claim that the HPCC is "the most secretive" of all these projects, Pet. at 3, the scope of the Project was both knowable and fully known to the public and Petitioner's members early on in its development. Public County Council meetings, press releases, media reports, the DES public comment process, and the County's publicly accessible permit records all disclosed the nature and scale of the Project—including its $2.8 billion price tag, described as "[o]ne of the [l]argest [e]ver in SC," Pet. at 5 n.5—in 2025. *See supra* pp. 5-6; Suppl. App. 218, 232-35, 283-86, 301-08, 480; App. 19, 156-58, 259-60, 268, 276. Petitioner's own affiants not only acknowledge awareness of the Project in 2025 but affirmatively assert that they became concerned about the "massive scale of construction" by March or April 2026. App. 260, 277, 300-

01. Yet Petitioner did not sue until July 2026, did not seek preliminary relief until August 2026, and then waited *over two weeks* to file the instant Petition. Simply put, Petitioner waited too long and thus cannot "*clearly show*[] that, pending the appeal, it will result in irreparable injury or the miscarriage of justice," *Kuhn*, 92 S.C. 488, 75 S.E. at 791 (emphasis added), or credibly claim an injunction is necessary to stop "immediate, irreparable harm," *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

In fact, Petitioner has now waited so long that an injunction would not even remedy many of its purported harms. For example, Petitioner claims its members have suffered an irreparable injury because "Valara has . . . been clear-cutting large, forested areas," which has "worsened the noise pollution, and harmed local wildlife that members so enjoy." Pet. at 9. But the trees have already been cut down, and an injunction cannot bring them back. *See* Suppl. App. 222-23. Likewise, Petitioner alleges harm from "'incredibly' bright light at night." Pet. at 8. But Valara has already invested approximately $1 billion in an open construction site and must continue using lights to protect its property and equipment from thieves and vandals, whether or not construction proceeds. *See* Suppl. App. 223-25. To the extent that Petitioner still alleges there is a noise issue, *see* Pet. at 9, 11-12, 14-16, that allegation is contradicted by its own affiant, who publicly stated at a County Council committee hearing that there is currently no noise problem in the neighborhood, and that his concern is only about *future* noise once the HPCC is in operation. *See* Suppl. App. 220. And the alleged dust can be remedied only once construction is completed and foliage is planted on ground that is currently open—and would stay open indefinitely if an injunction were to issue. *See* Suppl. App. 220-21, 223. If anything, an injunction would *prolong* Petitioner's alleged injuries by delaying Valara's efforts to plant new trees, install noise and sight buffers, and cover the undeveloped areas. *Id.*; *see Coffy v. Graziana*, No. 8:22-cv-03098-BHH-JDA, 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.'" (citation omitted)), *report and recommendation adopted*, 2023 WL 4677071 (D.S.C. July 20, 2023).

While Petitioner's delay has made injunctive relief ineffective at remedying its purported injury, it has vastly increased the irreparable harm *Valara* would suffer from an injunction. Had Petitioner moved promptly after the Phase I Permit issued in August 2025, it could have sought to preserve the pre-construction status quo. *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."). But for nearly a year, the status quo has been Valara's lawful construction under validly issued permits. Valara has already spent approximately $1 billion on materials, equipment, and labor—including more than two million hours of construction labor since March 2026, when Petitioner alleges its members first became aware of the Project's scope. Suppl. App. 223-24. A writ halting construction would upend that status quo and gravely injure Valara. *See infra* pp. 31-32. Petitioner's own cases show that an injunction is not warranted in those circumstances. *See Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987) (Pet. at 12) (reversing injunction where the company "had committed approximately $70 million to [oil] exploration . . . which they would have lost without chance of recovery had exploration been enjoined").

Nor would Valara be the only party harmed. An injunction would likely put more than 1,500 skilled workers out of work, with a commensurate loss to the local economy that their wages support. *See* Suppl. App. 217, 223-27. It would also jeopardize—and, at a minimum, seriously delay—the more than 150 full-time permanent jobs that Valara expects to create at the HPCC and the hundreds of millions of dollars in tax revenue the County is set to receive once the Project is

completed. *See* Suppl. App. 217. This Court should not reward Petitioner's inexcusable delay by disrupting the status quo and injuring both Valara and the citizens of Spartanburg County.

B. Petitioner's Claim of Irreparable Harm from Loss of "Use and Enjoyment" Fails.

Even if Petitioner's delay did not itself warrant denial of its Petition (it does), an injunction is still not appropriate here because none of Petitioner's purported harms—loss of use and enjoyment of its members' 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.

Citing inapposite authority from inapplicable contexts,[2] Petitioner argues that it can show irreparable harm because the ongoing construction has allegedly "harmed members' use and

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[2] For example, Petitioner cites *Dill v. Dance Freight Lines*, 247 S.C. 159, 164, 146 S.E.2d 574, 576 (1966), for the proposition that dust constitutes an irreparable harm sufficient to support injunctive relief. *See* Pet. at 12. *Dill* does not even mention irreparable harm. 247 S.C. 159, 146 S.E.2d 574. That is because *Dill* involved a jury verdict finding a private nuisance existed. *See id.* at 162, 146 S.E.2d at 575. In that scenario, the plaintiff "is entitled as a matter of right to an injunction." *Click Props., LLC v. Thomas SC Props., LLC*, No. 2020-CP-39-00266, 2022 WL 22392141, at *7 (S.C. Com. Pl. Sept. 21, 2022) (citing *Dill*, 247 S.C. 159, 146 S.E.2d 574), *aff'd*, 445 S.C. 468, 914 S.E.2d 488 (Ct. App. 2025). Petitioner has not alleged—let alone obtained a jury verdict—that Valara's construction activities constitute a private nuisance. Petitioner also 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" interfere with its members' use and enjoyment and constitute an irreparable injury. *See* Pet. at 12. But *AJG Holdings* involved a restrictive covenant, which "will be enforced regardless of the amount of damage that will result from the breach," so "[t]he mere breach alone is grounds for injunctive relief." 382 S.C. at 51, 674 S.E.2d at 509. That principle simply does not apply here. And Petitioner selectively quotes *Amoco* to assert that environmental injuries are irreparable. *See* Pet. at 12. But in the very next sentence, 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 (citation omitted).

enjoyment of their properties and neighborhood." Pet. at 8. However, Petitioner's loss of use and enjoyment theory fails for at least two reasons.

First, Petitioner's asserted harms do not give rise to a legally cognizable injury, let alone an irreparable one. In the zoning context, this Court has held that the very alleged harms Petitioner asserts—general complaints of increased traffic, noise, airborne particulate matter, pollution, visual blight, and harm to the local environment—do not constitute a "particularized harm" because they are merely inconveniences suffered by all individuals living in or passing through the area. *See Carnival Corp.*, 407 S.C. at 76-78, 753 S.E.2d at 851-52 (increased traffic and noise pollution are not a "particularized harm"). So too here. In its Amended Complaint, Petitioner alleges only that certain members are "being harmed by the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site," App. 10-11, and frames the remaining harms as injuries to "the public" and "the citizens of Spartanburg County" at large, App. 5-6, 8-9; *see also infra* Section III.A.

Second, Petitioner cannot connect its alleged harms to the conduct it challenges. The County's classification of the Project as a Minor rather than Major Land Development did not cause dust, noise, or traffic; Petitioner has never shown that those conditions would not have occurred had the Project proceeded through Planning Commission review. Clearing and grading were authorized by separate land disturbance permits that Petitioner has never challenged. *See* Suppl. App. 528-29. And Petitioner's affiants offered only lay speculation regarding causation, in an area home to several manufacturing plants, chemical facilities, and oil and gas companies within a three-mile radius. *See* Suppl. App. 216, 230; *see also Charleston Dev. Co. v. Alami*, 433 S.C. 533, 542-43, 860 S.E.2d 687, 692 (Ct. App. 2021) (holding that "belief that it is

'reasonable' to assume [defendant's] actions have caused [plaintiff]" harm is insufficient to establish injury-in-fact).

Petitioner also alleges it will suffer from pollution and other environmental effects once the HPCC is operating. *See* Pet. at 9. But 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 Petitioner's members cannot justify a preliminary injunction. *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 303, 551 S.E.2d 588, 590 (Ct. App. 2001). In any event, Petitioner's speculative allegations of future harm are unfounded. Air emissions are governed by the DES permitting process, which has already allowed Petitioner and its members to participate in public hearings and appeal the issuance of Valara's air permit, and the HPCC will comply with all applicable environmental regulations through its use of Selective Catalytic Reduction systems and Continuous Emissions Monitoring Systems. *See* Suppl. App. 222. And Valara plans to install dirt berms and plant trees to address noise and light concerns and is working with a third party to evaluate permanent sound barriers around the Property. Suppl. App. 220-21.

Finally, Petitioner relies on *Woodworth v. Gallman*, 195 S.C. 157, 10 S.E.2d 316 (1940), to argue that an extraordinary writ is appropriate because construction makes time of the essence. *See* Pet. at 13. But *Woodworth* is easily distinguishable and cuts against Petitioner. There, a taxpayer sued to enjoin a housing authority's program only after the authority had operated openly for months, acquired nearly all the land it needed, entered contracts, and spent borrowed funds. *See Woodworth*, 195 S.C. at 160-63, 10 S.E.2d at 317-18. Because the suit jeopardized the authority's financing and construction bids, the authority petitioned this Court for a writ of prohibition, which the Court granted, holding that "time is of the essence" because an ordinary appeal would inadequately protect the authority's rights. *Id.* at 163-65, 10 S.E.2d at 319. This

Court then dismissed the taxpayer's claims for failure to state a claim. *See id.* at 169-70, 10 S.E.2d at 321. *Woodworth* thus used an extraordinary writ to protect a lawful, ongoing development project from an unwarranted challenge—not to halt one. This case is the factual inverse of *Woodworth*. Here, Valara stands in the housing authority's shoes: it built openly under validly issued permits and invested heavily before Petitioner ever tried to stop construction. *Woodworth*, if anything, supports dismissing Petitioner's claims in full, not granting a writ that would freeze Valara's project after substantial expenditures.

C. The Appeal Will Not Be "Mooted" Absent a Writ.

Petitioner also contends that, absent a writ, the appeal "risks mooting the case." Pet. at 4, 11, 13. But Petitioner cites no authority holding that completion of construction moots a challenge to a land-use permit, and the relief Petitioner seeks in its Amended Complaint includes declaratory relief and an injunction against the County processing any further Minor Land Development permit for the Project. App. 29-30. The Phase II Application remains pending before the County, and Petitioner retains the ability to pursue the administrative appeal process from any final decision approving it. *See* App. 492-93. A speculative risk of mootness, caused in large part by Petitioner's own delay, is not material prejudice under Rule 245(a).

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) (citation omitted). 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. The writ sought here would *disrupt* the status quo by barring Valara and the County from "processing,

reviewing, permitting, approving, constructing, and/or operating" the Project without a Major Land Development Permit, *id.* at 4-5, 20—the very relief Petitioner's merits claims seek. Because Petitioner seeks to alter the status quo and, in effect, shut down Valara's business, Petitioner must "prove a violation [of the ordinance] to entitle [it] to an injunction." *Simpkins*, 348 S.C. at 670, 560 S.E.2d at 905. Petitioner cannot meet this standard (or any other standard), 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. Petitioner Lacks Standing to Pursue Its Claims Under the Planning Enabling Act.

In dismissing Counts II and III, the circuit court correctly held that Petitioner and its members lack standing to pursue injunctive relief under the Planning Enabling Act, App. 487-89, 493, and that defect independently defeats any likelihood of success here.

The Amended Complaint failed to allege that Petitioner's members suffered a particularized injury. Petitioner sought to enjoin Valara's construction under the Planning Enabling Act, which permits only "an adjacent or neighboring property owner ***who would be specially damaged*** by the violation" to seek an injunction. S.C. Code Ann. § 6-29-950(A) (emphasis added). That standard "incorporates the particularized injury requirement of general standing doctrine." *Carnival Corp.*, 407 S.C. at 79, 753 S.E.2d at 852. This, in turn, requires "a concrete [and] particularized . . . invasion of a legally protected interest" that "affect[s] the plaintiff in a personal and individual way," not a generalized grievance shared by the public at large. *Id.* at 75, 753 S.E.2d at 850.

The Amended Complaint alleged no such harm. At most, Petitioner alleged that certain members were "being harmed by the tree clearing, noise, dust, and traffic caused by ongoing construction at the Site." App. 10-11. These are "simply complaints about inconveniences

suffered broadly by all persons residing in or passing through" Spartanburg, which this Court has held "insufficient to establish standing." *Carnival Corp.*, 407 S.C. at 76-77, 753 S.E.2d at 851. In *Carnival*, this Court rejected nearly identical allegations of increased "crowds, pollution, and traffic" and diminished "use and enjoyment of the local environment and . . . [of] homes [and] neighborhoods" arising from alleged zoning violations. *Id.* The circuit court correctly held the same here.

Petitioner's argument that the circuit court should have relied on *Preservation Society of Charleston v. South Carolina Department of Health & Environmental Control*, 430 S.C. 200, 845 S.E.2d 481 (2020), is misguided. That case involved a challenge to "the propriety of state environmental authorizations" brought by several community historical preservation organizations in administrative law court. *Id.* at 205, 845 S.E.2d at 483-84. In determining that the petitioners had standing, this Court explained that the "General Assembly surely intended [the Department of Health & Environmental Control] to receive input from all persons affected by a project with potentially harmful environmental impacts" because such input would allow "the agency's permit review process to fully assess the project's impact." *Id.* at 216, 845 S.E.2d at 489. The Court explicitly distinguished cases arising from administrative proceedings, stating that its "approach in *Carnival Corp.* is not applicable here because *Carnival Corp.* involved nuisance and zoning claims initiated in the circuit court, not the statutory grant of administrative review in [administrative law court]." *Id.* at 214-15, 845 S.E.2d at 488-89. Thus, under Petitioner's own caselaw, the circuit court properly applied *Carnival* to this case, which originated in the circuit court as a challenge to the "permitting and construction" of the HPCC. Pet. at 9-10.

Petitioner further argues that the circuit court erred by failing to consider facts alleged in Petitioner's affidavits. Not so. "It is a well-settled principle that in resolving a Rule 12(b)(6)

motion to dismiss, the court is limited to a consideration of the allegations contained within the four corners of the complaint." *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 559, 713 S.E.2d 604, 608 (2011). In fact, this Court has held that trial courts commit reversible error by considering supporting affidavits when ruling on a Rule 12(b)(6) motion. *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987). The circuit court here therefore correctly relied on the Amended Complaint when ruling on the motion to dismiss. The circuit court dismissed Counts II and III because the Amended Complaint failed to adequately allege that Petitioner's members had been "specially damaged," as is required by statute. S.C. Code Ann. § 6-29-950(A); *see* App. 487-88, 493. Petitioner cannot cure that deficiency by now claiming the circuit court should have looked beyond the four corners of the pleading.

Petitioner's allegations of procedural harm suffer from additional defects. Petitioner alleged that "the public, Plaintiff, and its members" were "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, and that certain members were harmed by a "lack of transparency" about the Project's scope. App. 5-6, 10-12. By Petitioner's own account, those harms belong to "the public" and to all "citizens of Spartanburg County," not to Petitioner's members individually. App. 5-6, 8-9 ("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." (emphasis added)). But "'[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 (citation omitted). Nor

do the members' vague "concern[s]" and "trouble[s]" about how the HPCC might injure them in the future suffice. App. 10-12; *see Beaufort Realty Co.*, 346 S.C. at 303, 551 S.E.2d at 590.

The rarely invoked public-importance exception—which Petitioner appears to have rightly abandoned—also does not apply here. This Court has cautioned that courts must "be cautious with this exception, lest it swallow the rule," *Jowers v. S.C. Dep't of Health & Env't Control*, 423 S.C. 343, 360, 815 S.E.2d 446, 455 (2018) (citation omitted), and should reserve it for matters "inextricably connected to the public need . . . for future guidance," *ATC S., Inc. v. Charleston County*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008), that "transcends a purely private matter," *Bodman v. State*, 403 S.C. 60, 68, 742 S.E.2d 363, 367 (2013). Indeed, *Carnival* refused to apply the exception in a zoning dispute because "[c]ourts are not bodies for the resolution of public policy and generalized grievances." 407 S.C. at 81, 753 S.E.2d at 853. Here, the Amended Complaint seeks injunctive relief on the theory that Valara's permit applications and construction activities violated the ULMO. Unlike the claims in cases where this Court has applied the exception, those claims raise no broader question about the proper use of public funds and do not challenge the constitutionality of new legislation. *Cf. Adams v. McMaster*, 432 S.C. 225, 236, 851 S.E.2d 703, 708 (2020); *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 742 (2007). Instead, the Amended Complaint presents 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 Spartanburg County Administrator (the "SCA") in the first instance.

Because the Amended Complaint fails to plead allegations of particularized harm, Petitioner's members lack statutory and constitutional standing. Consequently, Petitioner lacks associational standing to seek injunctive relief under the Planning Enabling Act.

B. Petitioner Failed to Exhaust Administrative Remedies.

The circuit court also correctly found that Petitioner failed to exhaust its 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). This 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.*, 433 S.C. at 544-46, 860 S.E.2d at 693-94 (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").

As applied here, each claim in Petitioner's Amended Complaint is time-barred and/or premature: (i) Petitioner's challenge to the County's issuance of the Phase I Permit had to be brought before the BZA within ten days, and is now time-barred, *see* App. 41 (ULMO § 1.04); *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); (ii) Petitioner's challenge to the Phase II Application is premature because that application remains under review with the County; and (iii) Petitioner's claim that Valara has exceeded the scope of the Phase I Permit was required to be brought as a

complaint to the SCA, which has the obligation to "record and investigate such complaint, and take such action as provided by this Ordinance," including issuing a stop work order—precisely the relief Petitioner seeks here—subject to appeal to the BZA. *See* App. 47, 131 (ULMO §§ 1.17, 1.18, 5.02-2(1)); S.C. Code Ann. § 6-29-820(A).

In response, Petitioner raises two arguments challenging the circuit court's conclusion that its members failed to exhaust their administrative remedies. Neither has merit.

First, Petitioner argues that Section 6-29-950(A) of the Planning Enabling Act permits neighboring landowners who are "specially damaged" by a zoning violation to "sue directly in state court" for injunctive relief "in addition to other remedies," without first going to the BZA. Pet. at 17; S.C. Code Ann. § 6-29-950(A). As a threshold matter, Petitioner's members are not "specially damaged" and lack standing under that provision. But even if they had standing, Section 6-29-950(A) does not do what Petitioner says. The phrase "in addition to other remedies" merely identifies the remedies a court may award once a proper claim is before it; it does not purport to abolish the exhaustion requirement embedded in Sections 6-29-800 and 6-29-820 of the same Act. Moreover, by its terms, the provision addresses a structure or land that is used, or proposed to be used, "in violation of" a zoning ordinance—that is, conduct that violates the ordinance or exceeds an existing permit. It says nothing about challenges to whether a permit was properly issued in the first place. The Planning Enabling Act commits those challenges to a separate "administrative mechanism designed to enforce [local] zoning ordinance[s]": the BZA. S.C. Code Ann. § 6-29-780(A). That board has 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," *id*. § 6-29-800(A)(1), and any "person aggrieved" by such a decision—as Petitioner and its members claim to be—must appeal to the board in the first

instance, *id.* § 6-29-800(B). Unsurprisingly, Petitioner has not cited a single case in which a South Carolina court read Section 6-29-950(A) to allow a neighboring landowner to bypass that process.

Petitioner's reading would also render the administrative appeal process a nullity. If a neighbor could sidestep the BZA simply by recasting a challenge to a permit's issuance as a claim that the permitted project "violates" the ordinance, no aggrieved party would ever need to appeal to the BZA or meet the deadlines for doing so. Every permit decision could be attacked directly in circuit court, at any time, and Sections 6-29-800 and 6-29-820 would be meaningless. The Planning Enabling Act cannot be read to so thoroughly undermine itself.

Second, Petitioner argues that its failure to timely appeal the Phase I Permit—issued in August 2025 and challenged for the first time nearly a year later—should be excused because Valara "concealed" the Project's true scope. Pet. at 17-18. But the ULMO requires an appeal "within ten days of the date of the action," not within ten days of a party's subjective appreciation of a project's significance. In any event, as explained *supra* Section II.A, the record refutes any claim of concealment. And while Petitioner now asserts that the precise size of the power plant was not public until after the Phase I Permit issued, the power plant will be constructed under the final Phase II Permit, not as part of Phase I—so even if Petitioner were correct (it is not), that would not excuse Petitioner's failure to challenge the Phase I Permit, since Petitioner's own theory is that the Project's cost and size made it a Major Land Development—yet Petitioner and its members indisputably knew those attributes, including its $2.8 billion price tag, when the Phase I Permit issued.

C. Even if the Court Were to Reach the Merits of Petitioner's Claim, It Would Fail.

Even if Petitioner could overcome both dismissal grounds relied upon by the circuit court, it will not succeed in its appeal because its claims are meritless for a reason that the circuit court did not reach—namely, that the Project properly qualifies as a "Minor Land Development."

The ULMO defines "Major Land Development," lists in Exhibit A the specific uses that qualify, and directs that "[a]ll other [u]ses [n]ot [c]lassified as Major" Land Developments are Minor Land Developments. App. 40, 44 (ULMO § 1.02(1), Ex. A). Read together, Section 1.02(1) and Exhibit A to the ULMO leave no ambiguity. Section 1.02(1) provides that 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." App. 40 (ULMO § 1.02(1)). It says nothing about a development's square footage, building height, controversial nature, or any of the other metrics Petitioner claims the County should use to distinguish Major from Minor land developments. And whatever room "includes but is not limited to" and "similar developments" might leave, Exhibit A fills it: it enumerates a comprehensive list of fourteen additional uses classified as Major, from "Motor Speedway[s] or Testing Track[s]" and "Waste Management Facilit[ies]" to "Scrap Metal Processor[s]" and "Asphalt Batch Plant[s]"—but *not* computing or data centers—and then classifies "[a]ll other [u]ses" as Minor. App. 44 (ULMO Ex. A). Because the ULMO specifies which uses are Major and expressly assigns everything else to Minor, County Council's decision not to list computing centers as a Major use means they are necessarily Minor—

and the County properly processed the Project as a Minor Land Development.[3] Petitioner is therefore unlikely to succeed on any of its claims.

IV. A WRIT IS NOT NEEDED TO PRESERVE THE COURT'S JURISDICTION PENDING APPEAL BECAUSE PETITIONER POSSESSES AN ADEQUATE REMEDY AT LAW.

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). A remedy "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). Petitioner plainly has an adequate legal remedy: the administrative remedies of the Planning Enabling Act and the ULMO, which Petitioner had to exhaust before challenging a permit's issuance, or alleging noncompliance with an issued permit, in court. 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 [plaintiff] 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.").

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[3] This is consistent with the County's longstanding interpretation of the ULMO, under which it has processed projects larger than the HPCC as Minor Land Developments. *See* Suppl. App. 524-25. That interpretation is entitled to substantial deference and should not be overruled "without cogent reason[s]." *Purdy v. Moise*, 223 S.C. 298, 305, 75 S.E.2d 605, 608 (1953); *see also Furr v. Horry Cnty. Zoning Bd. of Appeals*, 411 S.C. 178, 184, 767 S.E.2d 221, 224 (Ct. App. 2014) ("The local zoning boards, and not the courts, are the primary entities responsible for the planning and development of our communities.").

V. IF AN INJUNCTION IS GRANTED, PETITIONER MUST POST A SUBSTANTIAL BOND.

Injunctive relief is unwarranted for the reasons above. But if the Court disagrees, it should condition any injunction on Petitioner first posting a bond of at least $200 million.[4]

Although the Petition neither mentions nor proposes an undertaking, a bond is mandatory for injunctions in South Carolina: "***no*** . . . injunction shall issue" unless the movant first posts a security bond. Rule 65(c), SCRCP (emphasis added). The bond exists 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). South Carolina courts enforce the requirement strictly, reversing injunctions issued without a bond and rejecting nominal ones. *See AJG Holdings*, 382 S.C. at 49-50, 674 S.E.2d at 507-08 (reversing order granting preliminary injunction because the court did not require a bond before it issued); *Epps v. Bryant*, 218 S.C. 359, 365, 62 S.E.2d 832, 834-35 (1950) (noting that an order granting preliminary injunction without requiring a bond "was inadvertently erroneous"); *Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) (holding that a nominal bond does not satisfy the security bond requirement).

Petitioner cannot sidestep this requirement by relabeling its request for an injunction as an extraordinary writ; the bond requirement applies with equal force when this Court acts in its original jurisdiction. *See State v. Pattersen*, 96 S.C. 29, 79 S.E. 522 (1913). In any other forum, under any other procedure, Petitioner would have to post a bond. A different label changes

[4] In addition, 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 any injunction in this case, at a very minimum, any such order should not restrain activities authorized by permits Petitioner does not challenge, including Valara's validly issued land disturbance permits, or activities necessary to allow Valara to secure and stabilize the Property.

nothing—least of all where Petitioner seeks a project-wide shutdown that would shift the entire economic risk of its litigation onto Valara.

As Valara explained to the circuit court, even a short-term halt in construction would cause tremendous damage. Valara would have to demobilize roughly 1,500 skilled workers and the Project's heavy equipment—a process lasting at least two months and costing approximately $2.75 million per day. Suppl. App. 224-25. Valara would then incur approximately $35,000 per day to secure, store, and maintain the idle site and its sensitive equipment. Suppl. App. 225. Restarting construction after an injunction is lifted would then require a roughly nine-month remobilization, costing an estimated $40 million to $60 million, including the expense of rebuilding a skilled workforce that will have moved on. Suppl. App. 225-26. Even a brief halt, then, would cause $208 million to $228 million in direct damages alone. Suppl. App. 226. And that figure excludes substantial costs not yet quantifiable—recommissioning equipment, lost discounts and restocking fees, expired warranties, higher cancellation penalties, longer lead times on reordered equipment, and, most of all, significant lost profits and substantial diminution in the value of the Property. Suppl. App. 226-27.

Accordingly, if the Court were to grant Petitioner's requested writ, it should require a bond of no less than $200 million[5]—below even the low end of Valara's quantified direct damages—so that Valara is protected if the injunction proves wrongful.

CONCLUSION

For the foregoing reasons, Valara respectfully requests that the Court deny Petitioner's Petition for Extraordinary Writ.

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[5] The amount of the requisite bond depends on the length of any injunctive relief, increasing by approximately $2.79 million per day.

Respectfully submitted,

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